COURT OF APPEALS DECISION DATED AND FILED

October 24, 2013

Diane M. Fremgen
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. 2013AP709

Cir. Ct. No. 2013SC183

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

RAY A. PETERSON,

PLAINTIFF-APPELLANT,

V.

MALCOLM H. STEVENS AND DEVONA STEVENS,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Affirmed*.

¶1 KLOPPENBURG, J.[1] Ray Peterson appeals pro se from a circuit court order dismissing the eviction complaint that Peterson filed against his tenants, Malcolm and Devona Stevens. As explained below, Peterson fails to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

make any meritorious argument on appeal. I therefore affirm the circuit court's order.

BACKGROUND

¶2 The relevant facts are taken from the trial record and are undisputed. Malcolm and Devona Stevens rented a four-bedroom house from Peterson, which I will refer to as "the rental property." On September 10, 2012, the City of Madison Building Inspection Division received a referral regarding possible building code violations at the rental property. Adrian Van Berkel, an inspector with the Building Inspection Division, inspected the rental property on September 11, 2012.

¶3 After inspecting the rental property, Van Berkel issued three official notices to Peterson. Each notice listed a number of building code violations, and a date by which Peterson needed to correct the violations. According to Van Berkel, twenty of the building code violations could have resulted in rent abatement if not corrected.

¶4 Van Berkel re-inspected the rental property on December 11, 2012. At that time, a number of the building code violations remained uncorrected. Because of the outstanding violations, Van Berkel referred the matter to the Madison City Attorney's Office for prosecution.

¶5 On December 18, 2012, the Building Inspection Division notified the Stevenses that they were eligible for rent abatement due to the building code violations at the rental property. They filed for rent abatement and, in January 2013, obtained an order for a ninety-five percent rent abatement from September 11, 2012, until Peterson corrected the building code violations.

¶6 Meanwhile, the December rent payment was due on December 11, 2012. The Stevenses did not pay their rent on time. Therefore, on December 19, 2012, Peterson sent them a notice[2] stating that they would be evicted if they did not pay their rent by December 28, 2012. Peterson received the December rent payment on January 3, 2013. On January 8, 2013, Peterson filed an eviction complaint against the Stevenses.

¶7 The circuit court held a court trial on the eviction action. The evidence presented at trial raised the issue of a retaliatory eviction under Madison General Ordinance § 32.15. Madison General Ordinance § 32.15 states, in relevant part:

> (1) No person or tenant shall be retaliated against for complaining of violations of … the Madison General Ordinances or for complying with those sections.
>
> (2) Retaliation shall include, but not be limited to, eviction …. Any such acts shall be presumed to be retaliatory if committed within six months after the tenant has complained to any state or local investigatory or enforcement agency of violations of … Madison General Ordinances or their statutory or administrative code equivalents. In order to overcome the presumption that such acts are retaliatory, the landlord must show by a preponderance of evidence that such acts were based upon good cause, as that term is used in this Chapter.

Madison General Ordinance § 32.12(8)(b) defines good cause: "'Good cause' … means that the landlord must show a good reason for his action, other than one related to or caused by the operation of this ordinance, including but not limited to

[2] Peterson calls this notice the "5-day notice." I will do the same.

normal uniform rental increases due to utility increases or other increased costs to landlord, or for other bonafide, nondiscriminatory business reason."

¶8 At trial, Peterson argued that he had good cause to evict the Stevenses because they prevented Peterson's maintenance employees from accessing the rental property to complete the repairs, and because they failed to pay their rent. Peterson presented the testimony of his office manager, Donnette Vollmer, in support of his position.

¶9 Vollmer testified that Peterson's rental company, Master Builders, had issued five-day notices to the Stevenses at least three times prior to December 2012. According to Vollmer, on those occasions, the Stevenses paid their rent after the five-day notices expired, and Peterson accepted their late payments. Vollmer also testified that if she receives a late rent payment after the five-day notice has expired, she asks Peterson whether to accept the payment, and Peterson decides whether to accept the payment or to file an eviction action.

¶10 The circuit court ultimately found that the eviction was retaliatory. The basis for the circuit court's retaliation finding was that, on three prior occasions, Peterson had sent the Stevenses five-day notices and accepted their late rent payments after the five-day notices had expired, but refused to do so in December 2012. Specifically, the circuit court stated:

> [W]hat happened here is that on three prior occasions [Peterson] did accept late payments after the 5-day notice, but on this occasion, he did not. And so the question is why. And I believe the answer is because of the complaints by the tenant which invoked the inspections by the City which resulted in the three write-ups, and numerous write-ups involved rent abatement violations.

Based on its finding that the eviction was retaliatory, the circuit court dismissed the eviction complaint with prejudice. Peterson now appeals. Peterson proceeds pro se, as he did in the circuit court.

DISCUSSION

¶11 Before discussing the merits of Peterson's appeal, I address whether this court can decide the appeal without a brief from the respondents. The Stevenses did not file a respondents' brief as required by the rules of appellate procedure and the delinquency order previously issued by this court. WISCONSIN STAT. § 809.83(2) provides: "Failure of a person to comply with a court order or with a requirement of these rules … does not affect the jurisdiction of the court over the appeal but is grounds for … summary reversal … or other action as the court considers appropriate." In cases where the respondents fail to file a brief, this court has the authority to issue summary reversal. *See* ***State ex. rel. Blackdeer v. Township of Levis***, 176 Wis. 2d 252, 259-60, 500 N.W.2d 339 (Ct. App. 1993) (summary reversal is an appropriate sanction for a respondent's violation of briefing requirements). Whether to grant summary reversal as a sanction against a party who fails to file a brief is a decision left to this court's discretion. *See* ***Raz v. Brown***, 2003 WI 29, ¶14, 260 Wis. 2d 614, 660 N.W.2d 647 ("A decision by the court of appeals to grant summary reversal as a sanction against a party who fails to file a brief by the date due involves an exercise of discretion."). I have determined that this appeal does not warrant summary reversal. I therefore decide the appeal based solely upon review of appellant Peterson's brief and the record.

¶12 Peterson has filed at least one other pro se appeal with this court. *See* ***City of Madison v. Peterson,*** No. 2013AP893, unpublished slip op. at ¶1 (WI

App Sept. 5, 2013) (deciding an appeal in which Peterson proceeded pro se). As was the case in his other appeal, Peterson's briefing here is highly inadequate in multiple respects. Peterson raises a number of arguments in his brief, but those arguments are scattered and unorganized. At points, Peterson's brief "is so lacking in organization and substance that for [this court] to decide his issues, [I] would first have to develop them." ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). Nevertheless, as this court did in Peterson's other pro se appeal, I will give Peterson the benefit of the doubt and attempt to address his arguments as far as I can discern them.

A. Whether Peterson Had Good Cause to Evict the Stevenses

¶13 Peterson argues that he had good cause to evict the Stevenses, and that the circuit court therefore erred by dismissing the eviction complaint. Peterson contends that he had good cause to evict the Stevenses because they prevented Peterson's employees from accessing the rental property to complete the repairs, and because they did not pay their rent.

¶14 The circuit court determined that Peterson's argument that the Stevenses would not allow Peterson's employees access to the rental property to complete the repairs was not relevant to whether Peterson had good cause to evict them. I agree and do not address this argument further.

¶15 Peterson also argues that he had good cause to evict the Stevenses because they did not pay their rent. In support of this argument, Peterson contends: "With regard to retaliation which the Court found to have emitted from the abatement process, Peterson's denial of and in support of irrelevancy thereof is Wis. Stats. [sic] 704.45(2)." WISCONSIN STAT. § 704.45(2) provides:

"Notwithstanding sub. (1), a landlord may bring an action for possession of the premises if the tenant has not paid rent ...." WISCONSIN STAT. § 704.45(1) states:

> Except as provided by sub. (2), a landlord … may not … bring an action for possession of the premises … if there is a preponderance of evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant for … [m]aking a good faith complaint about a defect in the premises to an elected public official or a local housing code enforcement agency.

Peterson seems to be arguing that under § 704.45(2), he had an absolute right to terminate the Stevenses' tenancy because they did not pay their rent, regardless of whether the circuit court found that the eviction was retaliatory. However, Peterson does not develop this argument, or address how § 704.45(1) and (2) apply here, where he brought the eviction action after the Stevenses paid their rent.

¶16 Moreover, my review of the record, including the transcript of the court trial and the documents that Peterson filed with the circuit court, reveals that Peterson did not cite WIS. STAT. § 704.45(2) before the circuit court. For the first time on appeal, Peterson argues that, under § 704.45(2), he had a right to terminate the Stevenses' tenancy because they did not pay their rent. Peterson forfeited this argument by not raising it before the circuit court, and I therefore do not consider this argument further. *See* ***Shadley v. Lloyds of London,*** 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838 ("It is well-established law in Wisconsin that those issues not presented to the trial court will not be considered for the first time at the appellate level.").

B. Whether the Circuit Court Erred by Admitting Adrian Van Berkel's Testimony

¶17 In another part of his brief, Peterson seems to argue that the circuit court should not have admitted the testimony of City of Madison Building

Inspector Adrian Van Berkel, who testified regarding the building code violations that he observed at the rental property. Peterson argues: "Testimony of Officer Van Berkel, although believed not to be relevant to subject eviction case, is believed to be perjurious [sic] and demonstrative of unnecessary, vindictive actions that Peterson believes have been committed against him by Mr Van Berkel ...."

¶18 Peterson cites no legal authority in support of this argument, and he also fails to provide adequate record citation. This court will not consider arguments that are unsupported by references to legal authority. ***Pettit***, 171 Wis. 2d at 646. Additionally, this court will not consider arguments that are unsupported by citation to the record. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463, *abrogated on other grounds by* ***Wiley v. M.M.N. Laufer Family Ltd. P'ship***, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236 (explaining that WIS. STAT. RULE 809.19(1)(e) requires parties' briefs to contain citations to the record, and that this court will refuse to consider an argument that is unsupported by citation to the record). Because Peterson's argument regarding Van Berkel's alleged perjury and vindictive behavior is unsupported by citation to legal authority or to the record, I do not address this argument further.

C. Peterson's Additional Arguments

¶19 Peterson raises a number of other issues in his brief.[3] Peterson's arguments on these issues are either undeveloped or incomprehensible. To decide these issues, I would first have to develop them. This would require me to act as both advocate and judge, which I cannot do. ***Pettit***, 171 Wis. 2d at 647. As I have explained, this court makes some allowances for the failings of pro se briefs, but there are limits beyond which this court cannot go in overlooking inadequate briefings. *See* ***id***. (stating that this court may decline to address issues raised by a party's brief if the brief "is so lacking in organization and substance" that the court would have to develop the appellant's arguments to decide the issues raised). I decline to address the additional issues that Peterson raises in his brief because Peterson's arguments are undeveloped and incomprehensible.

CONCLUSION

¶20 For the reasons stated above, I affirm the circuit court's order dismissing the eviction complaint with prejudice.

By the Court.—Order affirmed.

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

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[3] As I can decipher them, the additional issues that Peterson raises are: (1) the circuit court erred by finding that Peterson knew that the Stevenses were eligible for rent abatement before he filed the eviction complaint; (2) the defense of retaliatory eviction is prohibited by WIS. STAT. § 66.1010(2), which states that "[a] political subdivision may not enact or enforce an ordinance that imposes a moratorium on a landlord from pursuing an eviction action under ch. 799 against a tenant"; and (3) the circuit court erroneously decided the eviction action based on the decision of the rent abatement hearing examiner, who granted a ninety-five percent rent abatement to the Stevenses.