COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2025AP2537 **Cir. Ct. No. 2025SC1317**

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

MUNSON REALTY INC.,

PLAINTIFF-RESPONDENT,

V.

BRIAN DAVIS AND AMANDA THILLEN,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for La Crosse County: SCOTT L. HORNE, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] This is an eviction action involving a residential property in La Crosse. Brian Davis and Amanda Thillen (collectively, "the tenants") appeal a judgment of eviction in favor of Munson Realty Inc.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

("Munson").[2] The tenants, pro se, argue that the circuit court misapplied WIS. STAT. § 704.45(1), which prohibits retaliatory conduct by landlords against residential tenants under certain circumstances. Specifically, the tenants argue that the court erred in rejecting their argument that Munson would not have brought this action for possession of the premises but for the fact that the tenants complained to Munson and to a local housing code enforcement agency about defects and needed repairs to the property. *See* § 704.45(1)(a), (b). Based on facts found by the court that the tenants do not show were clearly erroneous, I conclude that the tenants' complaints about the property did not cause Munson to pursue this action in retaliation against the tenants, and therefore the tenants fail to show retaliatory conduct.

¶2 The tenants also argue that the eviction judgment must be reversed because this action was not, in the words of WIS. STAT. § 799.40(1), "commenced by a person entitled to the possession of real property, or by that person's agent authorized in writing, to remove therefrom any person who is not entitled to either the possession or occupancy of such real property." I conclude that the tenants forfeited this argument by failing to raise it in the circuit court and that there is not a sufficient reason to disregard the general rule of forfeiture.

¶3 In addition, the tenants contend that the circuit court failed to properly support its denial of their "Motion for Reconsideration, to Vacate Judgment, and to Stay Writ of Restitution," which was made and denied before the court entered the judgment of eviction. I conclude that the reconsideration motion

[2] The record reflects that, at all relevant times, one principal of Munson Realty Inc. was John Munson. For the most part, it is not necessary to distinguish between the corporate entity and the individual, but as necessary I refer to either "Munson Realty" or "John Munson."

was insufficient on its face and therefore the circuit court properly exercised its discretion in summarily denying it before entering the judgment of eviction.

¶4 Accordingly, I affirm the judgment.

BACKGROUND

¶5 Munson commenced this eviction and claim for money damages by filing a summons and complaint in small claims court on September 29, 2025, which involves residential property that I will generally refer to as "the property" or "the premises." Munson alleged the following. The tenants had been issued a 28-day notice to vacate the property on July 28, 2025, which Munson used in terminating their month-to-month tenancy as of September 28, 2025. The tenants "failed to vacate" the property on time and had "ceased most communication with us." A third party (later identified as Michael Hoagland) was scheduled to move into the property on October 1, 2025, under a rent-to-own contract.

¶6 In individually filed answers, the tenants both alleged that Munson pursues this action for possession of the property as retaliation against them for complaining about defects or needed repairs in the property.

¶7 The circuit court held an eviction hearing on October 24, 2025. Both Munson and Davis appeared, each without counsel. Also present was Brandi Thillen, Amanda Thillen's sister. The tenants asserted a single defense to entry of a judgment of eviction, namely, retaliatory conduct as defined in WIS. STAT. § 704.45(1). The parties stipulated that the tenants were on a month-to-month lease and that they had properly been provided with a 28-day eviction notice.

¶8 **John Munson testified to the following**. For the previous five years, Munson had acted as the "agent and property manager" for the property on

behalf of its owner, Spencer Nickelatti, whom Munson also described as a "client."[3] Referring to the tenants, Munson testified, "we've actually had a pleasant relationship"—the tenants paid their rent on time and created "no issues in their multiple years of living at the property." Munson "tried to retain" a rental relationship with the tenants, by showing them two other units as potential places to relocate, both of which were owned by Nickelatti and managed by Munson.

¶9 The tenants needed to move out of the property for the following reasons. Nickelatti had been trying over the previous year to sell the property, because he deemed it unprofitable to continue to own it. As part of his sales effort, Nickelatti had negotiated a contract with Michael Hoagland. Under this "lease option" contract, which had an October 1 start date, Hoagland paid Nickelatti $5,000 for the option to buy the property at a sale price of $235,000, although any sale would be "as is" and Hoagland would assume the responsibility to make all repairs. In the meantime, under the agreement, Hoagland could occupy the property.

¶10 It "doesn't [faze] us at all" that the tenants "call[ed] city inspection" about needed repairs to the property. "[W]e actually encourage" tenants to contact city inspectors about defects or needed repairs in properties. There were "six or seven" "work orders that came through" on the property, and "six or seven of them have been repaired." The only repair not yet completed involved "major potential foundation issues," with a potential price tag of $188,000. It would be "very hard" for the owner to "fix the foundation" "with tenants in there."

[3] A limited liability company associated with Nickelatti is referenced in the record, but as shorthand I use "Nickelatti" to refer to any combination of the conduct or the status of Nickelatti, the LLC, or both, because no distinctions matter for the issues raised in this appeal.

Nickelatti did not want to continue to assume "this potential risk of a foundation issue," and Nickelatti wanted to "offload" the property because the risks associated with the foundation were too high.

¶11 **Brandi Thillen testified to the following**. The $188,000 quote for the foundation work was to address "the entire foundation," but city inspectors "actually wanted" Nickelatti "to fix just a small little section of the foundation," and he could "easily fix" the smaller section "with tenants there." Nickelatti "didn't decide to rent out the property or do anything like that … until after the repair requests were made" by the tenants, "so that everything was a result of their repair request[s]." "I just don't think the tenant should be punished for making a repair request, no matter what the reason is."

¶12 **Davis testified to the following**. "I just felt like once we made those complaints, then things just turned sour right away." "All of a sudden[,] we make those requests and then this happens[;] it seems like … it was … done in retaliation."

¶13 After hearing this evidence, the circuit court explained that it would issue the judgment of eviction because the court rejected the only defense offered by the tenants. "[T]his is not a retaliatory action, but simply an action on the part of Munson's client, Mr. Nickelatti, to sell the property for financial reasons." The court found that the tenants were not "being replaced with another tenant who's simply making the same payments that [the tenants] were making," but instead Hoagland would fill a different role. That is, unlike the tenants who had only a month-to-month lease, Hoagland had committed to pay Nickelatti $5,000 for the right to occupy the property with an option to purchase it. As a result, Nickelatti's direction to Munson to terminate the periodic tenancy with the tenants was "more

of a financial decision" by Nickelatti to exercise his rights as an owner of the property—a decision informed by the need to make expensive repairs to the foundation—than it was "a way of retaliating against" the tenants. The court made the broad observation that owners of rental properties are generally "entitled to buy and sell property. I know many times tenants get caught in that."

¶14 The circuit court also noted that the tenants' "lawsuit is against Munson Realty," and that "there's been no effort to bring [Nickelatti] into the lawsuit or file a separate lawsuit against him." The court said that the tenants were required to "demonstrate that Munson Realty was retaliating against" the tenants, and "I can't find that."

¶15 Five days after the eviction hearing, the tenants filed, pro se, a "Motion for Reconsideration, to Vacate Judgment, and to Stay Writ of Restitution" (hereafter "the reconsideration motion"), which had some attached documents.[4] On that same day, there was circuit court docket entry addressing it, stating that the tenants "have already been advised that they can file an Appeal of [the circuit court's] decision and a stay of eviction can be heard by the Court of Appeals. Motion DENIED."[5] After this, the court entered the judgment of eviction.

[4] The writ of restitution referred to in the reconsideration motion is described in WIS. STAT. § 799.44(2) and (4). Such a writ is to be issued by the circuit court "immediately" after entry of a judgment of eviction, is directed to the local sheriff, and commands removal of the defendant from the premises. § 799.44(2), (4).

[5] The circuit court held a hearing on December 2, 2025, to address the ability of the tenants to obtain relief pending appeal in the form of a stay of the writ of restitution, *see* WIS. STAT. § 799.445, at which Nickelatti testified at some length. But that hearing postdated all events relevant to the issues raised on appeal, and I do not consider any aspect of this hearing in resolving the issues on appeal.

