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DISTRICT II

April 15, 2026

To:

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Circuit Court Judge
Electronic Notice

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Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
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Jeremy Vanderloop
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You are hereby notified that the Court has entered the following opinion and order:

2025AP185

Harry Schmitz v. Wisconsin Power and Light Company
(L.C. #2022CV176)

Before Neubauer, P.J., Grogan, and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Harry Schmitz appeals from the circuit court order granting summary judgment to Wisconsin Power and Light Company (WPL) on both his negligence and breach of contract claims. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ For the following reasons, we affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Schmitz's negligence action stems from his request that WPL disconnect electricity at his property, which is lakeside, for safety during a planned tree removal in August 2021. His electricity was disconnected on the morning of August 12, 2021, and he phoned WPL requesting that it be reconnected that evening at 8:30 p.m. WPL restored power at his property by 8:00 a.m. the following day. Schmitz went to his property in the evening of August 12 and found water in his basement that he asserts was not there that morning. While he had a sump pump, it would not operate absent electricity. In May 2022, Schmitz sued WPL claiming that the water in his basement was due to WPL's negligence.

Schmitz's breach of contract action stems from his efforts to upgrade electrical service at the same property. In November 2021, Schmitz installed an electric pedestal at the southeast corner of his garage on the property. Schmitz's garage is situated such that its southeast corner encroaches upon his neighbor Donald Enders's property. Schmitz and Enders had entered into a settlement agreement, filed in April 2004 to reconcile their property disputes, which included a garage easement.² WPL was not aware of the continued property disputes between the neighbors when its representatives discussed with Schmitz plans to upgrade the electricity utilizing the installed pedestal at the southeast corner of Schmitz's garage.

Shortly after Schmitz installed the pedestal, Enders communicated his objection to the pedestal's placement to WPL. WPL's manager of real estate services, who is responsible for evaluating WPL's authority and permission to install utilities, reviewed relevant documents

² Enders quit claimed to Schmitz "all right, title[,] and interest in the area of the encroachment and the improvements thereupon." The settlement agreement defined the "Scope of Garage Easement" as including maintenance of Schmitz's property, transport of items and vehicles for storage, and access to a "clean-out" location east of the garage for maintenance purposes.

provided by Schmitz, which Schmitz claimed proved his ownership, and concluded that the pedestal and service to it would infringe on Enders's property rights. WPL has a policy to avoid trespass to property in providing electric service, which it deemed would be the case at the location of the pedestal.

WPL suggested alternative locations for Schmitz to relocate his pedestal on his property. To facilitate service to Schmitz, WPL provided financial incentives to aid Schmitz in relocating the pedestal, and WPL secured a utility easement from Schmitz's neighbor on the west side of the property. Schmitz did not respond to this offer. Schmitz maintained that he and WPL had a contract to install electric service at the pedestal located at the southeast corner of his garage and refused to relocate the pedestal. Thus, in May 2022, Schmitz sued WPL for breach of contract as well.

In August 2024, WPL moved for summary judgment on both claims. On the negligence claim, WPL asserted that there was no evidence of causation that would attribute the water in Schmitz's basement to its alleged negligence and that Schmitz failed to provide itemization of his alleged damages that would distinguish damages from upgrades or improvements to his property. Absent Schmitz establishing causation and an estimation of the amount of damages, WPL asserted that Schmitz's negligence claim failed as a matter of law. The circuit court agreed that Schmitz failed to address these elements of his negligence claim and granted summary judgment to WPL.

On the breach of contract claim, WPL asserted that no contract existed between WPL and Schmitz, and, therefore, as a matter of law, Schmitz's claim failed. It also argued that Schmitz's breach of contract claim must be dismissed because of his failure to name his neighbor, Donald

Enders, as a necessary party to the lawsuit. The circuit court concluded that Enders was a necessary party to the lawsuit as his rights were implicated. The circuit court further held that due to the property dispute, any formation of a contract between the parties was defeated by its “lack[ing] legality of purpose” due to the likelihood of trespass if WPL would provide electric service at the pedestal at the southeast corner of Schmitz’s garage.

Schmitz appeals the grant of summary judgment to WPL on both of his claims. Summary judgment is appropriate “when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *State Farm Mut. Auto Ins. Co. v. Langridge*, 2004 WI 113, ¶12, 275 Wis. 2d 35, 683 N.W.2d 75. We review a grant of summary judgment de novo, benefitting from the circuit court’s analysis. *Id.*

To prevail upon a negligence claim, a plaintiff must show: “(1) A duty of care on the part of the defendant; (2) a breach of that duty; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury.” *Coffey v. City of Milwaukee*, 74 Wis. 2d 526, 531, 247 N.W.2d 132 (1976). The parties do not brief the first two elements of this cause of action. Even assuming that they are met, we conclude that Schmitz fails to establish the elements of causation and damages, and therefore we affirm the circuit court’s grant of summary judgment to WPL on Schmitz’s negligence claim.

