

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 25, 2015

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. 2014AP2402

Cir. Ct. No. 2011CV86

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

LYLE HIRD AND CAROL HIRD,

PLAINTIFFS-APPELLANTS,

V.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Waushara County:
GUY D. DUTCHER, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Lyle and Carol Hird appeal the judgment dismissing their bad faith claim against their insurer, American Family, denying their request for additional interest under WIS. STAT. § 628.46(1), and denying

their request for double costs and interest under WIS. STAT. § 807.01 (2013-14).¹ For the reasons set forth below, we conclude that: (1) American Family is entitled to summary judgment as to the bad faith claim because the issues of coverage and damages were fairly debatable and American Family's attempts to settle and defend those issues were objectively reasonable; (2) the Hirds are not entitled to additional interest under WIS. STAT. § 628.46 because they fail to show a sum certain owed; and (3) the Hirds are entitled to double costs and interest under WIS. STAT. § 807.01 because their October 26, 2011 offer of settlement was valid.

¶2 Therefore, we affirm the circuit court's order granting summary judgment in favor of American Family and denying the Hirds additional interest under WIS. STAT. § 628.46; and we reverse the court's denial of the Hirds' request for double costs and interest under WIS. STAT. § 807.01 and remand for an award of double costs and interest consistent with this opinion.

BACKGROUND

¶3 Given the complex procedural history of this case, we summarize the undisputed facts here and address additional facts in the discussion section.

¶4 The Hirds owned a cottage in Wautoma, Wisconsin. That cottage was insured by American Family. In November 2010, the Hirds traveled to their cottage to close it for the winter.

¶5 In January 2011, the Hirds discovered that an interior water line in the cottage froze and burst, causing flooding and damage to the cottage and its

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

contents. A heating company hired by the Hirds to inspect the cottage observed that the thermostat was not set on “heat” for the first floor furnace, and that the second floor furnace gas was turned off. The Hirds filed a claim for their loss with American Family.

¶6 In February 2011, American Family denied the Hirds’ claim for coverage by letter and cited the fact that heat was not maintained in the cottage as its reason for denial:

It has been concluded that your water lines were not turned off prior to your departure in Florida. Additionally, the thermostat was never turned to the on position. For this reason, heat was not maintained.

The letter further cited a freezing exclusion under the Hirds’ insurance policy and directed the Hirds to refer to their policy for the exact wording of the exclusion.

¶7 In March 2011, the Hirds filed this action against American Family seeking declaratory judgment that the insurance policy covers their loss and damages for American Family’s alleged breach of contract and bad faith.

¶8 In May 2011, American Family moved to bifurcate the issue of coverage and to stay discovery relating to the issue of damages and the bad faith claim until the issue of coverage was resolved. The Hirds agreed to proceed with the coverage issue first. The circuit court granted the motion to bifurcate and stay in July 2011.

¶9 In October 2011, the Hirds sent American Family a “statutory Offer of Settlement” for \$70,000 plus costs. American Family did not accept the Hirds’ settlement offer.

¶10 In August 2012, the coverage issue was tried before the circuit court. The court found that the Hirds exercised “reasonable care to maintain heat” in the cottage and, therefore, their loss was covered by the insurance policy. At the end of the trial, counsel for both parties agreed that they would “continue to work towards resolving” the issue of damages. In September 2012, the Hirds demanded \$73,496.74 in damages; American Family did not agree to pay this demand.

¶11 In December 2012, the parties participated in court-ordered mediation but failed to settle. However, American Family subsequently conceded \$42,799.67 in damages and conditionally tendered that amount to the Hirds as partial settlement in February 2013; the Hirds rejected the partial payment. In March 2013, American Family re-tendered \$42,799.67 without conditions along with a statutory offer of judgment in the amount of \$90,000 for all claims; the Hirds accepted the partial payment and rejected the judgment offer.

¶12 The issue of damages proceeded to trial in September 2013. A jury awarded the Hirds damages in the amount of \$81,514.34. Judgment was entered on the verdict in the amount of \$38,714.67 to reflect the prior \$42,799.67 partial payment.

¶13 In November 2013, American Family filed a motion for summary judgment as to the bad faith claim.

¶14 In February 2014, the circuit court granted summary judgment in favor of American Family as to the bad faith claim relating to conduct *pre-coverage* determination, but denied summary judgment as to the bad faith claim relating to conduct *post-coverage* determination.

¶15 Both parties filed motions for reconsideration. In June 2014, upon reconsideration, the circuit court granted summary judgment in favor of American Family as to the bad faith claim relating to conduct both pre- and post-coverage determination.

¶16 As to the Hirds' request for interest under WIS. STAT. § 628.46(1), the circuit court found that the \$42,799.67 conceded by American Family was overdue under § 628.46 between December 2012 and March 2013 and, accordingly, awarded the Hirds interest on that amount for that period of time. The Hirds also requested double costs and interest under WIS. STAT. § 807.01(3) based upon their \$70,000 statutory offer of settlement made in October 2011. The circuit court held that offer of settlement invalid because it was made prior to the coverage determination, and therefore, denied the Hirds' request for double costs and interest under § 807.01. The Hirds now appeal.

DISCUSSION

¶17 The Hirds argue that the circuit court erred in granting summary judgment on their bad faith claim in favor of American Family. The Hirds also argue that they are entitled to additional interest under WIS. STAT. § 628.46 based upon the \$73,496.74 claim they submitted to American Family in September 2012 (after coverage was determined), as well as double costs and interest under WIS. STAT. § 807.01 on their \$70,000 statutory settlement offer in October 2011 (before coverage was determined).

¶18 In the sections that follow, we address the parties' arguments and conclude that: (1) American Family is entitled to summary judgment dismissing the Hirds' bad faith claim; (2) the Hirds are not entitled to additional interest under

WIS. STAT. § 628.46; and (3) the Hirds are entitled to double costs and interest under WIS. STAT. § 807.01.

A. American Family is Entitled to Summary Judgment Because Coverage and Damages Were “Fairly Debatable”

¶19 The Hirds allege that American Family acted in bad faith in denying coverage and delaying payment. American Family argues that it is entitled to summary judgment because the issues of coverage and damages were “fairly debatable” and that its attempts to settle and defend those issues were objectively reasonable. We agree with American Family.

¶20 Our review of a circuit court’s grant of summary judgment is de novo. *Post v. Schwall*, 157 Wis. 2d 652, 656, 460 N.W.2d 794 (Ct. App. 1990). “When reviewing a grant ... of summary judgment, we apply the same methodology as the [circuit] court.” *Universal Die & Stampings, Inc. v. Justus*, 174 Wis. 2d 556, 560, 497 N.W.2d 797 (Ct. App. 1993). “Summary judgment is granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Kruschke v. City of New Richmond*, 157 Wis. 2d 167, 169, 458 N.W.2d 832 (Ct. App. 1990).

¶21 “Summary judgment methodology prohibits the [circuit] court from deciding an issue of fact. The court determines only whether a factual issue exists, resolving doubts in that regard against the party moving for summary judgment.” *Preloznik v. City of Madison*, 113 Wis. 2d 112, 116, 334 N.W.2d 580 (Ct. App. 1983). “In deciding whether there are factual disputes, the circuit court and the reviewing court consider whether more than one reasonable inference may be drawn from undisputed facts; if so, the competing reasonable inferences may constitute genuine issues of material fact. We draw all reasonable inferences from

the evidence in favor of the nonmoving party. Whether an inference is reasonable and whether more than one reasonable inference may be drawn are questions of law.” *H&R Block E. Enters., Inc. v. Swenson*, 2008 WI App 3, ¶11, 307 Wis. 2d 390, 745 N.W.2d 421 (2007) (citations omitted).

¶22 Consistent with these well-established principles, we review American Family’s motion for summary judgment as the circuit court would. We review the summary judgment materials submitted by the parties, drawing all *reasonable* inferences from the evidence in favor of the Hirds as the nonmoving party.

1. Bad Faith Defined

¶23 Generally, “every insurance contract has an implied duty of good faith and fair dealing between the insurer and insured.” *Brethorst v. Allstate Prop. and Cas. Ins. Co.*, 2011 WI 41, ¶31, 334 Wis. 2d 23, 798 N.W.2d 467. “When the duty of good faith is breached by the insurer and that breach results in damages, an insured has a cause of action for bad faith.” *Id.* “[A] bad faith claim is separate and distinct from a breach of contract.” *Id.*, ¶25. “[B]ad faith ‘is a separate intentional wrong, which results from a breach of duty imposed as a consequence of the relationship established by contract.’” *Id.* (quoted source omitted).

¶24 An insurer’s denial of a claim for damages may constitute bad faith. *Id.*, ¶34 (recognizing first-party bad faith claim for unreasonable withholding of payments). However, “when a claim is ‘fairly debatable,’ the insurer is entitled to debate it, whether the debate concerns a matter of fact or law.” *Id.*, ¶26 (quoted source omitted).

¶25 “Thus, to bring a bad faith claim, ‘a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and the defendant’s knowledge or reckless disregard of the lack of a reasonable basis for denying the claim.’” *Id.* (quoted source omitted). “Stated differently, the insured must plead facts that show the coverage claim ‘was not fairly debatable.’” *Ullerich v. Sentry Ins.*, 2012 WI App 127, ¶2, 344 Wis. 2d 708, 824 N.W.2d 876. “The assessment of whether there is or is not a reasonable basis to reject a claim is an objective analysis.” *Farmers Auto. Ins. Ass’n v. Union Pacific R. Co.*, 2008 WI App 116, ¶25, 313 Wis. 2d 93, 756 N.W.2d 461. “It asks whether a reasonable insurer under similar circumstances would have denied, suspended, or delayed payment on the claim.” *Brown v. LIRC*, 2003 WI 142, ¶24, 267 Wis. 2d 31, 671 N.W.2d 279.

2. *Bad Faith: Denial of Coverage (Conduct Pre-Coverage Determination)*

¶26 The Hirds allege that American Family acted in bad faith in denying coverage. American Family argues that whether there was coverage was fairly debatable and that its denial on the basis of the policy’s “freezing exclusion” was objectively reasonable, and therefore, there could be no bad faith in their denial of coverage. As we explain, the undisputed facts show that the issue of coverage was “fairly debatable” under the insurance policy’s freezing exclusion and the exception contained in that exclusion, and the Hirds fail to show that American Family lacked any reasonable basis for denying their claim. Therefore, American Family is entitled to summary judgment on the claim of bad faith as to denial of coverage.

¶27 The freezing exclusion in the Hirds’ insurance policy excludes loss resulting from:

Freezing of a plumbing, heating, air-conditioning or automatic fire protection sprinkler system or household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing, *unless you have used reasonable care to:*

- a. *maintain heat in the building; or*
- b. shut off the water supply and drain the system and appliances of water.

(Emphasis added.) It is undisputed that the Hirds' loss was due to an interior water line in the cottage that froze and burst, causing flooding and damage to the cottage and its contents. Thus, the freezing exclusion applies.

¶28 The burden then shifts to the Hirds to demonstrate that they fall under the exception to the freezing exclusion by having used reasonable care to maintain heat in the cottage. Here, the Hirds traveled to their cottage in November 2010 to close it for the winter. A heating company hired by the Hirds to inspect the cottage stated that the thermostat was not set on "heat" for the first floor furnace, and that the second floor furnace gas was turned off. The only reasonable inference from these facts is that the Hirds' failure to actually turn heat on in the cottage caused the freezing and damage. Given the undisputed facts, a factfinder could reasonably find that the Hirds' failure to set the thermostat to "heat" and failure to turn on the second floor furnace gas indicate that they did not use reasonable care to maintain heat so as to be excepted from the freezing exclusion. That the circuit court, after trial, decided coverage in the Hirds' favor does not change the debatable nature of the claim.

¶29 In sum, we conclude that American Family demonstrated that the Hirds' coverage claim was fairly debatable and that American Family had a reasonable basis for denying coverage under the freezing exclusion. "Because the question of coverage was fairly debatable and a reasonable basis existed for

denying the claim, the insurer could not have committed the tort of bad faith.” *Brethorst*, 334 Wis. 2d 23, ¶29. Therefore, American Family is entitled to summary judgment on the claim of bad faith as to denial of coverage.

3. Bad Faith: Damages (Conduct Post-Coverage Determination)

¶30 The Hirds allege that American Family acted in bad faith in delaying payment after the circuit court decided the issue of coverage in the Hirds’ favor in August 2012. American Family argues that it is entitled to summary judgment because the issue of damages was fairly debatable and its attempts to settle and defend were objectively reasonable. We conclude that the undisputed facts demonstrate that American Family is entitled to summary judgment on the bad faith claim as to damages.

¶31 Here, the circuit court held after a bench trial in August 2012 that the Hirds’ loss was covered under the insurance policy. On September 14, 2012, the Hirds presented American Family with an itemized claim for \$73,496.74, which American Family rejected. The parties then participated in court-ordered mediation in December 2012 but failed to settle. However, after mediation, American Family conceded to damages of \$42,799.67, which American Family unconditionally tendered to the Hirds as partial settlement in March 2013, and the Hirds accepted that partial payment. Between December 2012 and March 2013, American Family debated the Hirds’ claim for damages above \$42,799.67 on the basis of inadequate mitigation of loss by the Hirds. In March 2013, American Family reassessed its position and made a statutory offer of judgment in the amount of \$90,000 for all claims, including both the claim for damages and the bad faith claim, but the Hirds rejected that offer.

¶32 The issue of damages was then decided by a jury in September 2013. During trial, the Hirds offered evidence that they paid \$73,497 for actual repairs to the cottage. American Family offered testimony from various expert witnesses; one expert witness from a restoration company testified that had his company made the repairs in late January or early February 2012, the cost would have been \$34,604. The jury found damages in the amount of \$81,514.34.

¶33 We conclude from these undisputed facts that the issue of damages was fairly debatable up until the parties completed mediation in December 2012, when American Family conceded that the Hirds' damages were in the amount of \$42,799.67. But even after December 2012, American Family was entitled to debate the Hirds' claim for damages above \$42,799.67 based on its argument that the Hirds did not adequately mitigate their loss. American Family's decision to debate the damages before a jury, even if ultimately unsuccessful, is not a basis for a claim of bad faith. As with the issue of bad faith denial of coverage, we conclude that American Family was objectively reasonable in its attempts to defend and settle the issue of damages. Therefore, we affirm summary judgment on the bad faith claim as to damages.

4. The Hirds' Arguments Against Summary Judgment

¶34 Before we move on to the arguments pertaining to the Hirds' request for an award of costs and interest, we address and reject the Hirds' arguments against summary judgment.²

² We address the arguments that we can discern as developed in the Hirds' briefs. However, "we will not consider contentions that are not adequately briefed." *Bass v. Ambrosius*, 185 Wis. 2d 879, 888 n.9, 520 N.W.2d 625 (Ct. App. 1994) (quoted source omitted).

¶35 First, the Hirds argue that summary judgment is not appropriate because American Family did not file an answer to their amended complaint. However, American Family was not obligated to file an amended answer here, where the Hirds' amended complaint was not accepted by the circuit court until May 2014, after American Family's motion for summary judgment had been decided.³ The pertinent timeline is as follows:

- In November 2013, American Family filed a motion for summary judgment as to the bad faith claim.
- In January 2014, the Hirds filed an amended summons and complaint. American Family objected to consideration of the amended summons and complaint for the purposes of summary judgment. The circuit court stated that the amended summons and complaint was not filed in response to any judicial request or directive, and that the court would not consider it during its analysis of summary judgment.
- In February 2014, the circuit court decided the motion for summary judgment.
- In March 2014, the Hirds filed a motion for partial reconsideration.
- In April 2014, American Family filed a motion for partial reconsideration.
- In May 2014, the circuit court granted the Hirds leave to file their amended complaint.
- In June 2014, the circuit court decided the parties' motions for partial reconsideration.

The circuit court's reconsideration of its February 2014 decision did not address the Hirds' amended complaint, and thus, did not obligate American Family to file an amended answer for the purpose of the reconsideration.

³ "The circuit court has wide discretion regarding amendment of pleadings and will not be reversed absent an erroneous exercise of discretion." *Terry v. Journal Broadcast Corp.*, 2013 WI App 130, ¶35, 351 Wis. 2d 479, 840 N.W.2d 255. The Hirds do not argue that the circuit court erred in exercising its discretion.

¶36 Second, the Hirds appear to argue that they were entitled to proceed with discovery on the bad faith claim because the circuit court held that there was coverage. The Hirds cite to *Brethorst*, but do not explain how *Brethorst* supports their argument. Although the *Brethorst* court held that “bad faith cannot exist without some wrongful denial of benefit under the insurance contract,” this does not mean that some allegedly wrongful denial of benefit is *all* that is required to proceed with discovery on a bad faith claim. 334 Wis. 2d 23, ¶56. Rather, the *Brethorst* court reiterated that “[a] prerequisite to discovery in a bad-faith case is [] some evidence that what the insurance company did was objectively unreasonable because there is no claim for bad faith if it was not.” *Id.*, ¶80 (quoted source omitted). Thus, the threshold question for discovery on a bad faith claim is whether the insurer’s denial of claim was objectively unreasonable, not whether the circuit court ultimately holds that there is coverage. As we concluded above, American Family demonstrated that its conduct was objectively reasonable. Therefore, the Hirds were not entitled to proceed with discovery on their bad faith claim.

¶37 Third, the Hirds contend that evidence of alleged acts of bad faith by American Family, including its failure to “fully investigate” the Hirds’ claim, entitled them to proceed with discovery. The Hirds argue that the circuit court erred by not examining their evidence of American Family’s conduct and, instead, only focusing on its own difficulty in determining whether there was coverage. However, the Hirds appear to be placing the cart before the horse, because “when an objectively reasonable basis to deny coverage exists, as it does here, it is not necessary to consider evidence of investigation flaws or the subjective element of bad faith.” *See Samuels Recycling Co. v. CNA Ins. Companies*, 223 Wis. 2d 233, 250, 588 N.W.2d 385 (Ct. App. 1998). The circuit court did not err by first

determining whether there was an objectively reasonable basis for American Family's actions, and the court did not need to consider further evidence after it found that there was an objectively reasonable basis.

¶38 In sum, we affirm summary judgment in favor of American Family as to the bad faith claim because the issues of coverage and damages were fairly debatable and American Family's attempts to settle and defend these issues were objectively reasonable.

B. Additional Interest Under WIS. STAT. § 628.46

¶39 The Hirds argued in the circuit court that American Family did not timely pay their claim of \$73,496.74 that was made in September 2012 after the circuit court held that there was coverage and, therefore, they are entitled to interest under WIS. STAT. § 628.46. The circuit court denied interest on the \$73,496.74 claim, but granted the Hirds interest on the \$42,699.67 that American Family had conceded after mediation and unconditionally tendered to the Hirds in March 2013. On appeal, the Hirds argue that the circuit court erred in awarding them only three months (December 2012 to March 2013) of interest on the \$42,699.67 amount, and that they are entitled to additional interest because their claim for \$73,496.74 was a sum certain owed and, thus, interest should be assessed until that entire amount was paid. Our review of this argument turns on the applicability of statutes, and therefore, we review it de novo. See *Haynes v. American Family Mut. Ins. Co.*, 2014 WI App 128, ¶13, 359 Wis. 2d 87, 857 N.W.2d 478. As we proceed to explain, the Hirds are not entitled to additional interest because their claim for \$73,496.74 in damages was not a sum certain owed.

¶40 WISCONSIN STAT. § 628.46, upon which the Hirds rely, concerns the timely payment of claims and an insured’s entitlement to interest when a claim payment is overdue:

(1) Unless otherwise provided by law, an insurer shall promptly pay every insurance claim. *A claim shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of the loss....* Any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer.... All overdue payments shall bear simple interest at the rate of 12% per year.

(2) Notwithstanding sub. (1), the payment of a claim shall not be overdue until 30 days after the insurer receives the proof of loss required under the policy or equivalent evidence of such loss.

(Emphasis added.) “The purpose of § 628.46 is to discourage insurance companies from creating unnecessary delays in paying claims and to compensate claimants for the value of the use of their money.” *Dilger v. Metropolitan Prop. and Cas. Ins. Co.*, 2015 WI App 54, ¶11, 364 Wis. 2d 410, 868 N.W.2d 177. Generally, “[i]nterest is only due under [WIS. STAT. § 628.46] ‘when there is clear liability, a sum certain owed, and written notice of both’ is given to the insurance company.” *Haynes*, 359 Wis. 2d 87, ¶21 (quoted source omitted). In other words, “there can be no question of liability on the part of the insured [and] the amount of damages must be in a sum certain amount.” *Id.* (quoted source omitted).

¶41 In this case, the circuit court held that there was coverage in August 2012. Thus, there was no question of liability. However, the circuit court did not determine damages in August 2012, because that issue had been bifurcated from the issue of coverage. When the Hirds presented American Family with an itemized claim for \$73,496.74 on September 14, 2012, that amount was not a sum

certain owed, but rather, was the amount that the Hirds alleged they spent on repairs. Whether the Hirds were in fact damaged in that amount was, at that time, fairly debatable given American Family's reasonable position that the Hirds did not adequately mitigate their losses.

¶42 In sum, the Hirds fail to persuade us that \$73,496.74 was a sum certain owed, and therefore, they are not entitled to interest on that amount. American Family does not dispute the circuit court's determination that the \$42,699.67 in damages conceded to by American Family in December 2012 was a sum certain amount. Therefore, we affirm the circuit court's award of interest on the \$42,699.67 that was unpaid between December 2012 and March 2013.⁴

C. Double Costs and Interest Under WIS. STAT. § 807.01 on Statutory Offer of Judgment Made Before Coverage Determination

¶43 The Hirds argue that they are entitled to double costs and interest under WIS. STAT. § 807.01 on their \$70,000 statutory offer of settlement tendered to American Family in October 2011. As we proceed to explain, we conclude that the Hirds' statutory offer was valid, and therefore, they are entitled to double costs and interest under § 807.01.

¶44 Under WIS. STAT. § 807.01, if a plaintiff submits a valid offer of settlement to a defendant at least twenty days before trial, the defendant rejects the offer, and the plaintiff recovers a more favorable verdict at trial, then the plaintiff

⁴ The Hirds suggest that an award of interest under WIS. STAT. § 628.46 is "at odds" with a ruling that there is no bad faith. However, § 628.46 is "unrelated to the tort of bad faith and permits the imposition of interest even where bad faith is not present." *Poling v. Wisconsin Physicians Serv.*, 120 Wis. 2d 603, 613, 357 N.W.2d 293 (Ct. App. 1984).

is entitled to double the amount of the taxable costs and interest on the amount recovered from the date of the offer of settlement until the amount is paid:

(3) After issue is joined but at least 20 days before trial, the plaintiff may serve upon the defendant a written offer of settlement for the sum, or property, or to the effect therein specified, with costs. If the defendant accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the defendant may file the offer, with proof of service of the notice of acceptance, with the clerk of court. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. *If the offer of settlement is not accepted and the plaintiff recovers a more favorable judgment, the plaintiff shall recover double the amount of the taxable costs.*

(4) If there is an offer of settlement by a party under this section which is not accepted and *the party recovers a judgment which is greater than or equal to the amount specified in the offer of settlement, the party is entitled to interest at an annual rate equal to 1 percent plus the prime rate in effect ... on the amount recovered from the date of the offer of settlement until the amount is paid.*

WIS. STAT. § 807.01 (emphases added).

¶45 The parties' dispute concerns only whether the \$70,000 offer was a valid offer of settlement under WIS. STAT. § 807.01, such that it would entitle the Hirds to double costs and interest because the Hirds recovered a judgment (\$81,514.34) greater than that offer. American Family argues that the bifurcation of the coverage and damages issues meant that American Family could not fully and fairly evaluate its exposure to liability, and therefore, rendered the Hirds' October 2011 statutory offer invalid. "The validity of a statutory offer of settlement is a question of law that we review independently." *Kubichek v. Kotecki*, 2011 WI App 32, ¶40, 332 Wis. 2d 522, 796 N.W.2d 858.