¶16 The tenants appeal the judgment of eviction.

DISCUSSION

I. Retaliatory Conduct

¶17 The tenants argue that the circuit court improperly "treated Spencer Nickelatti's asserted business reason to sell [the property] as the answer" to the question of whether there was retaliatory conduct, and then, having reached that decision, "required [the tenants] to show retaliation by Munson Realty alone." I affirm the court's rejection of the retaliatory conduct defense based on the court's factual finding to the effect that no one associated with the ownership or management of the property, including both John Munson and Nickelatti, have pursued this action for possession because the tenants complained to Munson or because they complained to city authorities about defects or needed repairs. The tenants do not show that this finding is clearly erroneous. Nor do they show why the court could not reasonably credit testimony that could support the conclusion that the action was filed because Nickelatti decided to try to sell the property, which led to Nickelatti finding Hoagland, who was willing to pay an option fee to rent and potentially purchase the property.

¶18 This court interprets and applies WIS. STAT. § 704.45 de novo. *See* ***State v. Blackman***, 2017 WI 77, ¶26, 377 Wis. 2d 339, 898 N.W.2d 774. Circuit court findings of fact will be upheld on review unless they are clearly erroneous. *See* ***Reusch v. Roob***, 2000 WI App 76, ¶8, 234 Wis. 2d 270, 610 N.W.2d 168. "Under this standard, even though the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a reasonable person to make the same finding." ***Id.***

¶19 WISCONSIN STAT. § 704.45(1) prohibits landlords who have entered into residential leases from taking specified actions involving tenants, if the tenant shows by a preponderance of the evidence both that: the landlord's action would not have occurred "but for" the landlord retaliating against a tenant; and the retaliation was in response to the tenant engaging in one or more of the three forms of tenant conduct described in paragraphs (1)(a) through (c). Under the preponderance of the evidence standard, a litigant must prove, "by the greater weight of credible evidence[,] the certainty of his or her claim." *See* ***Town of Schoepke v. Rustick***, 2006 WI App 222, ¶11, 296 Wis. 2d 471, 723 N.W.2d 770.

¶20 As with the common law retaliation defense that predated it, WIS. STAT. § 704.45(1) does not require that a landlord have a "good" reason for the decision to pursue an action for possession of the premises, only that the landlord did not rely, to a sufficient degree, on a "bad" reason for doing this. *See* ***Dickhut v. Norton***, 45 Wis. 2d 389, 399, 173 N.W.2d 297 (1970) (landlord "may terminate a tenancy at will ... for any legitimate reason or no reason at all," but "cannot terminate such tenancy" in retaliation for the tenant "report[ing] an actual housing code violation").

¶21 When the element of causation appears in other legal contexts, it presents an issue of fact. *See, e.g.*, ***Johnson v. Neuville***, 226 Wis. 2d 365, 378, 595 N.W.2d 100 (Ct. App. 1999) (stating in context of civil negligence trial that "[c]ausation is a question of fact"); ***U.S. Bank Nat'l Ass'n v. Klein***, 2024 WI App 7, ¶32, 410 Wis. 2d 598, 3 N.W.3d 726 (remanding "[b]ecause the [circuit] court has not made any findings of fact on the issue"). This is an issue that is resolved "by making factual judgments about events in the world," and not by engaging in legal analysis. *See* ***Amerex Grp., Inc. v. Lexington Ins. Co.***, 678 F.3d 193, 206 (2d Cir. 2012) (stating that the issue of apportioning damage causation is

"essentially a factual question ... to be resolved by making factual judgments about events in the world, not legal analyses of the meaning of" a contract). I see no reason to interpret WIS. STAT. § 704.45 as requiring a different approach, and the tenants on appeal do not disagree.

¶22 Turning to the nature of the causation element in this context, WIS. STAT. § 704.45(1) by its terms requires a tenant to prove "but-for" causation, connecting one or more potentially prohibited landlord actions with one or more protected tenant activities. Across legal contexts, "but-for" causation is typically established when a factor is a "substantial cause" of the result at issue. *See* ***Chapnitsky v. McClone***, 20 Wis. 2d 453, 465-67, 122 N.W.2d 400 (1963) (upholding a "but-for" jury instruction in a negligence action because it was consistent with "[t]he substantial factor test of causation"); ***State v. Johnson***, 2005 WI App 201, ¶13, 287 Wis. 2d 381, 704 N.W.2d 625 (for purposes of criminal restitution statute, the defendant's criminal activity must be "'a substantial factor in causing' pecuniary injury to the victim in a 'but for' sense" (quoted source omitted)). This theory of causation does not require that a cause be a sole or even primary factor in causing the result in question. *See* ***Schnabl v. Ford Motor Co.***, 54 Wis. 2d 345, 353-54, 195 N.W.2d 602 (1972); *cf.* ***Dickhut***, 45 Wis. 2d at 399 (for common law version of retaliation defense, requiring that landlord's "sole purpose" for seeking to terminate a tenancy was in response to reporting an actual code violation). Put differently, "but-for" causation is satisfied when an event would not have taken place absent a particular factor. *See* ***Emer's Camper Corral, LLC v. Alderman***, 2020 WI 46, ¶21, 391 Wis. 2d 674, 943 N.W.2d 513 (addressing "substantial factor" test for causation in negligence cases).

¶23 Applying these legal principles here, the tenants' defense fails because the circuit court did not commit clear error in finding that this action for

possession of the premises would have been brought regardless of the tenants' complaints regarding defects or needed repairs, and this defeats the tenants' retaliatory conduct defense.[6] To recap, the court found that Nickelatti directed Munson to take possession of the property in order to sell it because it did not make financial sense to continue to own it. This assessment of what made financial sense was based in part on a property defect that the tenants had reported, but it was not done even in part in response to the tenants' reports. Thus, Nickelatti's decision to pursue "an action for the premises" was not caused by his "retaliation against the tenant[s]" under WIS. STAT. § 704.45(1).

¶24 The tenants argue that the circuit court "required" the tenants "to show retaliation by Munson Realty alone" and that this was error. This argument is apparently based on the fact that the court—in what appeared to be an alternative basis for its ruling—observed that Nickelatti is not a party to this action. It is not entirely clear to me, but I assume without deciding that the court meant to convey the following as alternative support for its ruling rejecting the defense: the tenants were required to show that Munson, acting entirely on its own, retaliated against the tenants by pursuing this action. I further assume without deciding that this would have been an erroneous basis for rejecting the defense.

[6] The tenants briefly assert that the circuit court erred in limiting its attention to the protected activity of making a good faith complaint to a government official or agency, *see* WIS. STAT. § 704.45(1)(a), as opposed to or in addition to complaining to the landlord about necessary repairs or housing code violations, *see* § 704.45(1)(b). But my review assumes that the tenants unambiguously claimed and offered some evidence of both forms of protected activity, and the tenants do not develop an argument that the circuit court erred by failing to recognize that they were claiming the second form.

¶25 But this assumed error does not undermine the circuit court's alternative basis for rejecting the defense, namely, its finding that this action would have been brought regardless of the tenants' complaints regarding defects or needed repairs in the property. The tenants in effect ask this court to substitute its judgment for that of the circuit court in determining credibility and in weighing the reasonable inferences from the evidence that was before the court when it rendered its decision, which I cannot do. *See* ***Phelps v. Physicians Ins. Co. of Wis., Inc.***, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615; *see also* ***Laughland v. Beckett***, 2015 WI App 70, ¶20, 365 Wis. 2d 148, 870 N.W.2d 466 (if called for, this court will "search the record for evidence to support the court's factual findings"); ***Stevenson v. Stevenson***, 2009 WI App 29, ¶14, 316 Wis. 2d 442, 765 N.W.2d 811 (when a circuit court acts as a finder of fact and there is conflicting testimony, the circuit court is the ultimate arbiter of the credibility of the witnesses; when more than one reasonable inference can be drawn from the evidence that could be credited, this court accepts the inference drawn by the trier of fact).

