

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 1, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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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. 2025AP1004

Cir. Ct. No. 2024CV169

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GORMIDOU Y. LAVELA,

PLAINTIFF-APPELLANT,

V.

**RODNEY TAPP, JUSTIN SPAHN, SHIRLEY SEVERSON, VALICIA
GILBERT AND MARK KLEIN,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Chippewa County:
JAMES M. ISAACSON, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, JJ.

Per curiam opinions 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).

¶1 PER CURIAM. Gormidou Lavela, pro se, appeals a circuit court order dismissing his housing discrimination complaint, with prejudice, based on Lavela’s voluntary dismissal of two prior complaints in federal court that asserted claims which were based on the same alleged facts. Lavela argues that the court erred by determining that these two prior dismissals barred him from filing a third complaint in state court. We reject Lavela’s arguments and affirm.¹

BACKGROUND

I. The first and second complaints

¶2 In 2023, Lavela, pro se, filed a civil rights complaint in the United States District Court for the Western District of Wisconsin alleging a variety of federal and state claims based on discriminatory conduct he claimed was occurring at the apartment building in which he lives (“the first complaint”). The defendants included Meridian Group, Inc., which Lavela alleged owns or manages Lavela’s apartment building, as well as Meridian’s CEO and vice president. Lavela subsequently filed a motion for voluntary dismissal of this first complaint, which the district court granted on February 5, 2024.

¶3 Lavela then filed a pro se complaint in the Chippewa County Circuit Court, again asserting a variety of federal and state claims based on the alleged discriminatory conduct occurring at his apartment building (“the second

¹ We also admonish Lavela for his failure to comply with our Rules of Appellate Procedure. Among other things, Lavela’s brief far exceeds the 11,000 word limit set forth in WIS. STAT. RULE 809.19(8)(c) (2023-24), and its margins are not sufficiently wide, in violation of RULE 809.19(8)(b)3.e. (2023-24).

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

complaint”). In addition to the defendants named in the first complaint, Lavela also named Meridian’s regional manager and residential manager. The defendants removed the second complaint to federal district court based on federal question jurisdiction and supplemental jurisdiction.

¶4 Lavela filed a motion to remand the second complaint to state court, arguing, among other things, that he could “revise his complaint to bring a claim under only” state law. In an order dated June 5, 2024,² the district court denied Lavela’s motion for remand but also noted that Lavela was “free to voluntarily dismiss this action and bring a new action in state court limited to state-law causes of action.”

¶5 On June 4, 2024, while Lavela’s motion to remand was pending, Lavela prepared a motion for voluntary dismissal and mailed it to the defendants and the federal district court. On August 9, 2024, the district court determined that FED. R. CIV. P. 41(a)(1)(B) required it to treat Lavela’s second voluntary dismissal as an adjudication on the merits. Accordingly, the district court entered judgment for the defendants and dismissed the second complaint “on the merits.” Lavela appealed the district court’s judgment to the United States Court of Appeals for the Seventh Circuit, arguing, among other things, that the federal district court erred by dismissing his second complaint with prejudice because his notice of dismissal was self-executing.

² Although the order stated that it was “entered on June 5, 2024,” the federal district court subsequently clarified that this order was not entered until June 6, 2024, and was then sent to Lavela by mail. Whether this order was entered on June 5 or June 6 does not change our analysis.

¶6 On March 12, 2025, the Seventh Circuit affirmed the district court’s judgment but modified the dismissal of the second complaint to be without prejudice. See *Lavela v. Gilbert*, No. 24-2582, 2025 WL 786608, at *1 (7th Cir. Mar. 12, 2025). The Seventh Circuit explained that because Lavela had filed his notice of dismissal before any defendant had answered or moved for summary judgment, Lavela’s case ended as soon as Lavela filed his notice of voluntary dismissal. Accordingly, “any further orders by the district court were without effect.” *Id.* at *2.

II. The third complaint

¶7 While the status of Lavela’s second complaint was still being litigated in federal court, Lavela filed the complaint that gives rise to the current appeal. Specifically, on June 6, 2024, the same day the federal district court later clarified that it had entered its order denying Lavela’s motion to remand the second complaint to the Chippewa County Circuit Court, Lavela filed a third pro se complaint, this time again in the Chippewa County Circuit Court (“the third complaint”). The third complaint alleged a variety of state law claims that were based on the same factual allegations as those in the first and second complaints. In addition to Meridian and the Meridian employees named in the second complaint, Lavela’s third complaint named the registered agent for his apartment building as a defendant.³

¶8 On October 11, 2024, Meridian moved to dismiss Lavela’s complaint on the grounds of claim preclusion, formerly known as res judicata.

