

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 8, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

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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. 2012AP1658**

**Cir. Ct. No. 2011CV9683**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**JAMES R. BRAUN,**

**PLAINTIFF-APPELLANT,**

**v.**

**VILLAGE OF HALES CORNERS, MICHAEL WEBER, ERIC CERA,  
KENT BIEGANSKI, STEVEN MURPHY, ROBERT G. RUESCH,  
WISCONSIN PROFESSIONAL POLICE ASSOCIATION AND RICHARD SACHS,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Milwaukee County:  
JANE V. CARROLL, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 BRENNAN, J. James Braun, *pro se*, appeals from the circuit court's order, which dismissed Braun's claims against the Wisconsin Professional Police Association ("the WPPA") and the Village of Hales Corners ("the

Village”), and which denied Braun’s motion to reconsider the circuit court’s previous order dismissing Braun’s claims against Richard Saks. Braun raises a number of issues on appeal, all of which are without merit. As such, we affirm.

## **BACKGROUND<sup>1</sup>**

On August 20, 2005, Braun, who was a Village of Hales Corners police officer, was present during a shooting at Wolfgang’s Pub, and in fact, owned the bar. The Village learned about the incident from the Milwaukee Police Department, rather than from Braun, and Braun was suspended pending an investigation.

### **I. The Village of Hales Corners Police Department’s Internal Investigation of Braun’s Conduct.**

¶2 The Village of Hales Corners Police Department (“the Police Department”) conducted an extensive investigation, which included witness interviews and statements, collection and analysis of records, written questions to Braun, and an interview of Braun.<sup>2</sup> The Police Department’s investigation found

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<sup>1</sup> The facts set forth in our background section are based upon the evidence produced by the defendants in their various motions for summary judgment. In his appellate brief, Braun conclusorily attacks many of these facts. However, Braun has not cited to any evidence in the record to support his recitation of the facts or to refute the well-documented allegations of the defendants. Furthermore, our review of the record did not uncover any evidence produced by Braun in the circuit court to support his allegations or to refute the defendants’ recitation of the facts. As such, we accept the defendants’ recitation of the facts as true for purposes of this appeal. See *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (arguments not refuted are deemed admitted); see also *L.L.N. v. Clauder*, 209 Wis. 2d 674, 684, 563 N.W.2d 434 (1997) (On summary judgment, evidentiary facts, as set forth in the affidavits or other proof of the moving party, are taken as true if not contradicted by opposing affidavits or other proofs in the record.).

<sup>2</sup> During discovery, the Village produced the entire investigative record and portions of that investigation are part of the record on appeal.

sufficient evidence demonstrating that Braun had violated several of the Police Department's General Orders.

¶3 First, the investigation found that Braun's actions on August 20, 2005, and his subsequent conduct, violated General Orders 301.2, Unbecoming Conduct, and 301.45, Untruthfulness. The Police Department's summary of findings included witness information from bar bouncer Lamonte Barfoot and bartender Stephanie Wacker. Barfoot told investigators that, after the shooting, Braun stated that he would be outside if needed but in fact left the scene, even though one of the shooting victims was still alive. Wacker told investigators that before Braun left the scene he removed items from the bar's safe and instructed Wacker to take the rest of the bar's money home with her. At that time, civilians were performing CPR on one of the victims. After leaving the scene, Braun called Wacker at least three times telling her to advise the investigating Milwaukee Police Department that "Al is the owner and Dan is the manager if asked."

¶4 During a meeting with Hales Corners Police Lieutenant Steven Murphy, Braun initially said that he was not at the bar during the shootings and had entered the bar prior to the establishment of a crime scene. However, Braun told the Milwaukee Police Department that he was present during the shooting; he also admitted this during the internal investigatory interview with his own department. Braun admitted to the Hales Corners Police Department during the internal investigation that his actions following the incident were motivated by a desire not to be disciplined, and admitted that the fear of discipline was of more concern to him than apprehension of a homicide suspect who had killed three people.

¶5 Second, the Police Department's internal investigation of Braun found sufficient evidence existed to sustain violations of General Orders 301.18, Insubordination, and 301.12(1)(b), Outside Employment relating to tavern operation.

¶6 According to the Police Department's internal report, Braun's answers to questions during the investigatory interview were internally inconsistent and were contrary to documentation assembled by investigators. For instance, on one hand, Braun denied leasing the bar, claiming it was in his wife's name, even though the written lease obtained by the Police Department said the property was leased to "Jim Braun." Braun simultaneously claimed that he did enter into a lease agreement for the bar but that the transaction was not yet completed, even though the lease agreement obtained by the Police Department was dated July 1, 2005.

¶7 The investigators found that Braun was introduced to the bar employees as the "new owner" of the bar and the employees regarded him as their boss. Braun undertook bar responsibilities such as obtaining change; closing the register every weekend and every few days; purchasing juice, cups, napkins and other bar supplies; instructing the amounts and manner in which employees should be paid; making decisions about business hours and how to handle money; fixing tappers; regularly opening the bar; introducing himself to customers as "the new owner"; scheduling employees; receiving the phone bill in his own name; and possessing one of only two keys to the safe.

¶8 Third, the Police Department's internal investigation found sufficient evidence existed to sustain violations of General Order 301.3, Immoral Conduct, regarding improper personal relationships. During the investigatory

interview, Braun admitted to befriending and engaging in personal and sexual relationships with two young female Police Explorers, and that one relationship resulted in a pregnancy. Braun admitted that on several occasions, while on duty, he met with the women.<sup>3</sup>

## II. The WPPA's Actions During the Investigation.

¶9 Hales Corners Police Detective Kent Schoonover stated via affidavit that he has been employed with the Police Department since 1984 and has held the rank of Detective since 1997. He served as one of three union representatives for the Hales Corners Police Officers Association, a local bargaining unit of the WPPA. In that capacity, sometime in 2005, Braun came to him and asked if he could “buy a bar” and go into business. Schoonover told Braun that buying a bar was in violation of Police Department rules and regulations.

¶10 Schoonover later heard about the triple homicide at Wolfgang's Pub, that Braun left the scene at the time of the incident, and that Braun left as Milwaukee Police Department officers were arriving to investigate. According to Schoonover, Braun contacted him in the following days, confirmed that he had left the scene, and asked for advice. Some days later, Braun discussed the matter with Schoonover again. Schoonover told Braun that he believed Braun stood no chance of saving his job if the matter were appealed to the Police and Fire Commission.

¶11 Schoonover was then asked by Lieutenant Steven Murphy to assist in the internal investigation by the Police Department. As such, Schoonover asked another union representative, Officer Dean Schoenleber, to take over as union

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<sup>3</sup> The investigation also revealed additional General Order violations that we do not detail here because they do not appear relevant to Braun's appeal.

representative for Braun. Despite assisting in the investigation, Schoonover stated in his affidavit that he did not reveal to the investigators anything that Braun told him in confidence when Schoonover was Braun's union representative.

¶12 On or about September 8, 2005, the Police Department interviewed Braun as part of its internal investigation. Schoenleber, Braun's new union representative, along with WPPA Business Agent Bob Pechanach, sat down with Braun, as well as Lieutenants Murphy and Eric Cera, for the interview. During the interview, Braun admitted that he was present in the bar when the triple homicide occurred, and that he left the scene while the Milwaukee Police Department officers were arriving to investigate. He also admitted to extra-marital affairs with women who worked as Police Explorers for the Police Department.

¶13 After the interview, Schoenleber opined that Braun's chances of overturning a termination at the Police and Fire Commission were nil. After that interview, in a private area, separate from the Lieutenants conducting the interview, Schoenleber and Pechanach discussed the possibility of Braun entering into a resignation agreement. At that time, Braun was not interested in resigning, but Pechanach opined that if Braun did not resign, his termination would be upheld by the Police and Fire Commission.

### **III. Braun Hires Private Counsel, Richard Saks, and then Resigns.**

¶14 Apparently unhappy with the advice given to him by his union representative, the WPPA's business agent, and the WPPA's counsel, Braun retained private counsel, Richard Saks, to represent him.

¶15 According to his summary judgment affidavit, Saks reviewed documents provided to him by Braun, including "extensive interrogatories posed

by the Department's investigators and the Commercial Lease Agreement signed by Braun to lease and operate Wolfgang's Pub." Saks also had detailed discussions with Braun regarding the answers and information he had given to the Police Department. Saks also interviewed cooperative witnesses and conferred with counsel for the WPPA and the Village of Hales Corners regarding a settlement to resolve discipline which allowed for resignation rather than termination and enhanced payment of sick days.

¶16 Based on his research and work as well as Braun's admissions, Saks "concluded with a high degree of certainty that Mr. Braun had no reasonable chance to prevail" in a costly potential appeal before the Hales Corners Fire and Police Commission. Saks counseled Braun that a trial would likely be a "futile and costly exercise." Saks advised Braun to accept the resignation agreement, which had been read by both Saks and Braun. Braun signed the agreement.

#### **IV. The Resignation Agreement.**

¶17 Braun personally signed the Resignation Agreement and General Releases ("the Agreement") on October 7, 2005. The Agreement provided that Braun would "voluntarily resign his employment with the Village effective at the end of the day on October 18, 2005." The Agreement set forth the desires of the Village and Braun "to fully and finally resolve any disputes which have arisen, or could arise, from Braun's employment with, or separation of employment from the Village," and the parties agreed to a number of terms "in consideration for the mutual covenants contained" in the Agreement.

¶18 First, the Agreement sets forth the consideration for Braun's execution of the Agreement and "waiver of legal rights," including a lump-sum payment in an amount equal to forty days of paid sick leave and payment for all

accrued but unused vacation time as of the resignation date. The parties agreed that this compensation “exceed[ed] the amount that would normally be received by him upon resignation of his employment with the Village.”

¶19 Next, Braun entered into a release of all claims, both known and unknown at the time the Agreement was signed. Braun further agreed that the Agreement constitutes a full and final settlement, and agreed not to sue the Village. Braun also expressly agreed that no representations were made outside the four corners of the Agreement:

The parties understand and agree that this Agreement is final and binding and constitutes the complete and exclusive statement of the terms and conditions of Mr. Braun’s resignation, and that no representations or commitments were made by the parties to induce this Agreement other than as expressly set forth in this Agreement.

¶20 Finally, the Agreement conspicuously recites the mutual understanding of the parties and the voluntariness with which they entered into its terms:

BY ENTERING INTO THIS AGREEMENT, EACH PARTY EXPRESSLY STATES THAT IT HAS READ AND FULLY UNDERSTANDS THE TERMS OF THIS AGREEMENT, THAT THE AGREEMENT HAS BEEN FULLY EXPLAINED TO IT BY ITS RESPECTIVE ATTORNEY, AGENT, OR REPRESENTATIVE, THAT IT ENTERS INTO THIS AGREEMENT VOLUNTARILY AND OF ITS OWN FREE WILL AND THAT IT UNDERSTANDS THAT THIS AGREEMENT CONSTITUTES A FULL, FINAL AND BINDING SETTLEMENT OF THE MATTERS COVERED BY THIS AGREEMENT. EACH PARTY FURTHER STATES THAT ITS WILLINGNESS TO ENTER INTO THIS AGREEMENT WAS NOT INDUCED BY, OR BASED UPON, ANY REPRESENTATION BY ANY OTHER PARTY HERETO, OR ITS AGENTS OR EMPLOYEES, WHICH IS NOT CONTAINED IN THIS AGREEMENT.

## V. Braun Files a Lawsuit.

¶21 On June 15, 2011, Braun, proceeding *pro se*, filed a complaint against the Village (individually naming many of the Village’s employees), the WPPA (individually naming one of the WPPA’s employees), and Saks, his former attorney. Braun filed an amended complaint on October 3, 2011, naming the same defendants.<sup>4</sup> While both Braun’s original complaint and the October 3, 2011 amended complaint were difficult to decipher, and none of his claims against any of the parties were particularly clear, the October 3, 2011 amended complaint was entitled as follows, giving the circuit court and the defendants some limited guidance as to Braun’s intentions: “AMENDED VERIFIED COMPLAINT FOR, BREACH OF CONTRACT (Collective Bargaining Agreement), VIOLATION OF 14<sup>th</sup> ADMENDMENT [sic] CIVIL RIGHTS, FRAUD AND MISREPRESENTATION, FAILURE TO REPRESENT, SELECTIVE ENFORCEMENT, BREACH OF CONTRACT (ATTORNEY), TORTIOUS INTERFERENCE, ATTORNEY NEGLIGENCE.”