¶26 That is, the tenants call attention to various pieces of evidence from the eviction hearing that could have supported a contrary finding. This primarily involves the timing of events, in particular when the tenants complained about the need for repair relative to when Munson notified them that the month-to-month leasing arrangement was being terminated. The tenants also stress the unrebutted evidence that they were consistently "pleasant," rent-paying tenants before Munson told them that they had to move out. But the tenants do not persuade me that the only reasonable inference—no matter how the circuit court assessed credibility or weighed various pieces of evidence—was that this action was filed at least in part because the tenants lodged repair complaints. The tenants suggest that

the fact that Munson (at Nickelatti's direction) wanted the tenants out of the property (because Nickelatti wanted to sell the property, at least in part due to repair issues), together with the fact that the tenants complained about repair issues not long before Munson terminated the periodic tenancy, *necessarily establishes* that Munson (at Nickelatti's direction) wanted the tenants out of the property because they had lodged the complaints. But that is not necessarily the case, and the circuit court found to the contrary.

¶27 It does not matter that, as the tenants point out, Munson argued to the circuit court that the retaliatory conduct defense would fail unless the tenants could show that their complaints of defects or needed repairs were the "sole reason" for the filing of this action. For reasons explained above, I reject this as the correct standard and, as already explained, the court did not apply that standard in making the finding that this action was filed only because Nickelatti had decided, beginning about one year before the eviction hearing, that he needed to sell the property, and took active steps to do so, resulting in finding and reaching an agreement with Hoagland.

¶28 The tenants assert that, under the logic applied by the circuit court, "a landlord could always defeat WIS. STAT. § 704.45 by saying [that a tenant's] complaint exposed costly repairs and therefore selling made business sense." Many assumptions are built into the tenants' assertion, including that circuit courts in similar cases will necessarily credit evidence regarding the landlord's motivation for pursuing an eviction action. Under the rationale used by the court, which the tenants fail to show was clearly erroneous, the court did not apply a blanket rule that any such defense is always doomed whenever a landlord attempts to sell the property at issue.

¶29 In sum on this issue, the tenants fail to show that WIS. STAT. § 704.45(1) protected them from retaliation in the form of the pursuit of this action for possession based on their complaints about defects or needed repairs.

II. Proper Party

¶30 On appeal, the tenants rely on WIS. STAT. § 799.40(1) to argue that the eviction judgment must be reversed because the record does not contain proof either "that Munson Realty was entitled to possession [of the property,] nor that Munson Realty was authorized in writing to act for the person who was." I do not reach the merits of this argument because the tenants did not raise it in the circuit court.

¶31 "As a general rule, issues not raised in the circuit court will not be considered for the first time on appeal." ***State v. Dowdy***, 2012 WI 12, ¶5, 338 Wis. 2d 565, 808 N.W.2d 691. The purpose of this rule "is to enable the circuit court to avoid or correct any error as it comes up, with minimal disruption of the judicial process and maximum efficiency." ***State v. Counihan***, 2020 WI 12, ¶26, 390 Wis. 2d 172, 938 N.W.2d 530. "Further, the forfeiture rule gives the parties and the circuit court notice of an issue and a fair opportunity to address the objection." ***Id.***, ¶27.

¶32 A reviewing court can exercise its discretion to disregard forfeiture. ***Id.*** ("The forfeiture rule is a rule of judicial administration, and thus a reviewing court may disregard a forfeiture and address the merits of an unpreserved issue in an appropriate case."); ***Marotz v. Hallman***, 2007 WI 89, ¶16, 302 Wis. 2d 428, 734 N.W.2d 411 (because rule against forfeiture does not relate to appellate jurisdiction, an appellate court may in its discretion consider an issue not raised in the circuit court).

¶33 Munson provides a supported argument on appeal that the tenants forfeited this argument by failing to raise it in the circuit court. In reply, the tenants argue that the issue was raised before the circuit court, but in support of this they merely note that the court found that the property belonged to Nickelatti, not Munson. This is not sufficient to preserve the argument based on this finding. The tenants fail to cite record support for the proposition that they raised the argument that WIS. STAT. § 799.40(1) is dispositive in the circuit court.

