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DISTRICT II

April 17, 2013

To:

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You are hereby notified that the Court has entered the following opinion and order:

2012AP2263

Maria L. Peterson v. PDQ Food Stores, Inc. (L.C. # 2012CV99)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Maria and Dennis Peterson appeal from a circuit court order permanently enjoining them from filing any new action “arising from their status as prior owners of real estate located in Kenosha County, Wisconsin” without first obtaining judicial approval. The respondents¹ argue that the permanent injunction was a proper exercise of the circuit court’s discretion. Based upon

¹ The co-respondents on appeal are PDQ Food Stores, Inc. and Lakeview Investments LLC. The Petersons’ primary dispute is with PDQ, though Lakeview filed the respondent’s brief. PDQ informed this court that it would not be filing a separate brief because Lakeview’s brief adequately represented PDQ’s interests. We will refer to PDQ and Lakeview collectively as “the respondents.”

our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).² We affirm.

The parties' underlying dispute arises from a 1997 real estate transaction wherein the Petersons conveyed land to PDQ Food Stores, Inc. The Petersons initially challenged the conveyance in the Kenosha County Circuit Court in 2004, and after a court trial, judgment was entered in favor of PDQ. On appeal, this court affirmed the judgment in *Peterson v. PDQ Food Stores, Inc.*, No. 2007AP348, unpublished op. and order (WI App July 2, 2008), and the Wisconsin Supreme Court denied the Petersons' petition for review. Since that time, the Petersons have filed petitions, complaints, and appeals in the state and federal court systems, including in the United States Supreme Court. Most recently, the Petersons commenced a new action in the Kenosha County Circuit Court. Their complaint reiterated the claims made in their original 2004 circuit court action. On May 29, 2012, the circuit court entered an order dismissing the case with prejudice. Thereafter, the respondents filed motions for sanctions and for injunctive relief, and on July 13, 2012, the circuit court held a hearing. On August 14, 2012, the circuit court entered a written order permanently enjoining the Petersons "from filing any action in any State Court in the State of Wisconsin arising in any matter from their status as prior owners of real estate located in Kenosha County, Wisconsin without first having obtained leave of Court." The order set forth the procedure for obtaining leave to file additional pleadings and specified that the failure to comply with the terms of the injunction would subject the Petersons or anyone acting on their behalf to a contempt finding.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In October 2012, the Petersons filed what this court liberally construed to be a notice of appeal from the permanent injunction order. On November 12, 2012,³ this court entered an order clarifying the extent of our jurisdiction and the scope of the issues on appeal. We ordered that “appellate jurisdiction in this appeal is limited to review of the August 14, 2012 order for a permanent injunction” and stated that the Petersons must “appropriately confine the issues and argument in their brief to that [injunction] order.”

Nonetheless, the Petersons’ appellants’ brief focuses on the circuit court’s alleged error in entering the 2007 judgment in the respondents’ favor. In fact, the Petersons never ordered the transcript from the July 13, 2012 hearing, and that transcript is not included in the appellate record. Similarly, the Petersons’ brief fails to mention or address the permanent injunction from which this appeal is taken. The Petersons have failed to address the sole issue in this appeal, and we will not develop their arguments for them. *See State v. Gulrud*, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987). The Petersons have abandoned any challenge to the circuit court’s order for a permanent injunction. *See State v. Johnson*, 184 Wis. 2d 324, 344, 516 N.W.2d 463 (Ct. App. 1994).

Even if we were to assume that the Petersons’ brief properly addressed the circuit court’s permanent injunction, we would conclude that the injunction order was an appropriate exercise of discretion. “A court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant’s access to the

³ This court had previously rejected the Petersons’ first-filed appellants’ brief due to its failure to comply with the WIS. STAT. RULE 809.19 rules of appellate procedure. We also dismissed their second appeal, No. 2012AP2262, on jurisdictional grounds as well as their failure to pay the filing fee.

court.” *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991) (citation omitted). First, because there is no transcript of the July 13, 2012 hearing, we assume that any transcript would support the circuit court’s discretionary exercise. See *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979) (when transcripts are missing from the record, we assume that they support affirming the trial court’s determinations). Second, based on the appellate record and the Petersons’ demonstrated history of continuing to pursue a claim that has already been decided, we determine that the circuit court properly crafted an order narrow enough “to strike a balance among the [Petersons’] access to the courts, the [respondents’] interest in res judicata, the taxpayers’ right not to have frivolous litigation become an unwarranted drain on their resources and the public interest in maintaining the integrity of the judicial system.” *Minniecheske*, 161 Wis. 2d at 749.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals