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DISTRICT IV

April 16, 2013

To:

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

2011AP2315 City of Platteville v. Darrel L. Kallembach (L.C. # 2010CV667)

Before Higginbotham, Sherman and Blanchard, JJ.

Darrel Kallembach appeals a judgment that granted the City of Platteville's claims for injunctive relief, abatement of nuisance, and forfeitures—all stemming from Kallembach's ongoing violations of municipal ordinances related to rental properties. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2011-12).[1]

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The appellant's brief raises numerous complaints about the circuit court proceedings in this matter, including claims that: the court lacked jurisdiction; that it improperly denied Kallembach's discovery requests relating to the incorporation of the City; that there were factual disputes about the conditions of the rental properties that should have precluded summary judgment as to whether there was a nuisance; that the building inspector had not been properly sworn into office; that the City's contract with an inspecting company was invalid because it was not signed by the comptroller; that Kallembach's licenses for his rental properties were still valid because expiration provisions were unenforceable; and that Kallembach should have been able to collaterally challenge 144 past citations. Kallembach's brief fails, however, to develop any coherent arguments for his numerous claims that apply relevant legal authority to the facts of record (i.e., what evidence the City had relating to each element of its claims), and instead relies largely upon conclusory assertions to demand relief.

A party must do more than "simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories." ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Consequently, this court need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See* WIS. STAT. RULE 809.19(1)(d) and (e) (setting forth the requirements for briefs); ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463 (regarding unsupported arguments); ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (regarding undeveloped arguments).

While we will make some allowances for the failings of pro se briefs, "[w]e cannot serve as both advocate and judge," and will not scour the record to develop viable, fact-supported legal theories on the appellant's behalf. ***Jackson***, 229 Wis. 2d at 337; ***Pettit***, 171 Wis. 2d at 646-47.

The depth of our discussion below is therefore proportional to the appellant's development—or lack of development—of each issue. Any additional arguments that we do not explicitly address are deemed denied. *See* ***Libertarian Party of Wis. v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not discuss arguments that lack "sufficient merit to warrant individual attention").

Kallembach's arguments are premised upon two primary contentions: that the condition of his rental properties was not genuinely unsafe; and that once he acquired valid rental licenses, the City should not have been able to condition his renewal of those licenses upon inspections. Neither of those contentions precludes judgment in the City's favor, however.

As the City points out, repeated and uncorrected violations of a City ordinance constitute a public nuisance as a matter of law. ***State v. H. Samuels Co., Inc.***, 60 Wis. 2d 631, 638, 211 N.W.2d 417 (1973). It is therefore immaterial whether the genuine safety condition of any of the rental properties would constitute a nuisance in and of itself.

As to the validity of Kallembach's licenses, Kallembach did not dispute in his answer the allegations in the complaint that the City had previously issued Kallembach twelve dozen citations for allowing rental properties to be occupied without valid rental licenses; that default judgments had been entered on all of the citations; and that Kallembach had not renewed any of the expired licenses after the citations. Kallembach has not presented any authority that would permit him to collaterally attack the prior citations in the present action. Therefore, his

arguments relating to whether either the City[2] or the inspector had the proper authority to issue the prior citations are irrelevant.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals

[2] In any event, as the circuit court correctly pointed out in its order denying discovery, the validity of the City's incorporation is a matter of law settled by an act of the legislature, and not a question of fact.