

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2016

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. 2015AP1213

Cir. Ct. No. 2015SC525

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JOHN JOSEPH MILLER,

PLAINTIFF-APPELLANT,

V.

MAYO HEALTH SYSTEM AND DR. TIM JOHNSON,

DEFENDANTS-RESPONDENTS.

APPEAL from orders of the circuit court for La Crosse County:
TODD W. BJERKE, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ John Joseph Miller, pro se, appeals the decision of the circuit court granting Mayo Health System and CEO Dr. Tim

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

Johnson's (collectively, Mayo) motion to dismiss Miller's complaint. Miller raises several arguments on appeal relating to his small claims action against Mayo. For the reasons that follow, we affirm.

BACKGROUND

¶2 Miller initiated this small claims action against Mayo in La Crosse County Circuit Court after he received a bill for a six-dollar co-pay following surgery at Mayo's La Crosse facility, alleging that Mayo failed to tell him that he would be responsible for the six-dollar co-pay for his surgery. Prior to surgery, Miller, a Medicaid beneficiary, signed a consent form authorizing Mayo to submit the resulting bill to Medicaid. Miller's suit alleged that the co-pay bill violated a Medicaid policy requiring healthcare providers to notify patients of non-covered charges and to obtain consent prior to beginning such non-covered services. Miller seeks \$10,000 in damages from Mayo due to this alleged violation.

¶3 As permitted by La Crosse County Circuit Court Rules 702 and 705, Mayo filed its answer with the circuit court by mail, rather than appearing in person at the initial hearing. In its answer, Mayo argued that while Medicaid had paid the majority of Miller's bill and that, in general, Miller was responsible for the co-pay under Medicaid policy, Mayo stated that it had waived the co-pay, leaving Miller's account with a zero balance.

¶4 An initial hearing was held on the return date and, as indicated, Mayo did not appear. On this basis, Miller moved for the entry of a default judgment in his favor. The circuit court denied Miller's motion and explained to Miller that Mayo was not required to appear in person because it had responded by mail according to La Crosse County Circuit Court Rule 705. Miller then requested

and received a substitution of judge, pursuant to WIS. STAT. § 799.205(1). Mayo subsequently filed a motion to dismiss.

¶5 Miller again argued for default judgment at the court trial. The court again denied Miller's request on the same grounds as before. Apparently dissatisfied with the court's ruling, Miller requested another judicial substitution, which was denied. At the end of the trial, the judge dismissed Miller's claims against Mayo and found Miller in contempt of court, citing disruptive behavior. Miller appeals the orders dismissing Miller's claim and finding him in contempt.

DISCUSSION

¶6 On appeal, Miller argues that the circuit court erred by: (1) dismissing his complaint; (2) erroneously exercising its discretion by denying Miller's request for a default judgment; (3) denying Miller's second request for judicial substitution; and (4) finding Miller in contempt of court. We address and reject each in turn.

I. *Dismissal of Miller's Complaint*

¶7 Miller argues that the court erred by dismissing his small claims complaint against Mayo. As we understand it, Miller claims Mayo violated Medicaid policy by billing him for the co-pay because Medicaid policy required Mayo to inform Miller of non-covered procedures. Mayo contends that Miller's complaint was properly dismissed. Consistent with the circuit court's decision,

Mayo argues that the co-pay has since been waived and thus, Miller has suffered no damages.² We agree with Mayo but on a different ground.

¶8 Miller’s six-dollar claim against Mayo is moot. *City of Racine v. J-T Enters. of Am., Inc.*, 64 Wis. 2d 691, 700, 221 N.W.2d 869 (1974) (an issue is moot when a party seeks a determination that will have no practical effect on an existing legal controversy). Simply put, there is nothing for Miller to litigate. Even assuming without deciding that Mayo somehow violated Medicaid rules, it is undisputed that Mayo has waived payment of the six dollars, thereby granting Miller the relief he seeks in this action.

II. *Denial of Default Judgment*

¶9 Miller next argues that the circuit court erred by denying his motion for a default judgment against Mayo for failure to appear at the initial hearing. On appeal, Miller makes the same argument that he made before the court, relying on La Crosse County Circuit Court Rule 702. Rule 702 states that “a default judgment ... will be granted as appropriate” if a defendant fails to appear at an initial hearing. Mayo argues that Rule 705 allows an out-of-county defendant to “appear” by answering via mail in a timely fashion. Consistent with the circuit court’s decision, Mayo argues that it appropriately answered by mail and denied Miller’s request for a default judgment. We agree with Mayo.

¶10 “Section 806.02(1), STATS., confers discretion upon the trial court in deciding whether to grant default judgment, and its exercise of discretion will be

² Mayo also argues that it did not violate Medicaid policy because Miller’s procedure was covered and therefore did not require Mayo to inform Miller about non-covered procedures.

affirmed on appeal unless a clear abuse is shown.” *Johns v. County of Oneida*, 201 Wis.2d 600, 605, 549 N.W.2d 269 (Ct. App. 1996) (footnote omitted).

¶11 The circuit court denied Miller’s motion for a default judgment on the ground that Rule 705 permits a non-resident party, such as Mayo, to file a written answer to a small claims complaint instead of appearing in person at the initial small claims hearing. “A reviewing court will affirm the circuit court’s exercise of discretion if the circuit court has examined the relevant facts, has applied a proper standard of law, and has used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach.” *Dane Cnty. DHS v. Mable K.*, 2013 WI 28, ¶99, 346 Wis. 2d 396, 828 N.W.2d 198. We conclude that the court reasonably applied local court Rule 705 under the pertinent facts of this case in denying Miller’s motion for a default judgment. *See id.*, ¶39.

III. *Denial of Second Judicial Substitution Request*

¶12 Miller argues that the circuit court improperly denied his second request for judicial substitution and that the judge should have been “disqualified for arresting me in court,” which we understand to mean that the judge should have removed himself from the case due to alleged bias towards Miller. Mayo argues that Miller is not entitled to a second substitution of judge and the judge was not required to remove himself. We agree.

¶13 A party to a small claims action is entitled to request substitution of a judge, pursuant to WIS. STAT. § 799.205(1). However, a party is limited to one such request. § 799.205(3). Miller’s second request for substitution of a judge was properly denied under § 799.205(3). The statute makes clear that Miller is entitled to only one judicial substitution, which he received. Miller does not explain why he is entitled to have the replacement judge substituted.

IV. *Contempt of Court*

¶14 Miller mentions in passing his contempt of court charge in his statement of “relief sought” without developing an argument on the topic. Generally, we will not hear arguments that are not fully developed or inadequately briefed. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (1992). Therefore, we decline to address Miller’s contempt of court charge.

CONCLUSION

¶15 We conclude that the circuit court properly dismissed Miller’s small claims action against Mayo, denied Miller’s motion for a default judgment and his second request for judicial substitution. Accordingly, we affirm the circuit court.

By the Court.—Orders affirmed.

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

