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DISTRICT II

September 23, 2026

To:

Hon. David W. Paulson
Circuit Court Judge
Electronic Notice

Mark R. Hinkston
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Diana Phillips
1431 Orchard Street
Racine, WI 53405

Kevin Phillips
5401 Yorkshire Court
Racine, WI 53406

You are hereby notified that the Court has entered the following opinion and order:

2025AP688

Dennis Rodriguez v. Kevin Phillips (L.C. #2023CV627)

Before Lazar, P.J., Gundrum, and LoCoco, 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).

Kevin Phillips appeals pro se from an order of the circuit court granting a motion to supplement prior partition orders, which ordered the private sale of property. Separately, Dennis and Joseph Rodriguez (collectively, Rodriguez) move for sanctions, arguing that Phillips' appeal is frivolous. 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

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

the following reasons, we affirm the circuit court order, grant the motion for sanctions, and remand to the circuit court to determine the award of costs, fees, and attorney's fees.

BACKGROUND

The underlying action of this appeal is the partition of five residential parcels ("the property") co-owned in fee by Rodriguez and Phillips. Prior to this action, Phillips' share was co-owned by Diana Phillips (Phillips' mother and a named defendant to the complaint) and Julie Casey, and they had been collecting rent on the residences located on the property but failed to provide Rodriguez his share of the rent revenue. Diana Phillips and Julie Casey conveyed their interests to Phillips, who continued to collect rent on the property without providing Rodriguez his share of the rent revenue. Thus, both Dennis and Joseph Rodriguez each own one fourth of the property and Phillips owns the remaining half.

In May 2023, Rodriguez filed a complaint seeking, in part, a judgment of partition, a sale of the property, and a fair and equitable division of the proceeds, as well as a proportionate share of the net collected rents. Phillips failed to answer the complaint, and in December 2023, the circuit court granted Rodriguez's motion for default judgment, ordering partition of the property by private sale and requiring Phillips to provide rent revenue information. In June 2024, Rodriguez filed a motion to reopen and for an order holding Phillips in contempt because he did not comply with the court order. In July 2024, the court granted the motion and issued an order that again required Phillips to provide an accounting of the rent revenue received from the tenants of the property as well as copies of any rental agreements, and cautioning that failure to comply with any portion of the order would result, upon motion, in a finding of contempt of

court. Thereafter, Rodriguez filed a motion for contempt. The court issued an order holding Phillips in contempt and ordering him to pay attorney's fees.

While four hearings were held in this matter, Phillips appeared only at the fourth and final hearing in March 2025. At that hearing, Phillips disagreed with the property's listing and sale, asserted that Rodriguez had repeatedly rejected his purchase offers, and stated that the circuit court's order for a private sale would subject him to a five-to-six-percent broker's fee if he made an outside offer to purchase, which he wanted to avoid. The court reminded Phillips that "the barn door is closed already"; it had "been through numerous court proceedings" and had not "seen [Phillips]." Thus, in April 2025, the court granted Rodriguez's motion to supplement prior partition orders ruling that the properties should be partitioned via private sale.²

Phillips appeals from the circuit court's order, seeking reversal of its rulings regarding partition, receivership, and attorney's fees.³

DISCUSSION

On appeal, Phillips argues: (1) the circuit court violated due process when it allowed extensive leading questions and restricted his ability to object; (2) the hearing was unfair and the testimony offered was unreliable and therefore the appointment of a receiver was improper;

² In June 2025, there was an accepted offer on the property but no closing due to this pending appeal.

³ Phillips appeals from an April 2025 order of the circuit court arising from the March 2025 motion hearing. The court subsequently amended the order twice. In the order, among other matters, the court appointed Dennis Rodriguez as receiver to facilitate a private sale of the property. None of the orders arising from the March 2025 hearing award attorney's fees. Accordingly, we address that issue no further.

(3) the court was biased against him as a pro se appellant; and (4) the court erroneously exercised its discretion by awarding attorney’s fees against him.