Schmitz had asked WPL to disconnect his electricity for safety purposes during his planned tree trimming. He offered no expert testimony to establish when, how, and why water appeared in his basement, which he did not see until the evening on the date that he had asked WPL to disconnect his electricity. “[E]xpert testimony [i]s required to raise a genuine issue of

material fact as to causation.”³ *Pinter v. Village of Stetsonville*, 2019 WI 74, ¶68, 387 Wis. 2d 475, 929 N.W.2d 547. Instead of establishing causation, Schmitz assumes that because there was no electricity at his property until the morning after the date when he expected the electricity to be reconnected, that the water in his basement was attributable to WPL. Schmitz does not offer any evidence that the water accumulated after the time when he expected the electricity should have been turned on. As stated by the circuit court, “How much of this water was a product of [Schmitz’s] decision to turn [the electricity] off?” Moreover, he offers no expert testimony to establish where the water came from. As noted by the circuit court, “[t]he facts [are] not in dispute ... that there was no rain within those preceding hours” prior to the water accumulation. Schmitz offers no analysis of his lakeside property, its foundation, the water table, or the septic system, to name a few confounding factors.

Notwithstanding Schmitz’s claim that these matters are “within the realm of ordinary experience and lay comprehension,” such that the water accumulation in his basement could be deemed solely attributable to the lack of electricity and the concomitant failure of the sump pump, a judge or jury would have to guess when, how, and why the water accumulated in Schmitz’s basement. Schmitz’s theory is just that, a theory, and he fails to present evidence to establish why his theory is the correct interpretation of the facts. It is the plaintiff’s burden to present his case in chief:

³ *Pinter* involved wastewater backup in plaintiff’s basement. *Pinter v. Village of Stetsonville*, 2019 WI 74, ¶1, 387 Wis. 2d 475, 929 N.W.2d 547. Schmitz asserts that *Pinter* is distinguishable from his case because, in *Pinter*, the cause of action was private nuisance and involved municipal wastewater management. We conclude this is a distinction without a difference with respect to establishing whether the water Schmitz found in his basement was due to WPL’s actions. Schmitz also cites to *Kraft v. Steinhafel*, 2015 WI App 62, 364 Wis. 2d 672, 869 N.W.2d 506, to assert that expert testimony is not required to establish causation in his case. *Kraft* is about legal malpractice and provides no applicable analogy to this case.

[a] plaintiff in a negligence action ... has the burden of producing evidence ... from which a jury could reasonably find a causal nexus between the negligent act and the resulting injury. If the plaintiff fails to meet this burden, the plaintiff has failed to establish a prima facie issue of causation[.]

Fischer by Fischer v. Ganju, 168 Wis. 2d 834, 857, 485 N.W.2d 10 (1992).

Because Schmitz fails to establish the element of causation for his negligence claim, we conclude that his claim fails as a matter of law. See *Menick v. City of Menasha*, 200 Wis. 2d 737, 745, 547 N.W.2d 778 (Ct. App. 1996) (“[Plaintiff’s] failure to offer an expert’s opinion as to the legal cause of the flooding defeat[ed] her claim.”). Additionally, the Record does not show that Schmitz provided an accounting of his damages, the final element needed to prove a negligence claim. This omission is also fatal to Schmitz’s negligence claim.

Schmitz argues that the circuit court should have allowed him to designate an expert witness to provide testimony on causation in his negligence case.⁴ Whether to allow a party’s motion to amend its witness list is a discretionary decision by the circuit court which we review for an erroneous exercise of discretion. See *Parker v. Wis. Patients Comp. Fund*, 2009 WI App 42, ¶22, 317 Wis. 2d 460, 767 N.W.2d 272 (“Evidentiary determinations are subject to the erroneous exercise of discretion standard of review.”). “Consistent with its inherent and statutory powers to manage its docket, [a circuit] court has broad discretion in deciding how to