³ We refer to these defendants collectively as “Meridian.”

Meridian's initial arguments relied on the federal district court's August 9 determination that Lavela's voluntary dismissal of the second complaint was an adjudication on the merits. After the Seventh Circuit issued its order modifying the district court's dismissal to be without prejudice, the parties filed supplemental briefs about whether Lavela's voluntary dismissal of the second complaint nonetheless operated as an adjudication on the merits for the purposes of barring Lavela's third complaint.

¶9 At a motion hearing on May 6, 2025, the circuit court determined that, under WIS. STAT. § 805.04, Lavela's voluntary dismissal of the second complaint operated as an adjudication on the merits. Because Lavela did not dispute that the parties and causes of action were substantially the same in all three complaints, the court determined that res judicata barred Lavela's third complaint. Accordingly, the court dismissed Lavela's third complaint with prejudice. Lavela appeals.

DISCUSSION

¶10 Lavela argues that the circuit court made several errors when it determined that the third complaint was barred. As a threshold matter, Lavela argues that the court erred by determining that his third complaint was barred by the doctrine of issue preclusion, formerly known in Wisconsin as collateral estoppel. This line of argument is a nonstarter because Meridian did not argue issue preclusion (or collateral estoppel) as part of its motion to dismiss, and the circuit court did not address that doctrine in its decision. Instead, Meridian argued that the third complaint should be dismissed based on claim preclusion. See *Jensen v. Milwaukee Mut. Ins.*, 204 Wis. 2d 231, 235, 554 N.W.2d 232 (Ct. App. 1996) (explaining the difference between claim preclusion and issue preclusion).

¶11 Claim preclusion has three elements: “(1) an identity between the parties or their privies in the prior and present suits; (2) an identity between the causes of action in the two suits; and, (3) a final judgment on the merits in a court of competent jurisdiction.” *Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 551, 525 N.W.2d 723 (1995). In this appeal, Lavela argues that the circuit court erred by determining that each of these three elements was satisfied. “The question of whether claim preclusion applies under a given factual scenario is a question of law that [an appellate court] reviews *de novo*.” *Id.*

I. Identity of parties and claims

¶12 Lavela argues that the first two elements of claim preclusion were not satisfied because “the voluntary dismissals in this case had very different parties, [t]he claims were not exactly the same, [t]he factual underpinnings were very different for the various claims, [and] [t]he events underlying the claims occurred at different times and in different places.”

¶13 Here, the circuit court determined that the first two elements were satisfied because, although Lavela’s third complaint added one defendant and made other “miniscule changes” from the second complaint, “the nucleus of the Defendants stayed the same” and “[t]he core facts against the Defendants remain[ed] the same.”

¶14 We reject Lavela’s arguments that the circuit court erred by making these determinations, for two reasons. First, Lavela has not satisfied his burden of demonstrating that he contested these two elements in the circuit court. *See Nickel v. United States*, 2012 WI 22, ¶22, 339 Wis. 2d 48, 810 N.W.2d 450 (“[T]he party who raises an issue on appeal bears the burden of showing that the issue was raised before the circuit court.” (citation omitted)). Instead, the court’s oral

decision reveals that these two elements were undisputed. Specifically, the court stated that “everybody agrees” that “[t]he parties are the same” and “the cause of action [is] the same.” Lavela does not cite any portion of the appellate record showing that the court was incorrect and that he did, in fact, contest the first two elements of claim preclusion. Accordingly, we will not blindsides the circuit court by reversing based on theories that were never presented to it. See **Townsend v. Massey**, 2011 WI App 160, ¶25, 338 Wis. 2d 114, 808 N.W.2d 155.

¶15 Second, even if Lavela had attempted to make an argument about these two elements in the circuit court, Lavela does not develop his appellate argument with any record facts or legal authority which would establish that the court erred. Lavela contends that, for claim preclusion to apply, “the parties in the first action must be exactly identical to [the] parties in the second action” and “[t]he claims must, likewise, be exactly identical.” Not only does Lavela fail to cite any legal authority to support these propositions, but they are also at odds with our supreme court’s holding that there only needs to be “an identity between the parties or their privies” and “an identity between the causes of action in the two suits.” See **Northern States Power Co.**, 189 Wis. 2d at 551.

