COURT OF APPEALS
DECISION
DATED AND FILED

December 5, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP803 **Cir. Ct. No. 2012SC8389**

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

MICHAEL A. FAGEN,

PLAINTIFF-APPELLANT,

V.

CARNOW ACCEPTANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from orders of the circuit court for Dane County: REBECCA RAPP ST. JOHN, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] Michael Fagen, pro se, appeals a small claims court order denying his action for replevin and an order denying what the court characterized as a motion for reconsideration.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a)(2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶2 Fagen brought a replevin action in small claims court against Carnow Acceptance Company to recover a vehicle that had been repossessed by Carnow Acceptance. Fagen alleged that Carnow Acceptance repossessed the vehicle without a replevin order, without providing him notice of intent to repossess, and without notifying local law enforcement of the repossession. Fagen further alleged that during the repossession, a "breach of peace" occurred and that at that point, repossession should have ceased pursuant to WIS. STAT. § 425.206(2)(a) and (3).

¶3 Following a trial on the matter, the court denied Fagen replevin. Fagen then filed a motion for a new trial with the court on the ground that the real controversy was not tried. At the hearing on Fagen's motion, the motion was recharacterized by the court as a motion for reconsideration. After hearing arguments from both parties, and receiving additional evidence, the court denied Fagen's motion. Fagen appeals.

¶4 Fagen contends on appeal that the circuit court erred in treating his motion for new trial as one for reconsideration because, unlike a motion for new trial, to prevail on a motion for reconsideration he would be required to present either newly discovered evidence or establish a manifest error of law or fact. *See* ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685 N.W.2d 853. Fagen claims that the motion should have been treated as one for a new trial because the motion was based on his claim that not all the issues raised in his complaint were fully tried at trial. However, Fagen acknowledges in his brief that at the hearing on his motion, the court heard additional evidence which he concedes "constituted a [n]ew [t]rial." Although the court may have re-described his motion as one for reconsideration, the court did not treat the motion as such. Instead, the court

treated the motion as one for a new trial. Fagen's argument is therefore without merit.

¶5 Fagen also contends the court erred in denying his motion at the conclusion of the hearing. At the hearing, Fagen argued that the court failed to determine at trial whether Carnow Acceptance violated WIS. STAT. § 425.206(2)(a) by committing a breach of the peace. *See* WIS. STAT. § 425.206(2)(a) and (3). Carnow Acceptance stipulated at the hearing that a breach of peace occurred, however, it took the position that the breach of peace occurred after repossession had taken place. According to Carnow Acceptance, the vehicle had been repossessed and moved to a different location a short distance from Fagen's apartment when Fagen arrived and objected to the repossession. Fagen did not dispute that the vehicle had been removed from in front of his apartment and transported to a different location when he objected to the repossession. The court ultimately agreed with Carnow Acceptance, finding that repossession occurred when the vehicle was removed from in front of Fagen's residence and that any breach of peace occurred *after* the repossession.

¶6 On appeal, Fagen argues that repossession did not occur when the vehicle was removed from his property because the individual who repossessed the vehicle did not properly secure the vehicle to the tow truck. Fagen does not cite this court to any legal authority in support of this argument. This court need not address arguments unsupported by legal authority. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). I also read Fagen's brief as arguing that a breach of peace could occur if there was an objection to the repossession "in the immediate vicinity" of where the repossession occurred. Assuming, without deciding, that Fagen is correct, Fagen does not show that the court's finding that repossession had already occurred when Fagen objected to the repossession was

clearly erroneous. *See* ***State v. Hindsley***, 2000 WI App 130, ¶22, 237 Wis. 2d 358, 614 N.W.2d 48 (a court's factual findings will be upheld unless they are clearly erroneous). Accordingly, I reject Fagen's argument.

¶7 For the reasons discussed above, I affirm the orders of the circuit court.

By the Court.—Orders affirmed.

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