⁴ We note that there is nothing in the Record to suggest that Schmitz moved the court to amend his witness list after July 14, 2024, the date by which, based upon stipulation of the parties the court extended the deadline for Schmitz to disclose his witness list, or that the court denied such a request. Instead, after the hearing on WPL’s motion for summary judgment, Schmitz filed an amended complaint seeking to add Enders as a party, which the circuit court denied, and to which Schmitz attached an affidavit of his proposed expert witness on causation. Expert witnesses must be disclosed by the date set by the circuit court; they cannot be “added in” by late-filed affidavit. Nevertheless, we address his argument.

respond to untimely motions to amend scheduling orders because that broad discretion is essential to the court's ability to manage its calendar.” *Id.*, ¶10 (citation omitted). We “sustain a discretionary act [of a circuit] court [if it (1)] examined the relevant facts, [(2)] applied the proper standard of law, and [(3)] demonstrated [a] rational process, reach[ing] a conclusion that a reasonable judge could reach.” *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982). As well, a court may properly exercise its discretion to sanction a party for failing to disclose an expert witness by the scheduling order date by excluding any late-named experts. *260 North 12th Street, LLC v. Wis. Dep’t of Transp.*, 2011 WI 103, ¶63, 338 Wis. 2d 34, 808 N.W.2d 372.

Schmitz failed to disclose an expert witness to opine on the matter of causation by the initial or extended deadline set by the circuit court. Schmitz did not designate an expert witness on causation until *after* the court ruled in favor of WPL on its motion for summary judgment. At the October 2024 hearing on WPL’s motion for summary judgment, the court stated,

To date, there’s been no expert noticed by the plaintiffs. The [c]ourt previously noted that we had a trial originally scheduled on this matter for June of this year, and that was extended. There was initially a requirement for witnesses to be done in March [2024], and by agreement of the parties, that essentially was extended. ... We essentially cancelled the jury trial to allow [Schmitz] an opportunity to complete disclosure and [based on] the scheduling order of the [c]ourt to require [Schmitz] to designate expert witnesses ... by June 14th. This trial has been set for some time, acknowledging what has been presented as urgency on behalf of [Schmitz]. But nonetheless, there’s been no experts filed.

I think it’s important to acknowledge that in review of the motion hearing going back to December [2023], it was at that point [WPL] even brought up points of concerns over experts. There was no expert report stemming from that. There was then the extension for delineation of experts. Again, nothing was filed. So from a causal component with respect to negligence, I am satisfied that [WPL] can be given relief on summary judgment.

....

[T]his [c]ourt has extended deadlines as a courtesy to the parties for the benefit of [Schmitz]. This matter is approximately 18 months old. There have been continued points being raised and it really hasn't developed further.

Thus, the circuit court considered the case's procedural history and Schmitz's missed deadlines. The court examined the relevant facts under applicable law and came to a reasonable conclusion: it determined that Schmitz failed to support his case within the time allowed by the court. We conclude that the court did not erroneously exercise its discretion.

To prevail on his breach of contract claim, Schmitz must prove “(1) a contract between [him] and [WPL]; (2) failure of [WPL] to do what it undertook to do; and (3) damages.” *Sears, Roebuck and Co. v. Bayshore Town Center, LLC*, 2017 WI App 50, ¶29, 377 Wis. 2d 335, 900 N.W.2d 871. Thus, as an initial matter, it is Schmitz's burden to prove that a contract existed. *See Acuity Mut. Ins. Co. v. Olivas*, 2006 WI App 45, ¶14, 289 Wis. 2d 582, 712 N.W.2d 374. He fails to do so.⁵ For that reason, his claim fails as a matter of law.

Nevertheless, assuming that a contract was contemplated, and that the contract was for WPL to establish electric service at the installed pedestal at the southeast corner of Schmitz's garage, we conclude that, although Schmitz was aware of a property dispute at the pedestal's location, he failed to include Enders as a necessary party to his lawsuit against WPL and only offered to do so after WPL filed its motion for summary judgment. *See* WIS. STAT. § 803.03(1)(b)(1) (joinder of persons needed for just and complete adjudication); *Dairyland*

⁵ Schmitz's initial Complaint states, “On November 4, 2021, [WPL representatives], along with Schmitz ... met to locate the pedestal. The location was determined, Schmitz accepted the proposal, and the parties thus were ‘contractually bound.’” Schmitz does not brief how the parties formed a legally binding contract.

Greyhound Park, Inc. v. McCallum, 2002 WI App 259, ¶11, 258 Wis. 2d 210, 655 N.W.2d 474 (stating whether a party is necessary under WIS. STAT. § 803.03(1)(b) is a question of law that this court reviews de novo). Because Schmitz failed to include his neighbor as a necessary party to his lawsuit, we affirm the circuit court's order granting summary judgment to WPL.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals