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DISTRICT II

December 12, 2018

To:

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Racine, WI 53403

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Estate of Arthur Dyer by personal
representative Norman Dyer
Arthur Dyer
7501 W. Wind Lake Rd., Unit 7
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You are hereby notified that the Court has entered the following opinion and order:

2014AP2464

Otter Creek Farms LLC v. John Doe
(L.C. #2014CV940, 2011SC5624)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

John Doe a/k/a Arthur D. appeals pro se from an order awarding Otter Creek Farms LLC damages and costs in an eviction dispute between him and Gary W. Thompson, Otter Creek's

owner.¹ Doe also appeals an order dismissing on issue preclusion grounds his separate action against Thompson. 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. We affirm.

Thompson filed an eviction action against Doe in 2011. Doe filed affirmative defenses and counterclaims. The trial court's February 28, 2012 written decision concluded that Doe's tenancy was properly terminated because the purchase contract was valid and enforceable; Otter Creek owned the property; and Doe had no option to purchase it and failed to pay the agreed-upon rent. Doe then filed eighteen amended counterclaims, alleging, among other claims, breach of contract; fraud; misrepresentation; unjust enrichment; and violations of WIS. STAT. § 134.01. The court dismissed Doe's amended counterclaims and granted a judgment on damages.

In March 2014, Doe sued Thompson personally, asserting claims that mirrored his already-dismissed counterclaims in the eviction action.² The trial court dismissed Doe's action on grounds of issue preclusion. In September 2014, the court rendered its decision on damages in favor of Otter Creek in the amount of \$40,063.62 plus costs.

Here, Doe once again revisits the eviction action, asserting four claims of error. We are

¹ Doe died in July 2018. This court granted his brother's motion for substitution. *See* WIS. STAT. § 803.10(1)(a) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The trial court consolidated Doe's action with the eviction action. The supreme court then ordered the cases unconsolidated, but cross-referenced, to allow the decision to be put in the record.

without jurisdiction to address them. Doe had fifteen days from the February 28, 2012 order for eviction judgment within which to file a notice of appeal. WIS. STAT. § 799.445; *Highland Manor Assocs. v. Bast*, 2003 WI 152, ¶21, 268 Wis. 2d 1, 672 N.W.2d 709. Doe failed to do so, thereby waiving any right to claim error in those proceedings.

Doe also challenges the dismissal of his counterclaims on grounds of issue preclusion. To determine whether the doctrine applies, we ask whether the issue “was actually litigated” in a prior proceeding and determined by and essential to a valid judgment, and, if so, whether applying the doctrine would be fundamentally fair. *Estate of Rille v. Physicians Ins. Co.*, 2007 WI 36, ¶¶36-37, 300 Wis. 2d 1, 728 N.W.2d 693. The first step is a question of law. *Id.*, ¶37. The fairness inquiry involves an exercise of discretion. *See id.*, ¶38.

The trial court properly applied issue preclusion. Its written decision satisfies us that the merits of the counterclaims were actually litigated in the eviction trial. The parties presented documentary evidence and witness testimony, and the court made careful credibility findings. As his counterclaims were intrinsically linked to the eviction action, they fell away once the court determined he had no viable claim to the premises. Thus, applying issue preclusion was fundamentally fair, and represented a proper exercise of discretion. Beyond that, this court has already concluded that Doe’s appellate issues lack arguable merit. *See Otter Creek Farms LLC v. John Doe*, No. 2016AP723, unpublished op. and order at 2-3 (WI App Mar. 8, 2017).

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals