

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 5, 2002

Cornelia G. Clark
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. 02-1227

Cir. Ct. No. 00-CV-267

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ROBERT L. PERKINS,

PLAINTIFF-APPELLANT,

v.

VIRGINIA L. ANDERSON,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Portage County:
RICHARD O. WRIGHT, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Robert Perkins appeals the order dismissing his action against Virginia Anderson. His complaint alleged that Anderson failed to disclose a material defect when he purchased a home from her. The circuit court

dismissed the action as a sanction for Perkins' failure to comply with an order compelling discovery. We affirm.

¶2 During the course of this proceeding, Anderson served Perkins with interrogatories and requests to produce documents. Perkins answered some of the interrogatories but refused to answer others, including requests to identify anybody living with him, to provide his and another potential witness's recent employment history and to state whether he had certain repairs done to the house after purchasing it from Anderson. He also refused to produce the requested documents.

¶3 Consequently, Anderson moved to compel discovery and scheduled a hearing. Perkins failed to appear, for reasons that do not appear in the record. In his absence, the circuit court granted the motion to compel, and ordered Perkins to comply with Anderson's discovery request within ten days. The order warned that "[f]ailure to comply with this Order will result in immediate dismissal of plaintiff's action on its merits and with prejudice." Perkins did not comply with the order nor provide any other response to it, and the circuit court dismissed the action shortly after Perkins' deadline expired.

¶4 Perkins contends that the court erred by granting the motion to compel because the information and documents he refused to provide were irrelevant. However, Perkins had the opportunity to present that argument to the

circuit court, but he failed to appear at the scheduled hearing and made no attempt to explain why he did not appear. We will not conclude that a circuit court erred based on arguments that were never presented to it. *See Prill v. Hampton*, 154 Wis. 2d 667, 678, 453 N.W.2d 909 (Ct. App. 1990).

¶5 Perkins next contends that the circuit court's order demonstrated a bias in favor of Anderson. No facts of record support that assertion. The circuit court has authority to compel discovery, WIS. STAT. § 804.12(1) (1999-2000),¹ and authority to dismiss an action for failure to comply with a discovery order. WIS. STAT. § 804.12(2)(a)3. The record demonstrates a reasonable exercise of that discretionary authority in this case. *See Smith v. Golde*, 224 Wis. 2d 518, 525, 592 N.W.2d 287 (Ct. App. 1999) (dismissal sanction under WIS. STAT. § 804.12(2)(a)3 lies within circuit court's discretion).

¶6 Finally, Perkins alleges error in the circuit court's initial scheduling order, because it allowed Anderson more time to disclose expert witnesses than Perkins received. Unless an alleged error affects a party's substantial rights we will disregard it. WIS. STAT. § 805.18(2). The different witness disclosure deadlines had no conceivable effect on the outcome of this proceeding.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

By the Court.—Order affirmed.

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