¶22 The circuit court later interpreted Braun’s October 3, 2011 amended complaint as asserting the following claims. As to the Village, the circuit court held that:

In this case Mr. Braun essentially alleges three causes of action against the Village of Hales Corners and the named defendants in the village.

First, the breach of contract, the collective bargaining agreement; second, a violation of his 14th

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<sup>4</sup> While in his complaint and amended complaint Braun personally names many of the Villages’ employees and a WPPA employee, in his appellate briefing he does not raise any challenge specific to these personally named individuals. As such, we do not go into detail regarding his accusations and claims against those individuals.

amendment due process rights; and three, fraud and misrepresentation, also described as fraud in the inducement.

As to the WPPA, the circuit court summarized Braun's claims thusly:

Mr. Braun alleges essentially four claims against the WPPA: a breach of the collective bargaining agreement, violation of the 14th amendment -- his civil rights, fraud and misrepresentation, failure to represent, and selective enforcement and tortious interference.

As to Saks, the circuit court concluded that Braun had alleged claims for malpractice and breach of legal representation. Braun has not challenged any of the circuit court's findings in this regard. Consequently, we accept the circuit court's representations of Braun's claims against the various defendants.

*A. The procedural history of Braun's claims against the Village.*

¶23 On March 19, 2012, Braun filed a motion entitled: "NOTICE OF MOTION AND MOTION OF PLAINTIFF, JAMES R BRAUN, FOR SUMMARY JUDGMENT, or IN THE ALTERNATIVE TO COMPELL" [sic]. In its response, the Village urged the circuit court to deny the motion because there were no outstanding discovery requests, because Braun had failed to make a sincere attempt to resolve any asserted discovery dispute, because Braun had not identified any specific response from the Village as insufficient, and because summary judgment was not a warranted sanction for alleged discovery violations. Thereafter, on April 17, 2012, the Village moved for summary judgment.

¶24 On May 30, 2012, following a hearing on both motions, the circuit court denied Braun's motion to compel and granted the Village summary judgment. The order memorializing those decisions was signed by the circuit court on June 12, 2012. Braun appeals from that order.

*B. The procedural history of Braun's claims against the WPPA.*

¶25 On July 28, 2011, the WPPA filed a motion to dismiss. While Braun filed his October 3, 2011 amended complaint after the WPPA's motion to dismiss, the amended complaint did not address the WPPA's concerns with the original complaint. Following a February 6, 2012 hearing, the circuit court granted the WPPA's motion in part, dismissing all of Braun's fraud and fiduciary duty claims against the WPPA. The court entered a written order to that effect on February 16, 2012.

¶26 On March 27, 2012, the WPPA filed a motion for summary judgment, addressing the remainder of Braun's claims against it. Following a hearing on May 30, 2012, the circuit court granted the WPPA's motion for summary judgment, dismissing the WPPA from the case. The court entered a written order to that effect on June 12, 2012. Braun appeals from that order.

*C. The procedural history of Braun's claims against Saks.*

¶27 On February 8, 2012, Saks moved for summary judgment. The circuit court orally granted Saks' motion at a March 27, 2012 hearing and entered a written order to that effect on April 16, 2012. Braun moved for reconsideration of Saks' dismissal from the case. The circuit court denied Braun's motion for reconsideration at a May 30, 2012 hearing, and entered a written order memorializing its decision on June 12, 2012. Braun appeals from that order.

¶28 Additional facts are included in the discussion as necessary to resolve the issues Braun raises.

## DISCUSSION

¶29 Braun's brief is rambling, confusing, and fails to conform with basic rules of appellate procedure. For instance, Braun's statement of the issues does not comprehensively present all of the issues he is asking this court to review, *see* WIS. STAT. RULE 809.19(1)(b); his argument is not arranged in the order of the statement of the issues presented, includes numerous arguments not set forth in the statement of the issues, and each of his arguments is not preceded by a one-sentence summary of the argument, *see* RULE 809.19(1)(e); his brief is almost entirely void of citations to the record, *see* RULE 809.19(1)(d); and contains minimal legal citations in support of his arguments, *see* RULE 809.19(1)(e).

¶30 Despite facing these handicaps, when interpreting Braun's brief we have done our best to address the arguments Braun raises on appeal and we summarize them thusly: (1) did the circuit court err when ruling that the October 3, 2011 amended complaint was the operative complaint in this case; (2) was Braun's notice of appeal from the circuit court's order dismissing Saks from the case untimely; (3) did the circuit court properly address Braun's discovery motions; (4) did the circuit court properly dismiss Braun's fraud claims against the WPPA and the Village; (5) did the circuit court properly dismiss Braun's tortious interference claims against the WPPA; and (6) did the circuit court properly dismiss Braun's breach of fiduciary duty claims against the WPPA. To the extent that Braun may have raised other issues in his brief that we have not addressed, we conclude that such issues are insufficiently developed, such that we cannot identify them, much less coherently address them.

¶31 With this background on Braun's appeal and the issues he raises, we address each issue in turn.

**I. The circuit court did not err in determining that the October 3, 2011 amended complaint was the operative complaint.**

¶32 Braun first complains that the circuit court erred in determining that his October 3, 2011 amended complaint was the operative complaint in this case. Instead, Braun argues that the circuit court should have been compelled to accept his October 26, 2011 submission as the operative complaint. We disagree.

¶33 On June 15, 2011, Braun filed the original complaint instigating this action. On October 3, 2011, he filed an amended complaint. On October 26, 2011, he filed another document entitled “AMENDED VERIFIED COMPLAINT FOR, BREACH OF CONTRACT (Collective Bargaining Agreement), VIOLATION OF 14<sup>th</sup> AMENDMENT CIVIL RIGHTS, FRAUD AND MISREPRESENTATION [sic], SELECTIVE ENFORCEMENT, BREACH OF CONTRACT (ATTORNEY), ATTORNEY NEGLIGENCE, CIVIL CONSPIRACY, TORTIOUS INTERFERENCE [sic], FAILURE TO REPRESENT,” in which Braun asked the circuit court to:

add Civil Conspiracy to the Amended Verified Complaint for the cause of action. Civil Conspiracy is to be added to the Complaint, as per the time frame given by the court of November 4, 2011. This cause of action shall [sic] directed to the defendants W.P.P.A. and the Village of Hales Corners ect. all [sic], and not defendant Richard Saxs [sic]. The complaint contents remain the same as previous [sic] submitted, but cause of action Civil Conspiracy is to be added.

¶34 Following a hearing on February 6, 2012, the circuit court entered a written order finding that the October 3, 2011 amended complaint was the operative complaint in this matter, and that the October 26, 2011 submission “was

made outside the time permitted by statute, without agreement of the parties and without leave of the court and will therefore be disregarded.”

¶35 Braun sought reconsideration of the circuit court’s order, asking the court to accept his October 26, 2011 submission as a motion to further amend the complaint. At a hearing on April 23, 2012, the circuit court denied his motion for reconsideration, stating:

In this case Mr. Braun has really failed to set forth any legal basis for his request for reconsideration. He does have three things he is complaining about, which I will address.

The first is the Court’s decision that his first amended complaint was the operative complaint, the one which was filed on October 3rd of 2011. The Court ruled that based on Section 802.09, which governs the filing of amended complaints, that Mr. Braun had not received leave of the Court to file a second amended complaint on October 26, 2011.

The plaintiff in this case argues that because he filed a document for -- requested permission to file an amended complaint and it was stamped as received by the court with the date stamp that that was somehow sufficient to obtain [the] Court’s approval for filing an amended complaint.

However, all documents that are submitted to the court are stamped with a stamp to indicate when they were received by the court, and a file stamp does not constitute permission of the court to file an amended complaint.

What Mr. Braun needed to do had he wanted to file an amended complaint was file a motion with the amended complaint, notice the parties, giving the other parties an opportunity to reply and get a hearing date. Because Mr. Braun did none of those things, the proper complaint that is before the Court is the October 3, 2011, complaint; and so my ruling will stand as to that issue.

¶36 On appeal, Braun argues that the circuit court erred by not permitting him to further amend his complaint to add his civil conspiracy claim.

While he admits that he did not file a motion requesting to amend the complaint, Braun argues that the circuit court had an obligation to inform him of his misstep because the circuit court knew he was proceeding *pro se*. Braun is mistaken.