As the appellant, Phillips bears the burden of demonstrating that the circuit court erred. See **Gaethke v. Pozder**, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. However, Phillips fails to meet this burden. His factual assertions, which are crucial to his arguments, are not supported by citations to the Record, as required by WIS. STAT. RULE 809.19(1)(e). See also **Madely v. RadioShack Corp.**, 2007 WI App 244, ¶14 n.7, 306 Wis. 2d 312, 742 N.W.2d 559 (stating that “we have no duty to scour the record to review arguments unaccompanied by adequate record citations”). Further, we could affirm without addressing the merits of Phillips’ arguments because he failed to file a Reply brief, therefore conceding to arguments made in the Response brief. See **Apple Hill Farms Dev., LLP v. Price**, 2012 WI App 69, ¶14, 342 Wis. 2d 162, 816 N.W.2d 914 (stating that a failure to file a reply brief is deemed a concession to respondent’s argument). Despite this, we will address the merits of his arguments.

Phillips’ arguments on appeal hinge entirely on “the hearing,” which, according to Phillips, involved “emotional” testimony, leading questions, and judicial bias. While Phillips appeared at the March 2025 motion hearing, his arguments on appeal concern a hearing that he describes as an “evidentiary hearing” but which he fails to identify by date or transcript citation. A review of the Record confirms that the circuit court never conducted an evidentiary hearing

involving testimony, as described by Phillips.⁴ Accordingly, Phillips’ arguments lack any factual basis in the Record, rendering his appeal entirely frivolous.

“[A]n appellate court decides whether an appeal is frivolous solely as a question of law.” *Howell v. Denomie*, 2005 WI 81, ¶9, 282 Wis. 2d 130, 698 N.W.2d 621. The court must find that “the party ... *knew, or should have known*, that the appeal ... *was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.*” *Thompson v. Ouellette*, 2023 WI App 7, ¶19, 406 Wis. 2d 99, 986 N.W.2d 338; *see* WIS. STAT. RULE 809.25(3)(c)2. “[I]f an appellate court determines that an appeal is frivolous, the court shall sanction the appellant ... by requiring [the appellant] to pay the successful party’s fees, costs, and reasonable attorney fees.” *Thompson*, 406 Wis. 2d 99, ¶18; *see* RULE 809.25(3)(a). For a court to sanction under RULE 809.25(3), it must conclude “the entire appeal is frivolous.” *Thompson*, 406 Wis. 2d 99, ¶20 (quoting *Howell*, 282 Wis. 2d 130, ¶9).

Pro se appellants are given “‘a degree of leeway’ in recognition of the fact that they are ordinarily unfamiliar with the procedural rules and substantive law that might govern their appeal.” *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶25, 389 Wis. 2d 516, 936 N.W.2d 587. “[W]hile we construe pro se ... briefs to make the most intelligible argument we can discern,” no intelligible argument can be discerned from Phillips’ assertion that a “hearing” occurred when he cites no hearing transcript and no such hearing appears in the Record. *See id.*;

⁴ In his brief-in-chief, Phillips refers to the hearing before “Judge Robert Paulson,” but the presiding judge in this matter was, in fact, the Honorable David W. Paulson. Furthermore, no evidentiary hearing occurred in the circuit court where Rodriguez or anyone else testified.

see also *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (“We may decline to review issues inadequately briefed.”). Regardless of his pro se status, Phillips “knew, or should have known, that the appeal ... was without any reasonable basis in law or equity” and that seeking appellate relief based on a hearing unsupported by the Record lacks a good-faith basis and is entirely frivolous. See WIS. STAT. RULE 809.25(3)(c)2.; *Thompson*, 406 Wis. 2d 99, ¶19.

Accordingly, we conclude that Phillips’ entire appeal is frivolous. Therefore, we affirm the circuit court order, grant the motion for sanctions, and remand to the circuit court to determine the award of costs, fees, and attorney’s fees.

Therefore,

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

IT IS FURTHER ORDERED that the motion for sanctions is granted and cause remanded for further proceedings.

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

Samuel A. Christensen
Clerk of Court of Appeals