¶46 “The general rule is that, to be valid, a statutory offer must be ‘absolutely unambiguous.’ An offer is unambiguous if it allows the defendant to fully and fairly evaluate his or her own exposure to liability.” *Id.* (citation omitted). American Family does not point to any ambiguity in the Hirds’ offer. Rather, American Family contends that because the bifurcation order precluded it from conducting discovery on damages, it could not fairly evaluate its financial liability. Thus, American Family’s argument does not take issue with anything contained within the Hirds’ offer, but rather, seems to suggest that a bifurcation order will always render settlement offers made prior to coverage determination invalid.

¶47 However, American Family’s argument is contrary to Wisconsin case law and the purpose of WIS. STAT. § 807.01, which is “to encourage pretrial settlement.” See *Prosser v. Leuck*, 225 Wis. 2d 126, 147, 592 N.W.2d 178 (1999). If bifurcation of coverage precludes a settlement offer that contains damages from ever being valid prior to the determination of coverage, parties would be locked into litigation until coverage is determined. This result is contrary to the purpose of § 807.01 as stated above, for it is “[t]he risk of being assessed the penalty of double costs under § 807.01(3) [that] encourages parties to seriously assess their chances of winning a *coverage* or liability dispute.” *Prosser*, 225 Wis. 2d at 147 (emphasis added).

¶48 American Family does not present any other argument with respect to the Hirds’ October 2011 statutory offer, and therefore, we conclude that the offer was valid. Accordingly, we reverse the circuit court’s denial of the Hirds’ request for double costs and interest under WIS. STAT. § 807.01 and remand for calculation of those costs and interest consistent with this opinion.

¶49 Finally, the Hirds appear to challenge the validity of American Family’s March 2013 offer of judgment, and the circuit court’s award of costs to American Family under WIS. STAT. § 807.01(1). The Hirds argue that two provisions in American Family’s offer rendered that offer invalid: (1) the offer was for “all claims and causes of action asserted in this action” and (2) the offer was for a sum certain “plus costs” and does not define “costs.” As to the first provision, the Hirds argue that additional litigation was necessary to determine the bad faith claim, and therefore, American Family’s offer to settle “all claims” was invalid. We reject this argument as wholly undeveloped and unsupported by any legal authority.⁵ See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (appellate court need not address undeveloped arguments). As to the second provision, the Hirds argue that the language “plus costs” is ambiguous. We see no ambiguity here. Indeed, the Hirds’ own offer of settlement also stated “plus taxable costs.” The Hirds do not provide any other reason to disturb the circuit court’s award of costs to American Family under WIS. STAT. § 807.01(1).

CONCLUSION

¶50 For the reasons set forth above, we conclude that: (1) American Family is entitled to summary judgment as to the bad faith claim because the issues of coverage and damages were fairly debatable and American Family’s attempts to settle and defend those issues were objectively reasonable; (2) the

⁵ We note that the Hirds essentially raise the same argument that American Family asserts against the Hirds’ offer of settlement. American Family argues that the issue of coverage needed to be decided before it could fairly evaluate the Hirds’ offer. The Hirds similarly argue that the bad faith claim needed to be decided before they could fairly evaluate American Family’s offer. We have rejected American Family’s argument for the reasons stated in the preceding paragraphs, and those same reasons would apply to negate the Hirds’ argument.

Hirds are not entitled to additional interest under WIS. STAT. § 628.46 because they fail to show a sum certain owed; and (3) the Hirds are entitled to double costs and interest under WIS. STAT. § 807.01 because their October 26, 2011 offer of settlement was valid. We affirm the circuit court's order granting summary judgment in favor of American Family and denying the Hirds' request for additional interest under WIS. STAT. § 628.46; and we reverse the court's denial of the Hirds' request for double costs and interest under WIS. STAT. § 807.01 and remand for an award of double costs and interest consistent with this opinion.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions.

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