¶16 Meridian argues that Lavela’s addition of the registered agent for his apartment building as a defendant in the third complaint “does not change the conclusion that there is a common identity of parties” because the newly added defendant is in privity with the existing defendants. See **Landess v. Schmidt**, 115 Wis. 2d 186, 195, 340 N.W.2d 213 (Ct. App. 1983) (explaining that, with limited exceptions, the preclusive effect of a judgment extends to all persons who have a relationship with the defendant “such that one of them is vicariously responsible for the conduct of the other” (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 51 (A.L.I. 1982))). Likewise, Meridian argues that the third complaint “relies on

nearly identical factual allegations as those in the two prior dismissed suits.” See **Menard, Inc. v. Liteway Lighting Prods.**, 2005 WI 98, ¶30, 282 Wis. 2d 582, 698 N.W.2d 738 (explaining that, for the purposes of claim preclusion, “all claims arising out of one transaction or factual situation are treated as being part of a single cause of action” (citation omitted)). Lavela does not respond to Meridian’s arguments in his reply brief, which we take as a concession of their correctness. See **United Co-op. v. Frontier FS Co-op.**, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (stating that, failing to refute a proposition asserted in a brief may be taken as a concession). Accordingly, we conclude that the circuit court did not err by determining that the first two elements of claim preclusion were satisfied.

II. Final judgment on the merits

¶17 Lavela argues that the circuit court erred by determining that the third element of claim preclusion was satisfied. The court explained that, under WIS. STAT. § 805.04(1), the voluntary dismissal of Lavela’s second complaint operated as an adjudication on the merits.⁴ Lavela argues that the circuit court erred because the “[j]udgment upon which [the court’s ruling] was based was reversed on appeal in Mr. Lavela’s favor.” According to Lavela, there is “no valid prior judgment to assert in state court” for the third element of claim preclusion.⁵

⁴ The circuit court referred to WIS. STAT. § 805.04(1) as “the two-dismissal rule,” and the parties use similar terminology in their briefs. We therefore follow their lead when referring to the effect of this provision.

⁵ Relatedly, Lavela contends that Meridian’s motion to dismiss was “procedurally defective” because Meridian filed it while Lavela’s Seventh Circuit appeal was pending. This argument goes nowhere because the parties filed supplemental briefs to address the impact of that decision after the Seventh Circuit issued its decision.

¶18 These arguments misconstrue the basis for the circuit court’s determination. By concluding that the dismissal of the second complaint operated as an adjudication on the merits, the circuit court did not rely on the federal district court’s determination regarding the effect of Lavela’s second voluntary dismissal under FED. R. CIV. P. 41(a)(1)(B). Instead, the circuit court evaluated, for the first time, the effect of Lavela’s two voluntary dismissals under Wisconsin law. Specifically, WIS. STAT. § 805.04(1) provides, in relevant part,

An action may be dismissed by the plaintiff without order of court by serving and filing a notice of dismissal at any time before service by an adverse party of responsive pleading or motion Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is not on the merits, *except that a notice of dismissal operates as an adjudication on the merits when filed by a plaintiff who has once dismissed in any court an action based on or including the same claim.*

(Emphasis added.) Here, because Lavela had already voluntarily dismissed one complaint that was based on the same claims as the second complaint, the circuit court determined that Lavela’s voluntary dismissal of the second complaint fell within the above italicized exception and, therefore, operated as an adjudication on the merits.

¶19 Lavela contends that, under Wisconsin law, “a voluntary dismissal is not subject to [claim preclusion].” None of the cases cited by Lavela stand for the proposition that, under WIS. STAT. § 805.04(1), a plaintiff’s second voluntary dismissal cannot serve as a basis for applying the doctrine of claim preclusion. Instead, each of these cases supports a broad application of that doctrine. See ***Marshall-Wisconsin Co. v. Juneau Square Corp.***, 139 Wis. 2d 112, 134-35, 406 N.W.2d 764 (1987) (determining that a judgment of dismissal for failure to prosecute under WIS. STAT. § 805.03 is “on the merits” for the purpose of claim

preclusion); **Werner v. Riemer**, 255 Wis. 386, 402-03, 39 N.W.2d 457 (1949) (explaining that claim preclusion may apply where the prior adjudication was based in part on a stipulation of the parties); **Great Lakes Trucking Co. v. Black**, 165 Wis. 2d 162, 168-69, 477 N.W.2d 65 (Ct. App. 1991) (same).

¶20 Lavela argues that the circuit court’s decision is contrary to **Semtek International, Inc. v. Lockheed Martin Corp.**, 531 U.S. 497 (2001). The question in **Semtek** was “whether the claim-preclusive effect of a federal judgment dismissing a diversity action on statute-of-limitations grounds is determined by the law of the State in which the federal court sits.” *Id.* at 499. In evaluating this question, the Court addressed the claim-preclusive effect of an involuntary dismissal under FED. R. CIV. P. 41(b). **Semtek**, 531 U.S. at 500-01. On its face, **Semtek** is inapposite because, here, the federal district court was exercising federal question jurisdiction and the complaints were voluntarily dismissed under FED. R. CIV. P. 41(a).

¶21 Lavela nonetheless argues that **Semtek** stands for the broader proposition

that Federal Rule 41 dismissals, with or without prejudice, are NOT “adjudicated on the merits” and do not have “claim preclusive effects” on other federal or state-court actions, except only to prevent the plaintiff from “refiling in the same federal district court,” unless the dismissing court actually passes upon the merits of the case.^{6]}

⁶ Lavela further contends that “Wisconsin appellate courts have said the same thing about voluntary dismissals under WIS. STAT. § 805.04(1).” Lavela cites no authority for this proposition, so we reject this argument as undeveloped. See **State v. Pettit**, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining that we need not consider arguments that are not supported by legal authority).

Lavela does not develop this argument with any citations to *Semtek*, and our independent review of *Semtek* does not support such a broad reading of that decision. We see nothing in *Semtek* that undermines the circuit court’s conclusion that Lavela’s two voluntary dismissals in federal court have a claim-preclusive effect under WIS. STAT. § 805.04(1).

¶22 Lavela further argues that the Seventh Circuit’s order modifying the federal district court’s dismissal to be without prejudice means that the two-dismissal rule has already been litigated in federal court. Accordingly, Lavela contends that Meridian is barred from relitigating this issue in state court due to issue preclusion. See *Jensen*, 204 Wis. 2d at 235 (“Issue preclusion forecloses relitigation in a subsequent action of an issue of law or fact that has been actually litigated and decided in a prior action and reduced to judgment.”). Instead, Lavela contends that Meridian’s only option for arguing the two-dismissal rule was to seek further review of the Seventh Circuit’s decision, which Meridian failed to do.

¶23 This line of argument falls short because, as explained above, the federal district court applied FED. R. CIV. P. 41(a)(1)(B), while the circuit court applied WIS. STAT. § 805.04(1). The effect of Lavela’s second voluntary dismissal under this state statutory provision was never litigated or decided in federal court.

¶24 Lavela argues that WIS. STAT. § 805.04(1) and FED. R. CIV. P. 41(a)(1)(B) are parallel provisions, such that the Seventh Circuit’s analysis of FED. R. CIV. P. 41(a) is dispositive of the state law question. Not only does Lavela fail to develop this argument with any legal authority, but the argument also misconstrues the Seventh Circuit’s order. The Seventh Circuit resolved only the jurisdictional question of whether the federal district court had authority to issue

its August 9 order analyzing how FED. R. CIV. P. 41(a)(1)(B) should apply to Lavela’s second voluntary dismissal. The Seventh Circuit determined that “the Rule 41(a)(1) notice that Lavela gave as to his second suit ‘effected the dismissal of the suit; the case was gone; no action remained for the district [court] to take.’” *Lavela*, 2025 WL 786608, at *2 (citing *Smith v. Potter*, 513 F.3d 781, 782-83 (7th Cir. 2008)). Because the Seventh Circuit concluded only that the federal district court’s decision regarding the effect of FED. R. CIV. P. 41(a)(1)(B) was void, we reject Lavela’s argument that the issue of how § 805.04(1) applies has already been decided in federal court.

¶25 Moreover, the Seventh Circuit expressly declined to determine the effect of Lavela’s second voluntary dismissal under FED. R. CIV. P. 41(a)(1)(B). The Seventh Circuit explained that “[s]ome courts apply the rule in a manner akin to a res judicata inquiry after the plaintiff has filed a third lawsuit,” while “[o]ther courts, like the district court here, apply the rule and dismiss a complaint on the merits when the plaintiff files a notice of voluntary dismissal under Rule 41(a)(1) for the second time.” *Lavela*, 2025 WL 786608, at *2. The Seventh Circuit then stated, “We leave for another day whether one or two previous Rule 41(a)(1) dismissals are required before a case should be dismissed ... on the merits.” *Id.* Nothing in the Seventh Circuit’s decision—focused on the Federal Rules of Civil Procedure—is inconsistent with the circuit court’s application of Wisconsin’s two-dismissal rule.

¶26 Lavela argues that both the federal district court and the Seventh Circuit expressly authorized his state law action to proceed. These arguments read too much into each court’s observations regarding Lavela’s intent to pursue his claims in state court instead of federal court. Neither court was asked to address the effect of WIS. STAT. § 805.04(1) on Lavela’s third complaint, nor did either

court purport to determine how Wisconsin courts should apply Wisconsin law to the facts of *this* case.⁷ On the contrary, the federal district court expressly disavowed such a determination, stating that it “express[ed] no opinion on whether Lavela’s state-law claims will be subject to a procedural bar if he refiles them in state court.” Similarly, the Seventh Circuit’s statement that “the parties may continue to litigate th[e] state court case” did not express any opinion regarding the outcome of that litigation, including the application of any state law bar to that case. *See Lavela*, 2025 WL 786608, at *3.

¶27 We now address Lavela’s remaining arguments regarding claim preclusion. To begin, he argues that his first complaint had not yet been screened and therefore does not count as a first voluntary dismissal for the purpose of applying WIS. STAT. § 805.04(1). Meridian argues that we should reject this argument because Lavela is raising it for the first time on appeal. *See State v. Rogers*, 196 Wis. 2d 817, 826, 539 N.W.2d 897 (Ct. App. 1995) (stating the general rule that “a party seeking reversal may not advance arguments on appeal which were not presented to the [circuit] court”). Meridian further argues that Lavela has presented no authority to support the argument that the federal district

⁷ Lavela also characterizes his second voluntary dismissal as “expressly preconditioned” on being able to pursue his claims in state court and further contends that he dismissed his federal complaint “without waiving any rights.” Lavela does not direct us to any record support for his contentions about the content of his notice of voluntary dismissal. In any event, these arguments go nowhere because (as Lavela successfully argued to the Seventh Circuit), his notice of voluntary dismissal was “self-executing.” *See Lavela v. Gilbert*, No. 24-2582, 2025 WL 786608, at *2, (7th Cir. Mar. 12, 2025). Accordingly, the federal district court did not have authority to consider any of the supposed terms on which Lavela’s second complaint should be dismissed.

Lavela also offers no authority for the proposition that he can reserve the right to avoid the effect of WIS. STAT. § 805.04(1). This proposition is at odds with our general rule that pro se litigants are bound by the same procedural requirements as attorneys. *See Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (“The right to self-representation is ‘[not] a license not to comply with relevant rules of procedural and substantive law.’” (citation omitted)).

court’s screening function under 28 U.S.C. § 1915(e)(2)(B) has any impact on voluntary dismissals. Lavela does not address either argument in his reply brief, which we deem to be a concession on this issue. See *United Co-op.*, 304 Wis. 2d 750, ¶39.

¶28 Lavela also argues that Meridian lacks standing to invoke the two-dismissal rule because Meridian never responded to any of his three complaints. According to Lavela, a defendant must “earn the right” to invoke the two-dismissal rule by filing an answer or motion. To support this proposition, Lavela cites cases addressing the effect of one voluntary dismissal under WIS. STAT. § 805.04(2). See *Estate of Engebose v. Moraine Ridge Ltd. P’ship*, 228 Wis. 2d 860, 863, 598 N.W.2d 584 (Ct. App. 1999) (“Section 805.04(2) ... is a rule of fairness designed to protect a defendant from prejudice.”); *Gowan v. McClure*, 185 Wis. 2d 903, 913, 519 N.W.2d 692 (Ct. App. 1994) (concluding that “[w]hen any of the adverse parties ... files a responsive pleading prior to the time in which the plaintiff attempts to unilaterally dismiss under § 805.04(1), a voluntary dismissal without prejudice to the plaintiff is no longer statutorily attainable”). Neither of these decisions addresses the effect of a second voluntary dismissal under § 805.04(1). Accordingly, neither of these authorities overrides the plain language of sub. (1), which expressly provides that the two-dismissal rule applies to a plaintiff who, for a second time, voluntarily dismisses a complaint “before service by an adverse party of responsive pleading or motion.” Sec. 805.04(1).

