COURT OF APPEALS
DECISION
DATED AND FILED

May 19, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

No. 97-1956

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

LEO FRIES,

PLAINTIFF-APPELLANT,

V.

LARSON MANUFACTURING COMPANY OF IOWA, INC., A/K/A LARSON MANUFACTURING COMPANY, A SOUTH DAKOTA CORPORATION, O. DALE LARSON, LARSON MANUFACTURING COMPANY, INC., A SOUTH DAKOTA CORPORATION, JOHN P. RUNDE, AND TERWILLIGER, WAKEEN, PIEHLER & CONWAY, S.C., A WISCONSIN SERVICE CORPORATION, AND LARSON MANUFACTURING COMPANY OF SOUTH DAKOTA, INC., FORMERLY INCORPORATED AS, AND NOW KNOWN AS LARSON MANUFACTURING COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment and an order of the circuit court for Marathon County: ROBERT E. KINNEY, Judge. *Affirmed and cause remanded with directions.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Leo Fries appeals from the trial court's judgment and order granting summary judgment to the respondents, and granting frivolous action sanctions against him and his attorney, Larry W. Rader. The respondents request that this court further sanction Fries and Rader for bringing a frivolous appeal. We affirm the trial court's judgment and order and grant the respondents' request for costs and fees.

The procedural history of this case, spanning more than five years and flowing from several suits in federal and state courts, need not be detailed. In short, Fries originally contended that he was due compensation from the Larson Manufacturing Company for what he claimed was his invention of a storm door design allegedly utilized by Larson in its product line. Fries first filed his action in Marathon County in 1993 and obtained a default judgment. Later, however, the parties realized that Fries had not served Larson's registered agent but, instead, had served a person who had no connection to Larson but had the same name as Larson's registered agent. Consequently, the parties returned to the Marathon County circuit court and stipulated to an order vacating the default judgment.

Fries then pursued several actions in which the merits of his original allegations, as well as several ancillary issues, were addressed. His suits were unsuccessful. In his most recent action — the one directly leading to this appeal — Fries complained that the order vacating the default judgment in the original action "was obtained by FRAUD AND DECEIT." (Upper case in original.) Specifically, Fries's complaint alleged:

> Larson Manufacturing Company and the other defendants failed to disclose to the court and to the plaintiff … in its motion to dismiss the true Larson companies[']

> corporate identities, that Larson Manufacturing Company, the defendant in [the original Marathon County] case 784 did not have a registered agent in Wiconsin [sic] in January of 1994 on the date of service, that Holzhueter was the registered agent of the newly formed 1993 South Dakota corporation, **Larson Manufacturing Company, Inc., and was not the agent for Larson Manufacturing Company of Iowa, Inc. which was defacto the true corporate name of the defendant in case 784.**

(Bold type in original.)

The trial court granted summary judgments to the respondents, concluding that the complaint failed to state a cause of action and, further, that the action was foreclosed on the basis of claim preclusion. The trial court also imposed sanctions against Fries and his attorney, and entered an injunction prohibiting them from filing further actions against Larson, without leave of the court.[1]

Our review of a trial court's grant of summary judgment is de novo. ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). We use the same methodology as the trial court. ***Id.*** That methodology has been described in many cases, *see, e.g.,* ***Grams v. Boss***, 97 Wis.2d 332, 338-39, 294 N.W.2d 473, 476-77 (1980), and need not be repeated here. Summary judgment must be granted if the evidentiary material demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." RULE 802.08(2), STATS.

Fries argues that "[t]he amended complaint states a claim for relief to set aside the September 12, 1994 judgment vacating the February 24, 1994 default judgment" because § 806.07(2), STATS., authorizes an independent action

[1] In this appeal, Fries presents no argument challenging the injunction.

"to set aside a judgment for fraud on the court" and, he contends, Larson gained the vacating of the judgment by perpetrating a fraud on the trial court. Although it is difficult to determine Fries's exact theories from his brief, most of his contentions seem to reduce to a simple proposition: when Larson advised him that his original summons and complaint had been served on the wrong "David A. Holzhueter," and when Larson succeeded in getting him to stipulate to the vacating of the default judgment, Larson failed to advise him that several related corporate entities had names similar to "Larson Manufacturing Company," and failed to advise him that the right "David A. Holzhueter" no longer was Larson's registered agent.

Fries fails to explain how any confusion he may have had about Larson's corporate identity or its registered agent constituted fraud or misled the trial court in any way. As the trial court explained:

> …[T]he plaintiff admits that he now believes that he sued the wrong party. However, there is no proof in this record that Larson or any of its corporate entities or anyone on its behalf induced, coerced, or enticed the plaintiff into filing his lawsuit against the wrong party.
>
> Mr. Rader argues today, … "They made [Fries's former attorney,] Mr. Molinaro serve the wrong person." How foolish.
>
> Furthermore, he fails to establish that there was any legal duty on the part of Larson or that there is any legal duty on the part of any defendant to assist a plaintiff who wishes to sue by supplying them with the specifics regarding their corporate status.
>
> In our adversary system, the task of determining the identity of a would-be defendant falls on the party wishing to sue. Of course, our discovery statutes are available to help plaintiffs and parties generally ferret out the proper identity of parties after suit has been commenced.
>
> ….
>
> The same public records and discovery procedures resorted to in the present case were available to the plaintiff

> in 1994. It is hardly Larson's fault if [Fries] did not avail himself of these resources and procedures.
>
> No doubt there are several different corporate entities which go by the general trade name Larson Manufacturing Company. However, there is no proof in this record that any of these corporate entities were established, merged, consolidated, or altered in any way to avoid the plaintiff's lawsuit. To the contrary, the proof is that Larson Manufacturing never once attempted to obfuscate or conceal its status in order to avoid the plaintiff's claims.
>
> In fact, if the matter of corporate identity had been of consequence and given the fact that the plaintiff now claims that he sued the wrong party in 1994, why would Larson even have bothered to reopen and vacate the default judgment?
>
> ….
>
> Again, if the question of corporate identity was as important as the plaintiff apparently now believes it to have been, why did Larson bother to reopen the default at all?
>
> The plaintiff apparently believes that Larson created an intricate trap, that he was going to be permitted to travel down the litigation road, but when he got to the end, it wouldn't make any difference if he had won because Larson was going to jump up and say, ha, ha, you sued the wrong corporation. We win anyway.
>
> If this is what this entire case is about — and there is really no other construction that can be given it — the plaintiff totally misapprehends the law.
>
> First, the plaintiff totally overlooks Section 803.06 (1) of the Civil Procedure Code having to do with parties. In pertinent part this section reads: … "Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just."
>
> In other words, if Fries had won on the merits and Larson had in some way attempted to assert at a later date that he had sued the wrong party, all that would need to have been done was simply to amend the caption of the action to conform to the proofs in the interest of justice.

Fries offers nothing to challenge the law or logic supporting the trial court's comments. He offers nothing to refute the trial court's conclusion, reached

after an apparently painstaking review of the voluminous record, that his fraud claims are "illogical and wholly lacking in legal merit." We will not develop Fries's amorphous and unsupported arguments for him. *See* ***Barakat v. DHSS***, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995).

Fries also argues that the trial court "abused its discretion and and [sic] arbitrarily awarded frivolous suit costs, and, then erroneously found bad faith and no reasonable basis in law or equity [for] any extension, modification or reversal of existing law under 814.025(3)(a)7(b) [sic]." We disagree.

A trial court's finding of frivolousness will be overturned on appeal only if it is against the great weight and clear preponderance of the evidence. ***Sommer v. Carr***, 99 Wis.2d 789, 792, 299 N.W.2d 856, 857 (1981). A trial court's decision to impose sanctions is a discretionary one and will not be disturbed unless the trial court erroneously exercised discretion. *See* ***Minniecheske v. Griesbach***, 161 Wis.2d 743, 747-48, 468 N.W.2d 760, 762 (Ct. App. 1991).

The trial court declared:

> Whatever the merit of the plaintiff's underlying claim may have been, I have been on the bench now for almost 21 years, and I can honestly say that I have never in that time seen a case which strings together so many convoluted and conniving arguments or which has been characterized by such sophistry, that is, reasoning that was superficially plausible but, in fact, totally fallacious ….

Fries acknowledges that in his brief to this court, he merely "addresses this issue summarily at this time." Indeed, he does little more than argue that "Judge Kinney has *retaliated* in a very malicious way," (emphasis in original) and contends:

> Plaintiff and his counsel submit that based upon the record and argument above made and the false pleading that such finding by Judge Kinney is not support [sic] by the record or the law, and is *egregious*. Judge Kinney [sic] attempt to **exonerate himself**, without cross-examination, on June 19 was a serious violation of Fries' civil rights. Fries, a veteran navy pilot, deserved a fair minded judge.

(Emphasis and bold type in original.) Thus, while Fries succeeds in asserting bold allegations, he fails to support any of them with authorities or arguments to counter the trial court's conclusion that his action was frivolous. It is not this court's job to supply legal research and argument to an appellant who raises unsupported claims. *See* ***State v. Waste Management, Inc.***, 81 Wis.2d 555, 564, 261 N.W.2d 147, 151 (1978).

Finally, Fries argues that "[t]he case should be reversed under Wis. Stats. 752.35 or 751.06 as the real controversy has not been fully tried or that justice has miscarried." Here, however, Fries does little more than declare: "*The record speaks for itself on these issues What* [sic] *more need be said on the miscarriage of justice.*" (Emphasis added.) We decline to consider Fries's challenge. Arguments in appellate briefs must be supported by authority and adequate record references, *see* RULE 809.19(1)(e) & (3)(a), STATS., and we need not address arguments that do not comply. ***Murphy v. Droessler***, 188 Wis.2d 420, 432, 525 N.W.2d 117, 122 (Ct. App. 1994).[2]

The respondents assert that Fries's appeal is frivolous; and urge this court to find that, under RULE 809.25(3)(c), STATS., it has been "used or continued in bad faith, solely for the purposes of harassing or maliciously injuring" them

[2] Fries identifies several other issues in his brief but fails to present any argument on them. Thus, we decline to address them. *See* ***State v. Waste Management, Inc.***, 81 Wis.2d 555, 564, 261 N.W.2d 147, 151 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

and, further, that Fries "and his attorney, Larry Rader, knew or should have known that this appeal was without any reasonable basis in law or equity and cannot be supported by a good faith argument for an extension, modification or reversal of existing law." Thus, they request that this court enter an order granting them actual costs and attorney's fees incurred in responding to this appeal. RULE 809.25 (3)(c).

Fries offers no argument countering the respondents' argument; indeed, he does not even reply to their request. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis.2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (arguments not refuted deemed admitted). The record provides overwhelming support for the respondents' request. The supreme court's comments in a different context could also apply to this case:

> Travelers in deserts report seeing mirages in the distance. As they are approached they recede or become blurred and fuzzy in outline. When they are reached, they vanish. The arguments of [Fries] here have this exact dissolving quality. When you get close enough to them, they have disappeared.

Witzel v. State, 45 Wis.2d 295, 297, 172 N.W.2d 692, 694 (1969). We conclude that Fries's appeal is frivolous. Accordingly, we grant the respondents' request for actual costs and attorney's fees incurred in responding to this appeal, and remand to the trial court for a determination of those amounts and their proper allocation between Fries and Rader.

By the Court.—Judgment and order affirmed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.