COURT OF APPEALS
DECISION
DATED AND FILED

September 23, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP721 **Cir. Ct. No. 2014SC2537**

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

JOHN M. KELLY, ATTORNEY AT LAW, LLC,

PLAINTIFF-RESPONDENT,

V.

DENNIS KRIZAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: SCOTT C. WOLDT, Judge. *Affirmed*.

¶1 GUNDRUM, J.[1] Dennis Krizan appeals pro se from a circuit court judgment ordering Krizan to pay John M. Kelly, Attorney at Law, LLC (Kelly[2]) $1000, plus statutory costs, under the equitable doctrine of quantum meruit, for legal services Kelly provided Krizan. Kelly moves on appeal for a determination that Krizan's appeal is frivolous, and Kelly seeks related costs and fees. For the following reasons, we affirm the judgment of the circuit court, but also conclude that Krizan's appeal is not frivolous.

Background

¶2 This appeal arises from a dispute relating to legal services. On May 26, 2014, Krizan contacted Kelly by e-mail seeking an attorney to handle a dispute Krizan was having with his neighbor. On May 27, Kelly replied by e-mail, "Your situation is the sort of case I do handle." The e-mail concluded, "I'd be happy to learn more about this claim and would be interested in handling it for you. Please give me a call at your convenience." On May 29, Krizan and Kelly had a thirty-three-minute telephone call. On May 29 and 30, there were also numerous e-mails exchanged containing information from Krizan to Kelly regarding this dispute. In an e-mail from Krizan to Kelly sent at 12:22 p.m. on Friday, May 30, Krizan notes, "Before you go any further, I need to know if the law allows us to hold [the neighbor] financially responsible for my costs…." Later that afternoon, Kelly sent an e-mail to Krizan noting, "As I told you yesterday, generally speaking, parties to a lawsuit have to bear their own

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] We will refer to both the law firm plaintiff-respondent John M. Kelly, Attorney at Law, LLC, and Attorney John Kelly together and individually as "Kelly," as the context warrants.

attorney's fees." The e-mail discussed potentially applicable cost shifting statutes and the possibility of punitive damages, and also provided the cost of pursuing various courses of action, ranging in potential fees from $2500 to as much as $25,000. It ended with an invitation to Krizan to discuss costs and strategy further with Kelly. Krizan responded he would call Kelly but could not do so until Monday.

¶3 On June 3, Kelly e-mailed Krizan asking for guidance. On June 5, Krizan asked for a more specific cost estimate "before we proceed w/anything," and stated, "If we had a written agreement that you get your fees exclusively from [neighbor or named utility company whose acts were at issue in dispute], we could move forward on a full blown court attack." In response, on June 6, Kelly noted that there was no guarantee a judge would require the neighbor to pay fees, and provided alternative strategies. On June 13, Kelly forwarded by e-mail a bill for services rendered to Krizan in the amount of $2059.25. Legal fees charged prior to May 29 totaled $235.25; fees charged for work done on May 29 and thereafter totaled $1824. By e-mail, Krizan disputed having hired Kelly, and Krizan refused to pay. Kelly noted in his response to this e-mail that Kelly believed Krizan had hired him during the May 29 telephone conference.

¶4 Kelly then brought this small claims action. Along with his answer to the small claims complaint, Krizan filed a counterclaim for $10,000, and Kelly responded by seeking a finding that the counterclaim was frivolous. After the court commissioner ruled for Kelly and ordered Krizan to pay Kelly's $2059

invoice in its entirety plus costs,[3] Krizan sought de novo review before the circuit court.

¶5 After Kelly and Krizan presented their positions to the circuit court, the court concluded that there was no contract between the parties but that Krizan was "trying to get free legal advice." It concluded "there was obviously some services that were given here" such that Kelly was entitled to payment under quantum meruit. The court ordered judgment for Kelly in the amount of $1000, plus statutory court costs. The court also determined that Krizan's counterclaim was frivolous, but denied attorney's fees as Kelly was "representing [him]self." Krizan appeals only that part of the judgment ordering him to pay the $1000 plus statutory costs. Additional facts are set forth in the opinion as needed.

Discussion

¶6 Krizan contends his appeal "present[s] a … possible violation of law, constitutional law and or its amendments," and makes a number of allegations relating to the conduct of both Kelly and the circuit court. Critically, however, he fails to provide a single legal citation or develop a legal argument. As we have stated, "Arguments unsupported by references to legal authority will not be considered." ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). While we recognize Krizan is pro se, it is nonetheless inappropriate for us to "abandon our neutrality to develop arguments" for a party. ***Industrial Risk***

[3] Both parties rely on minutes from the January 14, 2015 hearing before the court commissioner, which minutes sheet is included in Krizan's appendix. While this document is not part of the record, because both parties use this document in their arguments and we have no reason to believe it is not an accurate representation of the minutes sheet in the court commissioner's file for this matter, we use this document solely for the undisputed fact that Kelly was awarded all the fees it requested in the small claims complaint.

Insurers v. American Eng'g Testing, Inc., 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82; *see also* ***Waushara Cnty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (while we may allow some leniency for pro se litigants, self-representation does not provide "a license not to comply with relevant rules of procedural and substantive law," and thus pro se appellants "are bound by the same rules that apply to attorneys on appeal" (citation omitted)). Accordingly, Krizan has failed to meet his burden to show that the circuit court erred. *See* ***Seltrecht v. Bremer***, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997) ("[I]t is the burden of the appellant to demonstrate that the [circuit] court erred.").

¶7 Kelly moves on appeal for a determination that Krizan's appeal is frivolous, asserting that Krizan has (1) failed to provide any legal support for his arguments; (2) failed to provide any good faith arguments to justify reversal of the circuit court's decision based on a modification, reversal or extension of existing law; (3) advanced ad hominem attacks against Kelly and the circuit court; and (4) failed to acknowledge the standard of review this court must follow. We do not find Krizan's appeal to be frivolous.

¶8 To begin, we note that a party's appellate claims are not frivolous simply because the party is unsuccessful. *See* ***Ivancevic v. Reagan***, 2013 WI App 121, ¶33, 351 Wis. 2d 138, 839 N.W.2d 416. Further, we must resolve all doubts about whether a claim is frivolous "'in favor of the party or attorney' whom it is claimed commenced or continued a frivolous action." ***Id.***, ¶27 (citation omitted).

¶9 Here, the court commissioner awarded Kelly over $2000 on his small claims complaint. In the de novo action before the circuit court, the court agreed with Krizan that no contract for representation existed between Krizan and Kelly. The court then proceeded to determine whether Kelly was entitled under

quantum meruit to compensation for legal services he rendered to Krizan, and ultimately concluded Kelly was not entitled to the full amount of his billed $2059.25 in fees, but rather, was entitled only to $1000, plus statutory costs. Having been able to reduce by half the amount of judgment against him following his request for the trial de novo, and benefiting from the circuit court's determination that no contract for services existed, an appeal by Krizan seeking an additional reduction or elimination of the judgment against him was not frivolous. This is so whether Krizan sought to have this court conclude that certain unhelpful (to Krizan) facts as determined by the circuit court are clearly erroneous, or that the circuit court failed to properly exercise its discretion in granting the amount of money it did after concluding Kelly was entitled to quantum meruit relief. *See* ***Baierl v. McTaggart***, 2001 WI 107, ¶42 n.1, 245 Wis. 2d 632, 629 N.W.2d 277 (Crooks, J., concurring) (quantum meruit is an equitable remedy); ***Zinda v. Krause***, 191 Wis. 2d 154, 175, 528 N.W.2d 55 (Ct. App. 1995) (it is within the circuit court's discretion whether to grant equitable relief); *see also* ***Hedtcke v. Sentry Ins. Co.***, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982) (on review, an appellate court must look to the record to determine whether the circuit court undertook a reasonable inquiry and examination of the facts and whether the record discloses a reasonable basis for the circuit court's decision); ***Herro v. DNR***, 67 Wis. 2d 407, 423, 227 N.W.2d 456 (1975) (we will only reverse a discretionary decision of the circuit court if we conclude the court clearly erred).

¶10 Moreover, while Krizan failed to execute an appeal that provided this court the opportunity to adequately weigh his contentions, we do not see his appeal as being filed to harass or that some of his attempted arguments could not be warranted under existing law. Based on all of the above, and because we are

mandated to resolve all doubts in the nonmovant's favor, here Krizan, we deny Kelly's motion.

By the Court.—Judgment affirmed.

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