COURT OF APPEALS DECISION DATED AND FILED

October 12, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2401

Cir. Ct. No. 2009CV2077

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

R. SCOT DEERING,

PLAINTIFF-APPELLANT,

V.

WILLIAM WANGERIN AND BARBARA WANGERIN,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Brown County: WILLIAM M. ATKINSON, Judge. *Affirmed*.

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. R. Scot Deering, pro se, appeals an order dismissing his lawsuit against William and Barbara Wangerin, and directing him

to pay $4,156.50 toward the Wangerins' attorney fees as a sanction under WIS. STAT. § 802.05 (2009-10).[1] Deering intimates that the circuit court erred by dismissing his original complaint as barred under the doctrine of claim preclusion. Deering also appears to challenge the circuit court's decision to strike the first and second amended complaints, dismiss the action, and impose a sanction. Finally, Deering claims the circuit court judge should have recused himself. We reject these arguments and affirm the order.

BACKGROUND

¶2 The parties have a longstanding dispute over Deering's ingress/egress easement within a seventy-five-foot parcel of land owned by the Wangerins. In 2004, the trial court determined that the easement gave Deering use of a twenty-foot corridor on the southerly side of the seventy-five-foot parcel, and the Wangerins' garage did not unreasonably interfere with the use of that easement. On appeal, this court affirmed the judgment. ***Deering v. Wangerin***, No. 2004AP950, unpublished slip op. (WI App April 26, 2005).

¶3 In July 2009, Deering filed a complaint seeking "an expansion or returning of the easement back to its original condition." The Wangerins moved for summary judgment dismissal on grounds that the complaint failed to state a claim upon which relief could be granted and was barred by the doctrine of claim preclusion. An amended complaint raised several of the same arguments, but also appeared to allege new claims of civil trespass, civil battery and harassment that post-dated the 2004 judgment.

[1] All references to the Wisconsin Statutes are to the 2009-10 version.

¶4 The court determined that every allegation in the original and amended complaint, with the possible exception of the trespass, battery and harassment allegations, was barred by claim preclusion. The original complaint was dismissed and, in an order entered April 22, 2010, the court granted the Wangerins' motion for a more definite statement as to the three remaining allegations in the amended complaint. Deering was served with notice of entry of the order. In lieu of timely complying with the court's order,[2] Deering filed a petition for interlocutory appeal in this court. The petition and subsequent reconsideration motion were denied.

¶5 On June 16, 2010, the Wangerins moved to strike the amended complaint and dismiss the matter based on Deering's failure to timely comply with the court's order for a more definite statement. The Wangerins also moved for sanctions pursuant to WIS. STAT. § 802.05. Deering ultimately served a second amended complaint on July 15, 2010. After a hearing, the court struck both the first and second amended complaints, dismissed the action, and awarded attorney fees to the Wangerins. This appeal follows.

DISCUSSION

¶6 Deering contends the circuit court erred by employing claim preclusion to dismiss his original complaint. Under the doctrine of claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties [or their privies] as to all matters which were litigated or which might

[2] WISCONSIN STAT. § 802.06(5) provides that "if the motion [for a more definite statement] is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just."

have been litigated in the former proceedings." ***Northern States Power Co. v. Bugher***, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995) (citations omitted). "Further, claim preclusion is 'designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand.'" ***Id.*** (citation omitted).

¶7 The question of whether claim preclusion applies under a given factual scenario is a question of law that this court reviews independently. ***Id.*** at 551. For the earlier proceedings to act as a claim-preclusive bar, the following factors must be present: "(1) an identity between the parties or their privies in the prior and present suits; (2) an identity between the causes of action in the two suits; and, (3) a final judgment on the merits in a court of competent jurisdiction." ***Id.*** Here, the present parties were the same in the earlier litigation and there was a final judgment, affirmed on appeal, in a court of competent jurisdiction.

¶8 With regard to whether there is an identity between the causes of action, Wisconsin has adopted a transactional approach to determining whether two suits involve the same cause of action. ***DePratt v. West Bend Mut. Ins. Co.***, 113 Wis. 2d 306, 311-12, 334 N.W.2d 883 (1983). Thus, if both suits arise from the same transaction, incident, or factual situation, claim preclusion generally will bar the second suit. ***Northern States***, 189 Wis. 2d at 554. Here, Deering's complaint sought "an expansion or returning of the easement back to its original condition." The earlier litigation, however, already addressed the parties' rights and interest in the seventy-five-foot parcel and determined that while Deering holds an easement over the subject parcel, it is limited to a twenty-foot corridor for ingress and egress—the easement did not allow Deering use of the entire seventy-five-foot parcel. The doctrine of claim preclusion bars relitigation of this matter.

¶9 Citing ***Kruckenberg v. Harvey***, 2005 WI 43, 279 Wis. 2d 520, 694 N.W.2d 879; ***Flooring Brokers, Inc. v. Florstar Sales, Inc.***, 2010 WI App 40, 324 Wis. 2d 196, 781 N.W.2d 248; and ***Sopha v. Owens-Corning Fiberglass, Corp.***, 230 Wis. 2d 212, 601 N.W.2d 627 (1999), Deering appears to argue claim preclusion is not applicable to the present matter. These cases, however, are distinguishable on their facts.

¶10 In ***Kruckenberg***, our supreme court carved out a "special circumstances" exception to the doctrine of claim preclusion. Specifically, the court held: "When an action between parties or their privies does not explicitly determine the location of a boundary line, the doctrine of claim preclusion will not bar a future declaratory judgment action to determine the proper location of the boundary line." ***Kruckenberg***, 279 Wis. 2d 520, ¶41. Because Deering's complaint did not dispute boundary lines but, rather, sought expanded rights to an identified parcel, the ***Kruckenberg*** exception does not apply. Likewise inapplicable is ***Sopha***, where the court adopted a special circumstances exception to address the narrow issue of multiple injuries with long latency periods that result from asbestos exposure. ***Sopha***, 230 Wis. 2d at 236-37. Finally, ***Flooring Brokers*** addresses the applicability of issue preclusion, not claim preclusion. ***Flooring Brokers***, 324 Wis. 2d 196, ¶16.

¶11 Deering's claims regarding the circuit court's decision to strike the first and second amended complaints, dismiss the action and impose a sanction are undeveloped and fall below even the liberal thresholds of acceptability for pro se litigants. While Deering's brief makes skeletal arguments, in addition to asserting grievances and rhetorical questions, the arguments are not presented in a way that is susceptible to meaningful appellate review. This court need not address issues so lacking in organization and substance that for the court to decide the issues, it

would first have to develop them. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Further, Deering's brief violates the rules of appellate procedure by making factual assertions and references to documents without providing record citation. Under WIS. STAT. RULE 809.19(1)(e), proper appellate argument requires an argument containing the contention of the party, the reasons therefore, with citation of authorities, statutes, and that part of the record relied on—inadequate argument will not be considered. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 545-46 n.3, 292 N.W.2d 370 (Ct. App. 1980).

¶12 Finally, with regard to Deering's claim that the circuit court judge should have recused himself, he again fails to provide record citations or a legal basis for recusal other than emphasizing the general proposition that judges must be impartial and unbiased. Moreover, to the extent Deering intimates that the judge's rulings evince bias against him, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." ***Liteky v. United States***, 510 U.S. 540, 555 (1994).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.