**COURT OF APPEALS DECISION DATED AND FILED**

**July 15, 2014**

**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. 2013AP1681** **Cir. Ct. No. 2011PR21**

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

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**IN RE THE ESTATE OF DONNA M. SOTO:**

**JON SOTO,**

**APPELLANT,**

**V.**

**FRANKIE J. SOTO,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Trempealeau County: JOHN A. DAMON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Jon Soto, pro se, appeals an order denying his motion for relief from an order admitting his mother's will into probate. Soto claims he was deprived of his right to appear at the hearing on admission of the

will and the order should be voided because the will's admission was based on "fraudulent concealment." We reject Soto's arguments and affirm the order.

## BACKGROUND

¶2 Soto's mother, Donna Soto, died on May 22, 2011, and an application for informal probate of the will was subsequently filed. On June 21, 2011, Soto, a State prison inmate, filed a letter contesting that part of the will "specifically excluding" him and his brother, Joe Soto, as beneficiaries.[1] Soto asserted the existence of a codicil that allegedly modified the will to divide Donna's estate equally among all four of her sons. On June 29, the court issued notice of a hearing scheduled for July 11, 2011, to address both Soto's objection to the will and the application for probate.

¶3 Despite notice of the July 11 hearing, Soto did not appear in person, by telephone or by other audiovisual means. The court denied Soto's objection and admitted the will to probate. On July 14, Soto wrote the Register in Probate questioning why he did not get his "day in court." Soto indicated: "On [the date and time of the scheduled hearing] I went up to B Building here in Stanley Prison for the court hearing over the phone and they told me that there was no court hearing set for me by [Trempealeau] Count[y]."

¶4 The Register in Probate informed Soto that it was his responsibility to contact the court to request a method for appearing at the hearing and he failed to make such a request. On May 2, 2013, Soto filed the underlying "Motion to

[1] The will states: "Due to the fact that they are otherwise provided for, I have specifically excluded my sons JON A. SOTO and JOE A. SOTO under the terms of this will."

Object to the Admission of Will and Take Additional Testimony," alleging he was deprived of his right to appear at the hearing and admission of the will was based on fraudulent concealment. The circuit court rejected Soto's claim that he was deprived of his right to appear and ultimately denied the motion as untimely. This appeal follows.

## DISCUSSION

¶5 Citing ***Stone v. Morris***, 546 F.2d 730 (7th Cir. 1995), ***State ex rel. Rilla v. Circuit Court***, 76 Wis. 2d 429, 434, 251 N.W.2d 476 (1977), and WIS. STAT. §§ 782.44 and 879.15(3),[2] Soto argues he had a due process right to appear at the hearing, he did not waive that right, and the circuit court erred by refusing to consider proper factors "in determining whether the appellant should be produced for the hearing."[3] In denying Soto's motion, the circuit court recounted that apart from Soto's initial letter contesting the will, he filed no written response prior to the hearing and made no request to be allowed to appear from the prison by video or telephone. Without sufficient prompting from Soto, the circuit court was not required to weigh Soto's unexpressed interest in appearing against the State's presumptive interest in maintaining his confinement. The cases and statutes referenced by Soto do not impose any duty on the circuit court to ensure an incarcerated claimant's appearance at a civil proceeding, especially in the absence of a request to appear.

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[2] All references to the Wisconsin Statutes are to the 2011-12 version.

[3] We note that Soto's arguments are often conclusory and not well developed. Generally, this court declines to address conclusory assertions and undeveloped arguments. *See* ***Associates Fin. Servs. Co. v. Brown***, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56. We nevertheless address Soto's claims on their merits.

¶6 Soto also contends the circuit court erred by denying his motion as untimely filed. Given Soto's "fraudulent concealment" allegation, the circuit court reasonably construed Soto's filing as a WIS. STAT. § 806.07(1)(c) motion for relief from an order based on fraud. We review a circuit court's decision on a WIS. STAT. § 806.07 motion for an erroneous exercise of discretion. *See* ***Miller v. Hanover Ins. Co.***, 2010 WI 75, ¶29, 326 Wis. 2d 640, 785 N.W.2d 493. Because Soto's motion was filed approximately twenty-two months after the will's admission, the court denied the motion as untimely under § 806.07(2), which requires a motion for relief on the basis of fraud to be filed within one year of the order from which relief is sought.

¶7 Citing ***Koehler v. State***, 218 Wis. 75, 260 N.W. 421 (1935), Soto contends his motion could not be denied as untimely because the Estate did not plead the one-year time limit set forth in WIS. STAT. § 806.07(2) as an affirmative defense. ***Koehler***, however, does not stand for the proposition asserted. That case held that a perjury indictment was not fatally defective for its failure "to allege what was in fact the truth" where no substantial right of the defendant had been affected by the omission. ***Id.*** at 76. In any event, even assuming Soto's motion should not have been denied as untimely, the circuit court was correct to deny it. *See* ***Vanstone v. Town of Delafield***, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995) ("[W]e may affirm on grounds different than those relied on by the trial court."); ***State v. King***, 120 Wis. 2d 285, 292, 354 N.W.2d 742 (Ct. App. 1984) ("If a trial court reaches the proper result for the wrong reason it will be affirmed.").

¶8 Soto's motion alleged that admission of the will was based on "fraudulent concealment" of a codicil by his mother's attorney. Specifically, the motion claimed that counsel failed to disclose at the hearing that he had been paid

$300 to amend the will in 2007 or 2008, and failed to do so. The motion also included witness affidavits to support Soto's claim that his mother intended to include him and his brother in the will. The Estate filed a response disputing the allegations. Specifically, the response indicated that Donna paid counsel $300 in 2007 to draft a termination of her deceased husband's interest in property and thereafter record it with the register of deeds. Counsel denied Soto's claim that Donna asked him to amend her will.

¶9 Soto claims, without citation to authority, that because the response was not "sworn," it was not effective to refute his allegations and they must, therefore, be deemed conceded. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. WIS. STAT. § 802.05(1). Soto has failed to identify any rule or statute requiring the Estate to file a "sworn" response.

¶10 Even were we to assume the submitted affidavits constitute unrefuted evidence of Donna's "intent" to alter her will, the language of the will is the best evidence of the testator's intent. Therefore, a court need not further inquire into a testator's intent unless there is ambiguity or inconsistency in the will's provisions. ***Lohr v. Viney***, 174 Wis. 2d 468, 480, 497 N.W.2d 730 (Ct. App. 1993). Here, Soto and his brother were unambiguously and explicitly excluded under the will's terms.

¶11 To the extent Soto contends the affidavits constitute newly discovered evidence warranting a hearing under WIS. STAT. § 805.15(3), we are not persuaded the affidavits constitute new evidence. Nothing prevented Soto from collecting similar affidavit evidence prior to the July 11, 2011 hearing, and a lack of diligence in discovering evidence cannot form the basis for a new

proceeding. *See* WIS. STAT. § 805.15(3)(b). Moreover, as noted above, Soto has not established the relevance of these affidavits in light of the unambiguous language of Donna's will. Soto's arguments do not justify invalidating admission of the will; therefore, we affirm the order denying his motion.

*By the Court.*—Order affirmed.

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