COURT OF APPEALS
DECISION
DATED AND FILED

December 6, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2010AP2297 **Cir. Ct. No. 2004CV2676**

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

DSG EVERGREEN F.L.P. AND VOSS FARMS, LLC,

PLAINTIFFS-RESPONDENTS,

V.

TOWN OF PERRY,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Dane County: STUART SCHWARTZ and STEPHEN E. EHLKE, Judges. *Affirmed and cause remanded with directions.*

Before Lundsten, P.J., Sherman and Blanchard, JJ.

¶1 SHERMAN, J. The Town of Perry appeals orders of the circuit court awarding litigation expenses to DSG Evergreen F.L.P. and Voss Farms, LLC

pursuant to WIS. STAT. § 32.28,[1] denying the Town's request for an evidentiary hearing on the amount of expenses DSG and Voss Farms was entitled, and denying the Town's motion to compel discovery relating to DSG's and Voss Farms' entitlement to litigation expenses. We affirm.

BACKGROUND

¶2 This is another case in the long line of legal disputes between the Town and DSG and Voss Farms over the Town's attempt to obtain land owned by DSG and Voss Farms. *See, e.g.,* ***DSG Evergreen Family Ltd. P'ship v. Town of Perry (DSG - V)***, No. 2011AP492, unpublished slip op. (WI App Aug. 23, 2012); ***DSG Evergreen F.L.P. v. Town of Perry (DSG - IV)***, No. 2009AP727, unpublished slip op. (WI App July 22, 2010); ***Town of Perry v. DSG Evergreen Family Ltd. P'ship (DSG - III)***, No. 2008AP163, unpublished slip op. (WI App April 23, 2009); ***Town of Perry v. DSG Evergreen F.L.P. (DSG - II)***, No. 2006AP714, unpublished slip op. (WI App March 29, 2007); and ***DSG Evergreen F.L.P. v. Town of Perry (DSG - I)***, 2007 WI App 115, 300 Wis. 2d 590, 731 N.W.2d 667.[2] Though not in dispute, the procedural history of the instant case is

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] In, ***DSG Evergreen Family Ltd. P'ship v. Town of Perry (DSG – V)***, No. 2011AP492, unpublished slip op. (WI App Aug. 23, 2012), we made a point of noting that our work in reviewing the issues before us in that appeal was made considerably more difficult by the Town's failure to present coherent, relevant arguments with accurate citations to the record. The same is again true in the present case. The Town's brief is largely devoid of citations to the record and where citations are included, those citations most often reference the brief's appendix. We admonish counsel that WIS. STAT. RULES 809.19(1)(d) and (e) require appropriate citations to the record on appeal, and that references to the brief's appendix are not in conformity with the rules. *See* ***United Rentals, Inc. v. City of Madison***, 2007 WI App 131, ¶1 n.2, 302 Wis. 2d 245, 733 N.W.2d 322.

protracted and convoluted. To avoid confusion, we set forth only those facts in the main text of the opinion directly relevant to the matter now before us.

¶3 The Town sought to condemn, pursuant to WIS. STAT. § 32.06, land originally owned by DSG Evergreen for a historic park preservation district. Originally, Voss Farms held an access easement through the land the Town sought to acquire. In April 2004, the Town served both DSG Evergreen and Voss Farms with an appraisal of the property.[3] At the time, the property was owned by DSG and subject to an easement by Voss Farms, and both condemnees were represented by the same attorney, John Kassner. On June 3, 2004, DSG conveyed to Voss Farms by deed that part of the land the Town sought to condemn that had been Voss Farms' easement. It also appears that "Voss Farms obtained separate representation to protect its new ownership interest in the property." ***DSG - II***, No. 2006AP714, ¶2.

¶4 In June 2004, Attorney Kassner met with the Town and its attorney to negotiate the value of the land the Town sought to condemn. We observed in ***DSG - II*** that Attorney Kassner represented only DSG during the negotiation. ***Id.***, ¶3. Ultimately the June 2004 negotiation failed and, on July 21, 2004, the Town served DSG and Voss Farms identical "second amended jurisdictional offers." Those jurisdictional offers were based on the April 2004 appraisal, which did not account for the land transfer between DSG and Voss Farms.