¶37 First, Braun's argument is undeveloped, lacks citation to the record, and fails to cite any relevant authority.<sup>5</sup> As such, we need not address it. See *Madely v. RadioShack Corp.*, 2007 WI App 244, ¶22 n.8, 306 Wis. 2d 312, 742 N.W.2d 559 (noting that this court need not consider undeveloped arguments).

¶38 Second, the circuit court properly exercised its discretion pursuant to WIS. STAT. § 802.09. Section 802.09(1) explicitly states that:

A party may amend the party's pleading once as a matter of course at any time within 6 months after the summons and complaint are filed or within the time set in a scheduling order under s. 802.10. Otherwise a party may amend the pleading *only by leave of court or by written consent of the adverse party*; and leave shall be freely given at any stage of the action when justice so requires.

(Emphasis added.) A circuit court's decisions on motions for leave to amend a complaint and for reconsideration are discretionary. *Mach v. Allison*, 2003 WI App 11, ¶20, 259 Wis. 2d 686, 656 N.W.2d 766 (WI App 2002) (motion for leave to amend a complaint); *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853 (motion for reconsideration). We uphold discretionary decisions if the court applied the correct legal standard to the facts of record in a reasonable

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<sup>5</sup> Braun cites only to *Haines v. Kerner*, 404 U.S. 520-21 (1972) (holding that a *pro se* prisoner's complaint is to be liberally construed prior to dismissal pursuant to FED. R. CIV. P. 12(b)(6)) and to *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987) (finding harmless error where the circuit court had not advised a *pro se* plaintiff of the requirements to file affidavits opposing summary judgment). Neither case is applicable here.

manner. *Mach*, 259 Wis. 2d 686, ¶20. A movant may prevail on a motion for reconsideration by presenting newly discovered evidence or establishing a manifest error of law. *Koepsell's*, 275 Wis. 2d 397, ¶44. A manifest error “is the ‘wholesale disregard, misapplication, or failure to recognize controlling precedent.’” *Id.* (citation omitted).

¶39 The circuit court acted well within its discretion when it did not permit Braun to further amend his complaint, particularly when he did not comply with the dictates of WIS. STAT. § 802.09(1). He filed his second amended complaint untimely, admits not filing a motion seeking leave of the court, and argues the rules should not apply to him because he was *pro se*. Contrary to Braun’s contentions, *pro se* litigants are generally held to the same rules that apply to lawyers and “must satisfy all procedural requirements.” See *Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Braun did not do so here, and as such the circuit court acted well within its discretion in rejecting Braun’s October 26, 2011 submission.

## **II. Braun’s notice of appeal as to Saks is untimely.**

¶40 Braun filed claims against Saks, the attorney who represented him during the disciplinary proceedings, for malpractice and breach of legal representation. On February 8, 2012, Saks filed a motion for summary judgment, asserting that Braun’s claims against him were frivolous. At a hearing on March 27, 2012, the circuit court granted Saks’ motion. The circuit court entered a written order to that effect on April 16, 2012.

¶41 On April 3, 2012, (prior to entry of the circuit court’s written order dismissing Saks from the case but after the court’s oral decision), Braun filed a motion for reconsideration with the circuit court. During a hearing on May 30,

2012, the circuit court orally denied Braun's motion for reconsideration. The circuit court entered a written order memorializing that order on June 12, 2012.

¶42 On July 24, 2012, Braun filed a notice of appeal, indicating that he was appealing from the circuit court's June 12, 2012 order. Saks filed a motion with this court, asking us to dismiss Braun's appeal against him because it was untimely. Saks contended that the final order as to him was the circuit court's April 16, 2012 written order, and that therefore, Braun was required to file his notice of appeal by July 16, 2012. *See* WIS. STAT. § 808.04(1) ("An appeal to the court of appeals must be initiated within 45 days of entry of a final judgment or order appealed from ....").

¶43 We agreed that Braun's appeal was untimely as to the April 16, 2012 order, which dismissed Saks from the case with prejudice. However, because it was unclear to us whether Braun's motion for reconsideration, denied on June 12, 2012, presented the same issues as those determined by the April 16, 2012 order, we asked Braun and Saks to address that threshold jurisdictional issue as the first issue in their appellate briefs. *See Silvertown Enters., Inc. v. General Cas. Co. of Wis.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988) (An appeal cannot be taken from an order denying a motion for reconsideration which presents the same issues as those determined in the order sought to be reconsidered.).

¶44 In his appellate brief, Braun asserts that new issues were raised in his motion for reconsideration because that motion "had to do with the fact that Appellate [sic] had his discovery violated" and that he submitted for the first time with his motion for reconsideration affidavits "that complied with the requirements set forth in the statute." Untimely discovery complaints that could have been made prior to the April 16, 2012 order and affidavits to support his

previous arguments are not new issues such that Braun can appeal from the order denying his motion for reconsideration. *See id.* As such, we conclude that the April 16, 2012 order was the final order as to Saks because it dismissed him from the case and disposed of all matters as to him. *See Admiral Ins. Co. v. Paper Converting Machine Co.*, 2012 WI 30, ¶27, 339 Wis. 2d 291, 811 N.W.2d 351. That being so, Braun’s notice of appeal as to Saks was untimely and we lack jurisdiction to hear his claims against Saks.

### **III. Braun’s discovery argument is undeveloped and we decline to address it.**

¶45 Throughout his brief to this court, intermingled with his other arguments, Braun continually claims that he “had his discovery violated.” While his accusations are generally vague, at one point in his brief he complains that he “sought from the Hales Corners Police Department ... personal [sic] files of officers, and police explorers, policies and procedures, that were in affect prior to the 2005 incident.” Braun claims he “needed this evidence to defend against Saks’ motion for summary judgment that appellant was accused of violating.” However, Braun fails to direct us to any place in the record demonstrating that he ever asked the defendants for these documents or showing that he ever asked the circuit court to compel the defendants to produce these documents. Braun also fails to explain why these documents are relevant to his claims against any of the defendants.

¶46 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, *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 (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 an appellant’s behalf. *Pettit*, 171 Wis. 2d at 646-47; *see also State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999).<sup>6</sup>

**IV. The circuit court properly dismissed Braun’s fraud claims against both the WPPA and the Village.**

¶47 As best we can tell, the crux of Braun’s case against the Village and the WPPA appears to be that the general releases included in the Agreement he signed upon his resignation are invalid because he was fraudulently induced to sign the Agreement. On appeal, he seems to argue that the circuit court erred when it dismissed his fraud claims to that effect. We disagree.

¶48 WISCONSIN STAT. § 802.03(2) requires that “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” Particularity means a plaintiff must plead “the ‘who, what, when, where and how’” of his or her fraud claim. *Friends of Kenwood v. Green*, 2000 WI App 217, ¶14, 239 Wis. 2d 78, 619 N.W.2d 271 (citation omitted). Whether a complaint states a claim for relief is a question of law we review *de novo*. *Id.*, ¶11.

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<sup>6</sup> We note that Braun did file a notice of motion to compel with the circuit court, which the circuit court denied. However, there does not appear to be an accompanying motion or brief with that notice explaining what documents Braun wished the court to compel the Village to produce, and Braun has not included in the record a complete transcript of the court hearing at which the circuit court denied the motion.

¶49 On appeal, Braun generally argues that he resigned under false pretenses based on “misrepresentations.” However, Braun never explains who made these alleged misrepresentations, when the misrepresentations were made, where the misrepresentations were made, or how the misrepresentations were made. Furthermore, Braun does not tell us where in the complaint or amended complaint he made such allegations,<sup>7</sup> and we did not discover the required allegations in our review of either document. As such, we must conclude that the circuit did not err in dismissing Braun’s fraud claims against either the WPPA or the Village because Braun did not plead or support them with sufficient particularity. *See* WIS. STAT. § 802.03(2); *see also Friends of Kenwood*, 239 Wis. 2d 78, ¶14.

**V. The circuit court properly dismissed Braun’s tortious interference claim against the WPPA.<sup>8</sup>**

¶50 Braun also argues that the circuit court improperly dismissed his tortious interference claim against the WPPA on summary judgment. Our review in cases on appeal from summary judgment is well known. We review the circuit court’s summary judgment decision *de novo*, employing the same method as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d

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<sup>7</sup> At best, Braun alleges *what* the misrepresentations were, in that he contends that he was told by someone that the evidence demonstrated that he owned and operated the bar in question, that he failed to render aid to the homicide victims, and that he had engaged in inappropriate sexual relationships with two young Police Explorers. However, Braun was the only person with firsthand information with regard to those facts and was in the best position to know if that information when given to him was false. As the circuit court stated: “[Braun] knew what he did and did not do. He was in possession of that information, and using his knowledge, he decided ... to resign.”

