COURT OF APPEALS
DECISION
DATED AND FILED

October 1, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2160 **Cir. Ct. No. 2012CV2498**

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

DENNIS LEE MAXBERRY,

PLAINTIFF-APPELLANT,

V.

KELLER GRADUATE SCHOOL OF MANAGEMENT,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed*.

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Dennis Lee Maxberry, *pro se*, appeals from an order of the circuit court, dismissing with prejudice his claims against Keller Graduate School of Management. We affirm.

¶2 As best we can tell, Maxberry enrolled as a student at Keller, but was ultimately dismissed for failure to meet the school's academic standards. In March 2012, after the United States Department of Education's Office for Civil Rights dismissed Maxberry's discrimination complaint because Maxberry failed to provide adequate follow-up information as requested, Maxberry filed the underlying suit *pro se* against Keller. Keller moved to dismiss the complaint for failure to comply with the rules of civil procedure and failure to state a claim. The circuit court granted the motion,[1] but left Maxberry an opportunity to seek counsel if he desired and to file a revised, comprehensible complaint.

¶3 Maxberry filed a second *pro se* complaint in July 2012. Keller again moved to dismiss, arguing that the complaint was so incoherent that it was impossible for Keller to know how to defend itself. The circuit court granted the motion and dismissed Maxberry's claims with prejudice. Maxberry now appeals.

¶4 Keller urges us to dismiss the appeal as a matter of law for Maxberry's failure to comply with the briefing requirements of WIS. STAT. RULE 809.19(1) (2011-12).[2] *See* WIS. STAT. RULE 809.83(2). While we agree that Maxberry's brief is largely noncompliant[3] with the rule, as well as nearly unintelligible, we do discern some semblance of an argument therein. It appears that Maxberry is claiming he had a contract of some sort with Keller regarding financial aid and his enrollment in the school, and that he believes Keller breached

[1] This order was entered by the Honorable Francis T. Wasielewski.

[2] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[3] Maxberry's appendix is also inadequate. *See* WIS. STAT. RULE 809.19(2)(a).

this contract, possibly by discrimination based on race or disability, causing Maxberry at least $66,000 in damages. On appeal, Maxberry appears to assert that the contract was unconscionable, possibly because of an arbitration clause contained therein.[4]

¶5 Maxberry's problem, however, is that at no point in his main brief does he directly address the circuit court's decision to dismiss his case for failure to state a claim. While we review the disposition of a motion to dismiss *de novo*, *see* ***Beloit Liquidating Trust v. Grade***, 2004 WI 39, ¶17, 270 Wis. 2d 356, 677 N.W.2d 298,[5] we will not develop an appellant's argument for him, *see* ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987).

¶6 Moreover, even if we were satisfied that Maxberry's amended complaint adequately alleged breach of contract as a legal theory, the complaint is still insufficient because it is utterly lacking in factual support: no contract has been produced, nor its language quoted, and it is not clear which of Keller's actions ostensibly constitute a breach of said contract. *See* WIS. STAT.

[4] In his reply brief, though, Maxberry explains, "This is an action against Keller Graduate School of Management who discriminated against the appellant and would not give him grades in an open book testing arrangement." Further, when he "realized he was being defrauded he required accommodation at Section 504 of the 1973 rehabilitation in education act and was denied, appellant is disable[d] under 42 U.S.C. Section 12132 & 12182 of the ADA Act[.]" Even if this argument were adequately developed, we do not consider arguments raised for the first time in a reply brief. *See* ***Northwest Wholesale Lumber, Inc. v. Anderson***, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995).

[5] In support of this proposition, Keller cites "*Schutte v. Russ Darrow Group, Inc.*, 2012 WI App 132, ¶ 7, 345 Wis. 2d 62, 823 N.W.2d 840." We note, however, that ***Schutte*** is an unpublished *per curiam* opinion. *See* ***Schutte v. Russ Darrow Grp., Inc.***, No. 2011AP2716, unpublished slip. op. (WI App Oct 24, 2012). It should not have been cited. *See* WIS. STAT. RULE 809.23(3).

§ 802.02(1)(a) (complaints must identify the transaction or transactions out of which claim arises and which show that pleader is entitled to relief).

¶7 Further, it appears that the claim of unconscionability—for which, Maxberry complains, the circuit court never held an evidentiary hearing—is raised for the first time on appeal. Issues not presented to the circuit court need not be considered for the first time on appeal. *See* ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). The party raising a particular issue has the burden of showing where it was raised in the circuit court. *See* ***id.***

¶8 Ultimately, Maxberry has simply failed to adequately address the circuit court's dismissal of his amended complaint or explain how the circuit court erred by dismissing that complaint.[6] "[W]hen an appellant ignores the ground

[6] In his reply brief, Maxberry attempts to address the circuit court's dismissal of his complaint, writing:

> The Circuit Court asked the plaintiff/appellant what was his claim the appellant stated Title I of the 1964 Civil Right Act and Section 504 of the 1973 Education Act and the case was dismissed, and the Judge asked the [plaintiff] to amend his complaint, and established it as unconscious contract at Wisconsin Statutes 425.107 and the Judge dismissed the case with Prejudice without merit which is in err and requested to be reversed by the Appellant….
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> ….
>
> The Judge in Circuit Court dismissed the case with prejudice at 808.03 see Appendix 37. The Defendant's prejudice and their prejudicial claims and issues caused the Judge to err, and the Court of Appeals should reverse pursuant to Murray v. Buell, and Cleveland v. Policy Management and DeShaney v. Winnebago. Abuse to a Disabled Student and his or her Medical Records violate Wis. St. 49.49(a)(1)(2)(3).
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> ….

(continued)

upon which the [circuit] court ruled and raises issues on appeal that do not undertake to refute the [circuit] court's ruling[,]" he cannot be heard to complain if the accuracy of those rulings is deemed conceded. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

By the Court.—Order affirmed.

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

> The Trial Court erred by the prejudice nature of the Attorney and misappropriated the claim by depending on the prejudicial and prejudice of the attorney and the defendant, and the defense team all together once again see Murray. The trial court's decision was in err because the appellant did state a claim simple and plain see these lines in the transcript….

(All errors in original.) We observe that none of the appendices go to page thirty-seven, and the amended complaint does not cite WIS. STAT. § 425.107 or WIS. STAT. § 49.49. There are no record citations, and there are insufficient legal citations. As noted herein, we do not consider arguments raised for the first time on appeal, we do not consider arguments raised for the first time in a reply brief, and we will not develop an appellant's argument for him.