¶29 Lavela further argues that we should apply the equitable doctrine of unclean hands to bar Meridian from invoking the two-dismissal rule because applying that rule in this case “undermines public policy by rewarding defendants’ wrongdoing in failing to respond to a complaint they were duly summoned by a

court to answer.” Once again, this argument overlooks the plain language of WIS. STAT. § 805.04(1), which expressly imposes the two-dismissal rule when the second voluntary dismissal occurs before a responsive pleading or motion. In addition, Lavela has not developed any argument that Meridian engaged in wrongdoing by not responding to his complaint. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (stating that we need not consider arguments that are undeveloped).

III. Remaining arguments

¶30 Having concluded that the three elements of claim preclusion are satisfied, we briefly address the remaining arguments that we can discern in Lavela’s briefs. To the extent that we have failed to identify all of Lavela’s arguments, we reject them as undeveloped. See *id.*

¶31 Lavela contends that “Wisconsin law frowns on the rigid interpretation and application of res judicata.” See *Brye v. Brakebush*, 32 F.3d 1179, 1185 (7th Cir. 1994) (“Wisconsin law does not treat *res judicata* as an iron[-]clad rule which must be implacably applied whenever its literal requirements are met, regardless of any countervailing considerations.” (citation omitted)). In *Brye*, the Seventh Circuit explained that “[t]his general argument ... applies with special force ... where many of the important state policies underlying *res judicata* (i.e., avoiding duplication, conservation of scarce judicial resources, comity) simply do not apply.” *Id.*

¶32 In response, Meridian argues that “there are sound policy reasons” to affirm the circuit court’s application of the doctrine here, including “encourag[ing] plaintiffs to diligently prepare their pleadings [and] curbing potential abuses of the judicial system.” See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 397-98

(1990) (explaining the similar policies that underlie FED. R. CIV. P. 41(a)(1) and 11, *superseded in part by*, 1993 Amendments to FED. R. CIV. P. 11(c), *as stated in*, ***Morroni v. Gunderson***, 169 F.R.D. 168, 171 (M.D. Fla. 1996)). We see no developed argument from Lavela that would undermine Meridian’s assertion that there are sound policy reasons to apply the doctrine of claim preclusion in the present case.

¶33 Lavela also contends that the circuit court’s dismissal of his third complaint violates the right-to-remedy provision of the Wisconsin Constitution. *See* WIS. CONST. art. I, § 9. As our supreme court has explained, this provision “guarantees a suitor a day in [] court.” ***Aicher v. Wisconsin Patients Comp. Fund***, 2000 WI 98, ¶47, 237 Wis. 2d 99, 613 N.W.2d 849 (alteration in original; citation omitted). That said, this provision does not create new rights but merely “preserves the right ‘to obtain justice on the basis of the law as it in fact exists.’” ***Id.***, ¶43 (citation omitted). Here, the circuit court explained that Lavela has already had “two bites of the apple” and, having voluntarily dismissed both of those complaints, was “not entitled to a third” bite of the apple. We see no violation of the Wisconsin Constitution when “the law as it in fact exists”—namely, WIS. STAT. § 805.04(1)—prevents Lavela from obtaining a third day in court after voluntarily dismissing two prior actions. *See Aicher*, 237 Wis. 2d 99, ¶43 (citation omitted).

¶34 Lavela further argues that the circuit court’s dismissal of his third complaint violates his right to due process and to a jury trial. As with the right-to-remedy provision, Lavela does not develop any argument that the circuit court’s proper application of WIS. STAT. § 805.04(1) to limit Lavela to “two bites of the apple” amounts to a constitutional violation.

CONCLUSION

¶35 For the foregoing reasons, we conclude that the circuit court correctly determined that Lavela’s third complaint was barred by claim preclusion. We therefore affirm the order dismissing this case with prejudice.

By the Court.—Order affirmed.

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