¶34 Further, this is a classic situation calling for the application of the general rule of forfeiture for at least two reasons. First, the issue is essentially factual, and therefore the blindsided circuit court on remand would be finding relevant facts for the first time. Second, this is a small claims action, which called on the circuit court to render efficient, final decisions, relying on the best available information that was presented to it. *See* ***Littleton v. Langlois***, 37 Wis. 2d 360, 363, 155 N.W.2d 150 (1967) ("the objective of the small claims procedure is speedy and inexpensive justice"); ***Columbia County v. Bylewski***, 94 Wis. 2d 153, 165-66, 288 N.W.2d 129 (1980) ("small claims procedure should be as summary as possible"); WIS. STAT. § 799.209(1) (the court "shall conduct [small claims proceedings] informally, allowing each party to present arguments and proofs and to examine witnesses to the extent reasonably required for full and true disclosure of the facts"). Aggrieved parties have a right of appeal from these relatively summary and informal proceedings, but appeals should ordinarily be strictly limited to the evidence and arguments that were presented to the circuit court.

III. Reconsideration motion

¶35 The tenants argue that the circuit court failed to properly exercise its discretion in denying the reconsideration motion. I conclude that the motion on its

face failed to identify any reason for the circuit court to think that the tenants had material, newly discovered evidence or that they had identified any other basis to establish a manifest error of law or fact. Therefore, the court's summary denial was appropriate.

¶36 While styled as a motion for reconsideration, it heavily relied on citations to WIS. STAT. § 806.07(1)(b), (c), and (h). But when the motion was filed, on October 29, the circuit court had not entered "a judgment, order or stipulation," at least one of which would have been a necessary target for such a motion, as stated in § 806.07(1). The judgment was not entered until November 4. Instead, the motion was, at best, a request that the court reconsider the rulings that it expressed orally at the October 24 hearing in anticipation of entering a judgment of eviction.

¶37 To succeed on a motion for reconsideration, a movant must either present "newly discovered evidence or establish a manifest error of law or fact." ***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. A "manifest error" is "'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" ***Id.*** (quoted source omitted). "We review a trial court's decision on a motion for reconsideration under the erroneous exercise of discretion standard." ***Id.***, ¶6.

¶38 Also pertinent is the fact, referred to above, that small claims proceedings should be summary and informal to the extent feasible. The reconsideration motion confusingly appeared to invite repetitive and inefficient litigation on topics that the circuit court had fully addressed at the eviction hearing. The motion briefly referred to a broad range of authority, but without

developing a clear argument based on any of that authority. It contained vague and conclusory language, such as allegations of "illegal documentation" and "procedural unfairness," that was insufficiently supported.

¶39 To cite only one of several examples, the motion suggested that the court should refrain from entering the judgment of eviction against the tenants on the ground that Nickelatti had violated an administrative code provision by making a misrepresentation to *Hoagland* (as opposed to the tenants) about the status of the property in the rent-to-own agreement. The tenants' purported theory was that this was "fraud upon the Court." It is difficult to discern any possible logic to such a theory, and the circuit court was not obligated to hold a hearing to give the tenants a chance to try to furnish logic.

¶40 Beyond all that, the thrust of the reconsideration motion appeared to be that the tenants had obtained newly discovered evidence that undermined one or more grounds for the court's decision on the retaliation defense. But by their own account, this was not newly discovered evidence. In an attempt to explain why they failed to use this evidence at the eviction hearing, the tenants asserted in the motion, "The lease and related exhibits were served less than 24 hours before the October 24 hearing." The only reasonable interpretation of this assertion is that the tenants *were* served with these documents at least some hours before the hearing. The documents were not complex, and the tenants could have attempted to make use of them at the eviction hearing. Or, at a minimum, they could have told the circuit court that they needed an adjournment for a reasonable length of time to allow them to decide how they might effectively use the documents at the hearing.

CONCLUSION

¶41 For all of these reasons, I affirm the judgment of eviction.

By the Court.—Judgment affirmed.

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