<sup>8</sup> The circuit court concluded that Braun did not file a claim of tortious interference against the Village. Braun has not challenged that circuit court finding on appeal.

816 (1987). A party is entitled to summary judgment when there are no disputed issues of material fact and that party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2)

¶51 In his amended complaint, Braun mentions his tortious interference claim in the caption, and at one other time, when he states: “After Braun left HCPD, Braun tried to get hired by numerous police agencies, both in the State of Wisconsin and outside the State. Braun claims Tortois [sic] Interference.” The circuit court dismissed the claim on summary judgment, finding as follows:

In this case Mr. Braun has failed [to] identify any actual facts that could support a tortious interference claim either against the union or against the city. He fails to assert against whom he is alleging caused the interference. He fails to address this alleged claim also in his response to the motion for summary judgment; so the tortious interference claim cannot stand without more.

¶52 On appeal, Braun makes broad and conclusory allegations, claiming that he suspects “Hales Corners revealed sealed and protected information” to the Menomonee Falls Police Department that prevented Braun from obtaining new employment. However, Braun admits in his brief to this court that he has “no proof of this.” He relies solely on allegations that his wife spoke with “a Menomonee Falls Police Lieutenant, who was summoned to [Braun’s] residence, regarding a domestic disturbance complaint, made by [Braun’s wife],” and that the Lieutenant told Braun’s wife that he “knew of [Braun’s] involvement in Wolfgang’s and told [Braun’s wife] that her husband had applied to Menomonee Falls Police and would never get hired.” Braun claims that he alleged as much in his amended complaint and that those allegations are sufficient to warrant a trial on his tortious interference claim against the WPPA.

¶53 In order to succeed on his claim for tortious interference, Braun must prove that: (1) Braun had a contract or a prospective contractual relationship with a third party; (2) the WPPA interfered with that relationship; (3) the interference by the WPPA was intentional; (4) there was a causal connection between the interference and damages; and (5) the WPPA was not justified or privileged to interfere. *See Briesemeister v. Lehner*, 2006 WI App 140, ¶48, 295 Wis. 2d 429, 720 N.W.2d 531. Even if Braun's allegations regarding his wife's conversation with the Menomonee Falls Police Lieutenant are true, that statement does not even begin to address the multiple elements Braun must prove to succeed on his claim. *See id.* Braun needs evidence to succeed on a motion for summary judgment, and he admits he has none. *See* WIS. STAT. § 802.08(2). He has only unsubstantiated suspicions. As such, we affirm the circuit court's decision to dismiss his tortious interference claim against the WPPA.

**VI. Braun's argument that the circuit court improperly dismissed his fiduciary duty claim against the WPPA is undeveloped and we decline to address it.**

¶54 Braun also appears to disagree with the circuit court's decision to dismiss his fiduciary duty claim against the WPPA. However, his argument in support of that claim is unclear, fractured, and lacks references to either relevant legal citation or to the record. In fact, as best we can tell, given that Braun's brief contains almost no citation to the record, Braun has not included in the record a

transcript of the February 6, 2012 hearing at which the circuit court discussed the claim and dismissed it.<sup>9</sup>

¶55 “It is the appellant’s responsibility to ensure completion of the appellate record and ‘when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the [circuit] court’s ruling.’” *State v. McAttee*, 2001 WI App 262, ¶5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774 (citation omitted). Furthermore, as we stated previously, 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*, 239 Wis. 2d 406, ¶6 (regarding unsupported arguments); and *Pettit*, 171 Wis. 2d at 646-47 (regarding undeveloped arguments).

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.

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<sup>9</sup> The hearing transcripts are particularly necessary in this case because Braun’s filings before the circuit court were as ambiguous and difficult to decipher as his arguments before this court. In those hearing transcripts included in the record, the circuit court did an admirable job of sorting through Braun’s filings, creating some clarity for both the parties and this court.

