

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 2, 1999

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. 99-0815

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

FRANCE SALES & SERVICE, INC.,

PLAINTIFF-RESPONDENT,

v.

MIKE FOLEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
RAYMOND THUMS, Judge. *Affirmed.*

¶1 HOOVER, P.J. This is an appeal of a small claims judgment granted March 16, 1999, to France Sales and Service, Inc., against Mike Foley. Foley claims that: (1) the circuit court erroneously exercised its discretion when it found facts and granted judgment to France without allowing Foley to present his defense and litigate his counterclaim; (2) two defendants were improperly dismissed from the suit "as a result of the ex parte communication to the court by

the Plaintiff-Respondent"; and (3) the circuit court erred by holding the trial one business day after Foley was served with an amended complaint. This court concludes that Foley's first assignment of error is inadequately briefed and therefore cannot be evaluated and addressed. His last two contentions are without merit. The judgment is therefore affirmed.

¶2 France commenced this action to collect payment allegedly due for heating, ventilation and air conditioning work done at a building Foley owns. Foley filed an answer alleging that the court lacked jurisdiction because France had not completed its work. He also counterclaimed for future damages that might result from unauthorized alterations and modifications to Foley's building. Several months later, France filed an amended complaint, adding as defendants Kroker Electric and Dawn Donahue. Kroker provided installation services as part of the project. Donahue was Foley's tenant and a cosigner of the proposal France submitted prior to undertaking the project. The amended complaint was silent as to the nature of the claims asserted against the new defendants. Neither Kroker nor Donahue filed an answer.

¶3 France filed a second amended complaint, dated March 10, 1999, removing Kroker and Donahue as defendants and incorporating the original complaint's allegations, dated September 30, 1998. The next day, France filed a letter with the court directing that Kroker and Donahue be dismissed. Foley alleges, without benefit of record citations, that on March 12, 1999, he received the amended complaint and a court notice changing the trial date from March 18 to March 16. On March 15, Foley filed a motion to adjourn the trial date to permit discovery.

¶4 Foley first argues that he was not permitted to present a defense or pursue his counterclaim. Foley's claim, however, is nothing more than an unattended assertion. This court declines to consider arguments that are unexplained, undeveloped or unsupported by citation to authority. *M.C.I., Inc. v. Elbin*, 146 Wis.2d 239, 244-45, 430 N.W.2d 366, 369 (Ct. App. 1988). Foley has failed to make an argument that may be addressed on appeal. Moreover, the trial transcript belies Foley's premise, disclosing that he was an active trial participant, fully informing the circuit court of his defenses and the perceived basis for his counterclaim.¹ Foley's first contention is thus without merit.

¶5 Foley next objects to Kroker's and Donahue's dismissal from the action, based upon "an ex parte communication" from France to the court. He contends that the trial court erroneously exercised its discretion by dismissing these defendants. Foley's argument fails for several reasons. He does not contend, nor does the record support, that he filed a cross-claim against either Kroker or Donahue. Foley presents no argument as to why, under this circumstance, he has standing to complain about their dismissal. Alternatively, Foley mistakenly concludes that the order dismissing Kroker and Donahue was predicated upon the circuit court's exercise of discretion. While under § 805.04, STATS., a plaintiff's voluntary dismissal of an *action* requires the court to exercise discretion, Foley cites no authority for the proposition that a plaintiff requires court approval to voluntarily dismiss parties against whom Foley has not filed

¹ Foley's appellate brief alludes to certain defenses and claims, but does not relate them to any of the three issues raised on appeal or any other coherent theory for appellate relief. "A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories." *State v. Jackson*, No. 98-0525-CR, slip op at 7 (July 13, 1999, ordered published Aug. 17, 1999).

cross-claims. This court declines to consider arguments that are unsupported by appropriate citation to authority. ***M.C.I.***, 146 Wis.2d at 244-45, 430 N.W.2d at 369.

¶6 Finally, Foley contends that the circuit court erred by holding the trial one business day after he was served with the second amended complaint. As France correctly observes, however, the second amended complaint did nothing more than repeat the allegations of the original complaint. Indeed, as noted above, the first amended complaint merely added two new defendants; the claim was unchanged. From the day the action was commenced, Foley had notice of the single claim alleged. Foley had not asserted any formal claims against the two defendants impleaded through the first amended complaint. The trial court was therefore within its proper exercise of discretion by proceeding to trial on the one claim the plaintiff had ever asserted. Upon the foregoing, the circuit court's judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

