

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 5, 2001**

Cornelia G. Clark  
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.

**No. 00-3063**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**LINDA S. PAINTER,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WILLIAM D. WHITNALL,**

**DEFENDANT-APPELLANT,**

**WHITNALL LAW OFFICES, S.C., ABC INSURANCE  
COMPANY, XYZ GENERAL PARTNERSHIP, KENNETH NEU,  
HIGHWAY 20 AUTO PLAZA, LTD. AND FEDERATED  
MUTUAL INSURANCE CO.,**

**DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Racine County:  
ALLAN B. TORHORST, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. William Whitnall appeals from a judgment entered against him in this legal malpractice action. He challenges on appeal the judgment awarding damages to the respondent, Linda Painter. We affirm the judgment of the circuit court.

¶2 Whitnall is an attorney who undertook to represent Painter in an action for intentional tort and sexual harassment against her former employer Kenneth Neu, his employer, and their insurance companies. Whitnall, however, missed the statute of limitations. Painter then brought this suit against Whitnall for legal malpractice and Neu for negligence. A default judgment was entered against Whitnall, and a hearing was scheduled on damages. Before the hearing on the damages was held, Painter dismissed the claims against the other defendants with prejudice. The court then awarded damages against Whitnall. In its order awarding damages, the circuit court stated that the judgment was “nondischargeable in Federal bankruptcy court.”

¶3 Whitnall now claims that the circuit court erred when it awarded damages to Painter after it allowed her to dismiss her claims against the other defendants. He asserts that he defaulted on the basis of the pleadings which included claims against her employer. Once the others were dismissed, Whitnall was left as the only defendant. He argues that this unilaterally altered the action against him without notice.

¶4 While Whitnall has raised a potentially interesting point, both his brief and Painter’s are woefully inadequate on the issue. Neither party analyzes the issue adequately nor addresses the relevant law. In considering the issue, the court had a number of questions, none of which are mentioned by Whitnall or Painter. For example, the dismissal against Neu was with prejudice. The court

questioned whether this precludes Whitnall from pursuing some sort of contribution claim against Neu. Neither brief addresses this issue.

¶5 And, it appears from the record that a right to sue letter was issued to Painter. The court also questioned whether an action based on this letter must be brought within a specific amount of time. If so, the statute of limitations would bar Painter from bringing any sort of action against Neu, including this negligence action, and thereby making Whitnall responsible for all the damages. His claim of prejudice, therefore, would be irrelevant. This question also was not addressed in either brief.

¶6 As the appellant and the one who is asking this court to reverse the circuit court, Whitnall bears primary responsibility for these shortcomings. When a party does not properly analyze an issue, a court is not required to do the work for him. “An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.” *State v. Waste Mgmt., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). The court, therefore, declines to address the issue.

¶7 On the record before us, we conclude that the circuit court acted properly when it awarded damages to Painter. The purpose of a legal malpractice award is to put the plaintiff in the same position she would have been in had the attorney acted properly. See *Lewandowski v. Cont'l Cas. Co.*, 88 Wis. 2d 271, 277-78, 276 N.W.2d 284 (1979). This is what the circuit court did when awarding damages to Painter. Whitnall has not demonstrated that the court acted improperly.

¶8 Whitnall also argues that the court lacked jurisdiction to determine the dischargeability of the debt in federal bankruptcy court. Again, Whitnall's brief is completely inadequate. Whitnall makes a two-paragraph argument and

states, “Citation is really not necessary.” He is wrong. Citation is always necessary when making a legal argument. In fact, arguments unsupported by reference to legal authority may not be considered by the court. *Post v. Schwall*, 157 Wis. 2d 652, 657, 460 N.W.2d 794 (Ct. App. 1990).

¶9 Moreover, Whitnall’s unsupported statement of law is not completely correct. The exceptions to dischargeability in bankruptcy are set forth in 11 U.S.C. § 523(a). Subsection (4) excepts, in relevant part, debts “for fraud or defalcation while acting in a fiduciary capacity.” While the federal courts ultimately determine whether a debt is dischargeable in bankruptcy, the determination of whether a fiduciary relationship exists “frequently turns upon obligations attendant to relationships governed by state law.” *The Andy Warhol Found. for Visual Arts, Inc. v. Hayes*, 183 F.3d 162, 166 (2d Cir. 1999). Moreover, the debt created by the breach of the attorney-client relationship for failing to timely file an action has been found to be the type of debt not dischargeable under 11 U.S.C. § 523(a)(4). See *Brawer v. Gelman (In re Gelman)*, 47 B.R. 735 (Bankr. S.D. Fla. 1985). The circuit court’s statement that the debt is not dischargeable may have been a suggestion to a federal court that Wisconsin courts would consider this relationship to be the type of fiduciary relationship included within the exceptions.

¶10 More importantly, however, since the federal courts ultimately determine the dischargeability of a debt in bankruptcy, the federal courts will not be bound by the circuit court’s language. If Whitnall does file for bankruptcy, he may ask the federal court to consider the issue. Since the language may not be binding on the federal court, Whitnall has not explained to this court how he is harmed by the language in the circuit court’s order.

¶11 For the reasons stated, the judgment of the circuit court is affirmed.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)5.