[3] The April 2004 appraisal was the Town's second attempt to obtain the land through condemnation. In March 2003, the Town served upon DSG an appraisal for the land it sought to acquire and in January 2004, filed a condemnation petition and lis pendens. DSG and Voss Farms commenced a right to take action against the Town, Case No. 2004CV291 and in April 2004, the Town voluntarily withdrew its condemnation petition in light of the invalidity of its jurisdictional offer due to a scrivener's error in the legal description of Voss Farms' access easement, and the case was dismissed. This earlier proceeding is not at issue here.

¶5 DSG and Voss Farms rejected the Town's jurisdictional offer, and in August 2004, the Town filed a second petition for condemnation proceedings, which was docketed as Case No. 2004CV2620. *See* ***id.***, ¶4. In response, DSG and Voss Farms filed the present right-to-take action pursuant to WIS. STAT. § 32.06(5), alleging the Town had no right to take their land.

¶6 In September 2004, the circuit court in Case No. 2004CV2620 referred the Town's petition to the condemnation commissioners, which set a hearing on the petition for December 2004. Prior to the scheduled hearing, DSG and Voss Farms separately moved the court in Case No. 2004CV2620 for temporary restraining orders and injunctions to prevent the condemnation commissioners from holding a hearing on the Town's August 2004 petition and for withdrawal of the assignment of that petition to the condemnation commissioners. Following a hearing on the motions, the circuit court withdrew the assignment. The court determined that the Town had failed to negotiate with Voss Farms as required by WIS. STAT. § 32.06(2a). The court concluded that separate appraisals for both DSG's and Voss Farms' separate land interests and negotiation with Voss Farms were statutory conditions precedent for a jurisdictionally sufficient jurisdictional offer and the Town's failure to comply with those requirements meant the Town's July 2004 jurisdictional offer was not statutorily sufficient. The court then withdrew the assignment to the condemnation commissioners on the basis that the assignment of the August 2004 petition to the condemnation commissioners was not supported by a statutorily sufficient jurisdictional offer.

¶7 In October 2005, the Town served separate amended jurisdictional offers to DSG and Voss Farms, this time taking into account their separate property interests in the subject acreage, and in December 2005, filed amended

petitions for condemnation in Case No. 2004CV2620. DSG moved the circuit court for dismissal of the petition against it. In February 2006, the circuit court in Case No. 2004CV2620 granted DSG's motion to dismiss and dismissed without prejudice the Town's petition, allowing the Town the opportunity to refile new, separate petitions for each land owner.

¶8 In November 2006, DSG and Voss Farms moved the circuit court for summary judgment in the present case. The court granted DSG's and Voss Farms' motion. The court held that the circuit court in ***DSG II***, Case No. 2004CV2620, determined that the July 2004 jurisdictional offer was jurisdictionally defective and therefore "the Town lacks the statutory right to take the subject property from DSG and Voss [Farms] to the extent it attempts to do so under its July 20, 2004 jurisdictional offer." The court further concluded that the dismissal of the Town's petition to condemn in Case No. 2005CV2620 rendered the present case moot because any judgment on the merits of DSG's and Voss Farms' claims in this case could not affect the viability of the petition for condemnation in Case No. 2004CV2620. Because DSG and Voss Farms successfully challenged the Town's August 2004 petition to condemn, the court further concluded that DSG and Voss Farms were entitled to "some amount of litigations expenses" under WIS. STAT. § 32.28(3).

¶9 Following additional litigation unrelated to the issues before us on appeal, in April 2008, DSG and Voss Farms submitted to the circuit court a request for litigation expenses along with supporting documentation. Their request included litigation fees incurred during the pendency of the present case as well as those incurred in defense of Case No. 2004CV2620. The Town objected to the request and moved the court for an evidentiary hearing on DSG's and Voss Farms' entitlement to litigation expenses. The parties were then asked to brief the

court on two legal questions raised by the Town's motion: whether a hearing was necessary to determine whether the parties acted in good faith and whether claim preclusion barred DSG's and Voss Farms' request for litigation fees incurred defending the Town's condemnation petition in Case No. 2004CV2620. DSG and Voss Farms objected to the Town's request for an evidentiary hearing and moved the court for a protective order relieving them from the obligation of responding to requests for the production of documents sent to them by the Town in August 2008. The circuit court granted DSG's and Voss Farms' motion for protective order and denied the Town's motion for an evidentiary hearing.

¶10 In December 2008, the Town filed a motion to compel DSG's and Voss Farms' response to certain requests for admissions, requests for production, and interrogatories, which DSG and Voss Farms of course objected to. The court denied the Town's motion. In September 2009, the Town again filed a motion to compel discovery, which DSG and Voss Farms objected to, and in April 2010, DSG and Voss Farms moved the court for another protection order, which the Town objected to.[4] The Town in turn moved the court for a protective order, which DSG and Voss Farms objected to. In May 2010, the court granted DSG's and Voss Farms' motion for a protective order, limiting the Town's discovery. Thereafter, following a hearing on the matter of DSG's and Voss Farms' litigation expenses, the circuit court entered an August 2010 order approving $180,366.32 in litigation expenses in favor of DSG and Voss Farms. The Town appeals.

[4] Following the filing of the Town's September 2009 motion to compel and DSG's and Voss Farms' April 2000 motion for a proactive order, the parties were informed that due to the retirement of Judge Stuart Schwartz, who until his retirement had served as the presiding judge in this action, Judge Stephen Ehlke was assigned to take over the case.

DISCUSSION

¶11 The Town challenges the circuit court's determination that DSG and Voss Farms are entitled to litigation expenses in the amount of $180,366.32 under WIS. STAT. § 32.28(3)(b). The Town also challenges the court's rulings that the Town was not entitled to an evidentiary hearing and certain discovery relating to DSG's and Voss Farms' entitlement to litigation expenses.

A. Litigation Expenses under WIS. STAT. § 32.28(3)(b)

¶12 We review the circuit court's determination of appropriate litigation expenses for an erroneous exercise of discretion. *See* ***Standard Theatres, Inc. v. DOT***, 118 Wis. 2d 730, 747, 349 N.W.2d 661 (1984).

¶13 Under WIS. STAT. § 32.28(3)(b), after a government initiates condemnation proceedings to acquire a landowner's property, "litigation expenses shall be awarded to the condemnee if … [t]he court determines that the condemnor does not have the right to condemn part or all of the property described in the jurisdictional offer or there is no necessity for its taking." Paragraph (3)(b) "level[s] the playing field by shifting the obligation to pay expenses that may have been unnecessary if the condemnor had shouldered its responsibilities properly." ***Warehouse II, LLC v. DOT***, 2006 WI 62, ¶¶21-22, 291 Wis. 2d 80, 715 N.W.2d 213.

¶14 Before a condemnor has the right to proceed with the condemnation of property, the condemnor must issue a legally sufficient jurisdictional offer to purchase and the failure to do so means the condemnor does not have the statutory right to condemn. ***Id.***, ¶¶9, 34. In ***Warehouse II***, the court addressed the legal consequence of a condemnor's failure to engage in good faith negotiations with

the property owner prior to issuing a jurisdictional offer. The court stated that negotiations under WIS. STAT. § 32.06(2a) "is a necessary condition of conferring jurisdiction upon the administrative body and the court to determine just compensation" and therefore a condemnor must negotiate with the property owner in good faith before issuing a jurisdictional offer to purchase. ***Id.***, ¶¶5-6 (citation omitted). The court concluded that because the condemnor in that case failed to engage in good faith negotiations with the property owner, which constituted a jurisdictional, or fundamental, defect in the jurisdictional offer, the condemnor did not have a statutory right to condemn. ***Id.***, ¶¶10, 34. The court further concluded that because "condemnation is [a] purely [] statutory procedure," the fundamental defect in the jurisdictional offer meant the condemnor lacked the right to condemn the property in question and that pursuant to WIS. STAT. § 32.28(3)(b), the condemnee was thus entitled to litigation expenses. ***Id.***, ¶35.

¶15 Relying on ***Warehouse II***, the circuit court in the present case concluded that the Town did not have the right to condemn the property at issue because, as determined by the circuit court in Case No. 2004CV2620, the July 2004 jurisdictional offer was fundamentally defective due to the Town's failure to negotiate with Voss Farms prior to issuing the jurisdictional offer and the Town's failure to provide DSG and Voss Farms with separate appraisals for their respective parcels.

¶16 The Town contends that the July 2004 jurisdictional offer was not jurisdictionally defective, arguing that it *did* satisfy the requirement under WIS. STAT. § 32.06 that it negotiate in good faith with Voss Farms and that the circuit court erred in concluding otherwise. The Town asserts that the negotiation requirement was satisfied because Voss Farms was represented, or apparently represented, by Attorney Kassner, DSG's attorney, at the June 2004 negotiation.

The Town argues that Attorney Kassner "admittedly represented Voss [Farms] in all condemnation proceedings before and after the June 2004 negotiations" and "there is no evidence of [Attorney] Kassner having terminated or even limited his representation of Voss [Farms] after January 2004. The Town also argues that even if Attorney Kassner did not represent or appear to represent Voss Farms in the June 2004 negotiation, the Town nonetheless satisfied the negotiation requirement because it made a bona fide attempt to negotiate with the "assumed landowner."

¶17 The Town fails to cite this court to any affirmative evidence in the record supporting its claim that Attorney Kassner represented or appeared to represent Voss Farms in the June 2004 negotiation. It is not the role of this court to try to determine what evidence the Town might be referring to. *See* ***State v. West***, 179 Wis. 2d 182, 195-96, 507 N.W.2d 343 (Ct. App. 1993) (this court is not required to search the record to supply facts that may support appellant's argument). The Town also does not cite this court to any legal authority supporting its position that negotiation with an "assumed landowner" satisfies the WIS. STAT. § 32.06 requirement that a condemnor negotiate with the property owner in good faith before issuing a jurisdictional offer to purchase. Arguments not supported by citation to legal authority also need not be addressed on appeal. *See* ***Kruczek v. DWD***, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286.

¶18 Moreover, the Town ignores the fact that a court of law previously determined in Case No. 2004CV2620 that the Town did *not* satisfy the negotiation requirement with respect to Voss Farms and therefore dismissed the Town's condemnation petition. The Town did not appeal that decision and it seems to us that the Town is therefore barred from disputing this issue again on appeal in this case under one of the following theories: claim preclusion, issue preclusion,

forfeiture, or law of the case. However, the Town has not briefed this court on why one or more of these theories does not prohibit it from disputing now a matter previously determined in a separate action and for that reason as well we will not address the issue.

¶19 The Town argues that the circuit court erred in determining that the failure of the appraisal to take into account the land transfer between DSG and Voss Farms constituted a jurisdictional defect in the July 2004 jurisdictional offer. The supreme court determined in ***Warehouse II*** that a condemnor's failure to negotiate in good faith with the property owner was a jurisdictional defect resulting in a condemnor's lack of the right to condemn. ***Warehouse II***, 291 Wis. 2d 80, ¶¶10, 34. Because the Town's failure to negotiate with Voss Farms was, by itself, a jurisdictional defect resulting in the Town's inability to condemn the property, we need not and do not address the Town's arguments as to whether the deficient appraisal was also a jurisdictional defect. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (when a decision on one issue is dispositive, we need not reach other issues raised).

¶20 The Town next argues that DSG and Voss Farms are prohibited by the doctrine of claim preclusion from recovering fees under WIS. STAT. § 32.28(3)(b) because those fees could have or should have been requested in Case No. 2004CV2620, wherein DSG and Voss Farms brought a motion for attorney fees under WIS. STAT. § 814.025, which governed sanctions for frivolous pleadings, and WIS. STAT. § 802.05, which governed sanctions for frivolously

continued actions.[5] Before the circuit court, the Town argued that claim preclusion applied only to those attorney's fees that were incurred by DSG and Voss Farms during their defense of Case No. 2004CV2620. To the extent that the Town is now arguing that claim preclusion prohibited DSG and Voss Farms from receiving *any* fees under § 32.28(3)(b), we will not address that argument, but will instead limit our review to the issue raised by the Town below—whether the recovery of litigation expenses incurred during Case No. 2004CV2620 should be given claim preclusive effect. *See* ***State v. Ndina***, 2009 WI 21, ¶¶29-31, 315 Wis. 2d 653, 761 N.W.2d 612 (failure to timely raise argument forfeits the argument on appeal). We conclude that the Town's argument is insufficiently developed on the limited issue before us, and reject it on that basis.

¶21 When the doctrine of claim preclusion is applied, a final judgment on the merits in one action will ordinarily bar all matters which were litigated or might have been litigated in the former proceeding. ***Kruckenberg v. Harvey***, 2005 WI 43, ¶19, 279 Wis. 2d 520, 694 N.W.2d 879. When the party against whom claim preclusion is asserted was a *plaintiff* in the first action, the doctrine of claim preclusion applies if the following three elements are met: (1) identity between the parties or their privies in the prior and present suits; (2) an identity of causes of action, or claims, in the two suits; and (3) a final judgment on the merits by a court of competent jurisdiction. ***Wickenhauser v. Lehtinen***, 2007 WI 82, ¶¶22-23, 302

[5] The circuit court in Case No. 2004CV2620 denied fees under those statutes, finding that the Town had not acted frivolously. The court found that although the 2004 jurisdictional offer was defective, the Town had proceeded with its petition on the good faith, albeit mistaken, belief that any defects in the jurisdictional offer could be cured by an amendment under WIS. STAT. § 32.14. We note that by supreme court order, both WIS. STAT. §§ 814.025 and 802.05 were repealed and replaced by a new WIS. STAT. § 802.05 effective July 1, 2005. *See* ***Storms v. Action Wis., Inc.***, 2008 WI 56, ¶4 n.2, 309 Wis. 2d 704, 750 N.W.2d 739.

Wis. 2d 41, 734 N.W.2d 855. When, however, the party against whom claim preclusion is asserted was a *defendant* in the first action, as was the case here, a different analysis is applied. *See* ***id.***, ¶23. In that situation, all three elements of claim preclusion must be met and, in addition, the claim must come within the common law compulsory counterclaim rule. *See* ***Menard, Inc. v. Liteway Lighting Prods.***, 2005 WI 98, ¶28, 282 Wis. 2d 582, 698 N.W.2d 738. Whether the facts at hand satisfy the elements of claim preclusion presents a question of law which we review de novo. ***Id.***, ¶23.

¶22 The Town devotes substantial argument to the questions of whether the second element—an identity of causes of actions or claims between the two suits—has been met, and whether the issue of fees under WIS. STAT. § 32.08(3)(b) could have been raised in Case No. 2004CV2620. However, the Town has failed to set forth any argument establishing that the other elements of claim preclusion have been met. In particular, the Town has failed to show that any of the orders issued by the court in Case No. 2004CV2620 constituted "final judgment[s] on the merits." *See* ***Wickenhauser***, 302 Wis. 2d 41, ¶22. Because the Town's argument is insufficiently developed, we do not further address it. *See* ***Associates Fin. Servs. Co. of Wis., Inc. v. Brown***, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56 (this court need not consider undeveloped arguments).

¶23 The Town next argues that the circuit court erroneously exercised its discretion in awarding DSG and Voss Farms $180,366.32 in litigation expenses because they acted with "unclean hands." The Town argues that a party seeking to recover litigation fees under WIS. STAT. § 32.28(3)(b) must have clean hands and that DSG and Voss Farms do not because they "fail[ed] to negotiate in good faith and act with candor toward the tribunals [which] created complex, long, and expensive litigation which could have been straightforward" and utilized

"manipulative defense tactics," which included changing attorneys and transferring title to a portion of the property at issue without informing the Town.

¶24 Assuming, without deciding, that "clean hands" doctrine applies here, the Town does not provide a meaningful discussion of the "clean hands" doctrine as applied to the facts of this case. Accordingly, we consider the Town's argument to be insufficiently developed, and reject it on that basis.

¶25 "For relief to be denied a plaintiff in equity under the 'clean hands' doctrine, it must be shown that the alleged conduct constituting 'unclean hands' caused the harm from which the plaintiff seeks relief" and "'it must clearly appear that the things from which the plaintiff seeks relief are the fruit of *its own* wrongful or unlawful course of conduct.'" ***Security Pac. Nat'l Bank v. Ginkowski***, 140 Wis. 2d 332, 339, 410 N.W.3d 589 (Ct. App. 1987) (citation omitted). As pointed out by DSG and Voss Farms, there was no finding by the lower court in this case that either DSG or Voss Farms engaged in deceptive conduct or otherwise acted in bad faith. Furthermore, the Town does not explain why DSG and Voss Farms had an obligation to inform the Town that it was transferring title to a portion of the property after the Town had obtained an appraisal, or why they had an obligation to inform the Town's attorney at the July 2004 negotiation that Attorney Kassner was not representing Voss Farms.

¶26 Finally, the Town argues that the circuit court erroneously exercised its discretion because the court "virtually rubber stamped" DSG's and Voss Farms' request. The record reflects that the court denied some of their requests and reduced others. The fact that the Town does not believe that the court's denial and reduction was enough does not mean the court's award was clearly erroneous where the court denied some expenses and reduced others.

B. Evidentiary Hearing and Discovery

¶27 The Town argues that under WIS. STAT. § 32.06(5), the circuit court was obligated to hold a trial "to resolve the contested issues." Those contested issues apparently include whether the Town failed to provide an appraisal in accordance with § 32.06(2), and whether the Town served its jurisdictional offer on Voss Farms without first attempting to negotiate with it, as required by § 32.06(2a).

¶28 The circuit court did not make an independent determination as to whether the Town provided a proper appraisal and negotiated with Voss Farms prior to serving its jurisdictional offer, but instead relied upon the court's determination of those issues in Case No. 2004CV2620. The Town argues that the court's failure in the present case to make an independent determination on those issues denied the Town the opportunity "to be heard and to defend on contested factual issues."

¶29 The Town has failed to cite to the record below where it raised before the circuit court the issue of its entitlement to a *trial*. The record reflects that the Town submitted multiple motions to the court requesting a *hearing*; however, the Town has not demonstrated that it preserved below the issue of a trial. As a general rule, we do not review issues not shown to have been raised in the circuit court. ***Schinner v. Schinner***, 143 Wis. 2d 81, 94 n.5, 420 N.W.2d 381 (Ct. App. 1988). Furthermore, a plain reading of WIS. STAT. § 32.05(5)[6] does not,

[6] WISCONSIN STAT. § 32.06(5) provides:

(continued)

as the Town suggests, require that a court hold a trial on the issue of whether a property owner is entitled to litigation expenses under WIS. STAT. § 32.28(3)(b) and the Town has failed to cite us to any legal authority supporting its claim that it does. It is well established that arguments unsupported by citation to legal authority will not be addressed. *See* ***Kruczek***, 278 Wis. 2d 563, ¶32 (we need not consider arguments unsupported by reference to legal authority).[7]

> COURT ACTION TO CONTEST RIGHT OF CONDEMNATION. When an owner desires to contest the right of the condemnor to condemn the property described in the jurisdictional offer for any reason other than that the amount of compensation offered is inadequate, such owner may within 40 days from the date of personal service of the jurisdictional offer or within 40 days from the date of postmark of the certified mail letter transmitting such offer, or within 40 days after date of publication of the jurisdictional offer as to persons for whom such publication was necessary and was made, commence an action in the circuit court of the county wherein the property is located, naming the condemnor as defendant. Such action shall be the only manner in which any issue other than the amount of just compensation or other than proceedings to perfect title under ss. 32.11 and 32.12 may be raised pertaining to the condemnation of the property described in the jurisdictional offer. The trial of the issues raised by the pleadings in such action shall be given precedence over all other actions in said court then not on trial. If such action is not commenced within the time limited the owner or other person having any interest in the property shall be forever barred from raising any such objection in any other manner. The commencement of an action by an owner under this subsection shall not prevent a condemnor from filing the petition provided for in sub. (7) and proceeding thereon. Nothing in this subsection shall be construed to limit in any respect the right to determine the necessity of taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with condemnation during the pendency of the action to contest the right to condemn….

[7] We note that much of the Town's argument is difficult to follow and poorly developed. To the extent that we have not addressed an argument in the Town's brief, we have not done so because that argument is so lacking in coherency and development that it does not warrant a response. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶30 DSG and Voss Farms also seek to recover their litigation expenses incurred on appeal, pursuant to WIS. STAT. § 32.28(3)(g).[8] We question whether it is necessary for a party to obtain a ruling from this court in order to recover appellate litigation expenses under § 32.28(3)(g), as opposed to simply requesting them from the circuit court following remittitur. Nonetheless, to avoid possible confusion, we address the matter. In ***Narloch v. State Dept. of Transportation***, 115 Wis. 2d 419, 439, 340 N.W.2d 542 (1983), the supreme court held that "litigation expenses" under § 32.28(3)(g) included recovery of those expenses that a prevailing condemnee incurs in an appeal. Here, pursuant to § 32.28(3)(g) and ***Narloch***, 115 Wis. 2d at 439, DSG and Voss Farms, the prevailing condemnees, are entitled to litigation expenses associated with the appellate proceedings.

¶31 After remittitur, the circuit court shall award litigation expenses incurred on appeal to the respondents in an amount to be determined by the circuit court.

By the Court.—Orders affirmed and cause remanded with directions.

Not recommended for publication in the official reports.

[8] On the same day we issued our original opinion in this case, DSG and Voss Farms filed a motion for inclusion of litigation expenses. The Town filed a response objecting to the motion.