COURT OF APPEALS
DECISION
DATED AND FILED

November 29, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-0139 **Cir. Ct. No. 00-SC-1640**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CHILDERIC MAXY,

PLAINTIFF-APPELLANT,

V.

JULIA MEYER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Affirmed.*

¶1 VERGERONT, P.J.[1] Childeric Maxy, pro se, appeals the circuit court's order dismissing his small claims complaint against Julia Meyers for

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

compensation and for return of personal belongings left at her home. For the reasons explained below, we affirm.

¶2 Maxy filed his complaint on June 16, 2000, and the return date was scheduled for July 7, 2000. Maxy did not appear because he was incarcerated in the county jail. The action was dismissed, but reopened after Maxy filed a motion informing the court that the guard had not allowed him to go to court because the court had not sent for him. Both parties then appeared in court and were referred to mediation but could not reach an agreement. A trial was scheduled for September 5, 2000, and Meyer filed an answer to the complaint, alleging that she made numerous unsuccessful requests that Maxy remove his car and belongings from her garage and finally had them towed to the law enforcement parking lot. At Meyer's request the court rescheduled the trial for October 24, 2000.

¶3 Meanwhile, Maxy was transferred to Dodge County Correctional Institution in Waupun, Wisconsin. In a letter filed on October 11, 2000, he wrote the court stating that he was incarcerated and requesting a "habeas corpus" appearance for the October 24 hearing. About the same time, Meyer wrote the court stating that she believed Maxy had been transferred to a state penitentiary and would not be able to appear on October 24; she asked if that were correct and if she still had to attend the hearing or would the case be dropped. The small claims clerk responded by letter that Meyer did not need to appear, that Maxy was in prison and the case would be dismissed if he did not appear.

¶4 Maxy did not appear at the October 24, 2000 trial. The brief transcript of that proceeding shows that the court dismissed the action because Maxy was serving sixty years in prison and did not appear.

¶5 The next document in the record is a letter from Maxy to the court, filed December 27, 2000, inquiring about what happened in the small claims action, complaining that the court had ignored his October letter, and also suggesting that the court knew, throughout the various proceedings and reschedulings of the small claims action, that he was going to be sentenced to prison.[2]

¶6 The small claims court record for December 27, 2000, notes this correspondence and states that "clerk will send copy of court record to pl[aintiff] in prison."

¶7 In his brief on this appeal, Maxy challenges the accuracy of Meyer's statements in her answer and in other communications to the court. However, this court does not decide disputed issues of fact. ***Wurtz v. Fleischman***, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155 (1980). That is the function of the trial court. In this case, the trial court did not decide the factual disputes because Maxy did not appear on the date scheduled for trial because he was incarcerated in another city.

¶8 Maxy asserts the court committed "judicial misconduct" in dismissing the case the first time. It appears that Maxy is arguing that it was the court's error in not seeing that he was brought to court from the county jail on the return date of July 7, 2000. However, as we understand the record, the court reopened the case and Maxy did then appear—and was referred to mediation, which he apparently attended. Maxy seems to be asserting that the court

[2] It appears from this letter that the judge presiding over the small claims after the unsuccessful mediation was the same judge who presided at Maxy's criminal trial and that Meyer was a witness against him in the criminal trial. Maxy makes various statements about the wrongfulness of his conviction and of Meyer's role in it, which are not relevant to this appeal.

intentionally delayed the trial until he was in prison and could not attend, but the record does not show any evidence of this. Maxy's own assertions are not evidence.

¶9 Maxy also asserts the court violated his rights under the Seventh and Fourteenth Amendments to the United States Constitution by dismissing his complaint because he did not appear due to his incarceration. However, he does not develop this argument in any way or provide any legal authority that would enable us to address the argument. We recognize that Maxy is pro se. However, Meyer is also pro se. If we were to develop Maxy's argument for him and make a decision on that basis, Meyer would not have the opportunity to respond. We cannot act both as judge and as an advocate for one party; we therefore do not address arguments that are inadequately developed. ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.