COURT OF APPEALS
DECISION
DATED AND FILED

February 21, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1544 **Cir. Ct. No. 2012SC4070**

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

GREG GRISWOLD,

PLAINTIFF-APPELLANT,

V.

DARRYL ANTONIAK AND ROXANNE ANTONIAK,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dane County: FRANK D. REMINGTON, Judge. *Affirmed.*

¶1 BLANCHARD, J.[1] This small claims case was initiated as a replevin action by Greg Griswold against Darryl and Roxanne Antoniak.

---

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) and (3) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Griswold sought an order requiring the Antoniaks to return to him a flatbed trailer in possession of the Antoniaks. The Antoniaks counterclaimed, alleging that the trailer had been given to them "in lieu of cash payment" for Darryl Antoniak's recent installation of a duct system at Griswold's farm in Cross Plains.

¶2 After taking evidence at a de novo trial, the circuit court: entered judgment for replevin of the trailer in favor of Griswold; entered a money judgment in the amount of $3,572.21 in favor of the Antoniaks, on the theory of unjust enrichment to Griswold, based on Darryl Antoniak's installation of the ductwork (including statutory costs of $5 and statutory attorney fees in the amount of $300); and denied Griswold's petition for waiver of the cost of producing a transcript based on indigency, which Griswold sought pursuant to WIS. STAT. § 814.29(1).

¶3 Griswold contends in this pro se appeal that the court erred in its application of the law, and in other ways erroneously exercised its discretion, in concluding that a money judgment for the value of the ductwork should be awarded to the Antoniaks. Griswold also contends that the court erroneously exercised its discretion in: awarding the Antoniaks statutory fees and costs for prevailing on their counterclaim; denying Griswold's request for a form of "offset" for the Antoniaks' use of the trailer; and denying Griswold's petition for waiver of the costs of producing a transcript. This court concludes that each of Griswold's arguments is either undeveloped or without merit and accordingly affirms.

BACKGROUND

¶4 Griswold was also pro se in the circuit court. In his small claims complaint, filed May 10, 2012, he alleged that the Antoniaks[2] "borrowed" a "Triple L Flat Bed Hydraulic Trailer" that belonged to Griswold, but that, since April 27, 2012, they had refused Griswold's requests to return it to him. Among the forms of relief Griswold sought was an order awarding him $50 for each day that the Antoniaks had possession of the trailer "without Griswold's permission."

¶5 As part of a timely filed answer, the Antoniaks made a counterclaim alleging that they had "installed a duct air distribution system at the Greg Griswold farm," attaching an itemized invoice ("the invoice") for materials and labor for this project. The invoice, dated March 15, 2012, reflects a balance due of $3,123.99. It is on the letterhead of "Antoniak's Heating and Air Conditioning" and lists the customers as "Laura Wierzbicki/Greg Griswold Farm." The Antoniaks further alleged in the counterclaim that "in lieu of cash payment, Darryl Antoniak was given title and possession of the [trailer] as payment in full for said contract." The Antoniaks took the position in the counterclaim that, if they were required to return the trailer, then they were entitled to the $3,123.99 due to them for the duct installation.

¶6 At the de novo trial, Darryl Antoniak testified in part that Laura Wierzbicki gave him the trailer "as collateral" after he performed the ductwork

[2] The parties suggest no divergence of interests between Darryl and Roxanne Antoniak in this appeal. Therefore, for ease of reference, the Antoniaks are sometimes referred to in this opinion as a unit when the record reflects an action alleged to have been done by only one of them.

reflected on the invoice at a farm where Griswold and Wierzbicki resided. He further testified that his bill was consistent with market rates for work of that type.

¶7 Laura Wierzbicki testified in part that she let Darryl Antoniak take the trailer, on or about February 4, 2012, under an agreement that Antoniak could use it, while holding it as "collateral," until she "paid for my heating system, which is now [Greg Griswold's] heating system." Wierzbicki testified that Darryl Antoniak satisfactorily performed the ductwork requested, and that the invoice appeared to be a fair bill for the materials supplied and the work performed. In fact, Wierzbicki believed, before getting the bill for the work, that it might cost about $6,000.

¶8 Between sworn testimony and arguments he made to the court, Griswold conveyed to the court assertions and positions that included the following: Wierzbicki ordered the ductwork without Griswold's advance or contemporaneous knowledge; Wierzbicki fraudulently or otherwise unlawfully conveyed the trailer to the Antoniaks without Griswold's advance or contemporaneous knowledge; Griswold is typically able to rent the trailer for $250 per day and also needs it for work on the farm, such that the Antoniaks' possession of it was costly to Griswold; when Griswold contacted Darryl Antoniak and asked for return of the trailer, Antoniak first told Griswold that he would return it promptly, but then, in a series of shifting positions during the course of further communications with Griswold, suggested that he might not return it; and Darryl Antoniak never told Griswold that he was holding the trailer as collateral for payment of a ductwork project.

¶9 Additional facts are referenced below as necessary to the discussion.

DISCUSSION

¶10 At the outset of discussion, this court notes that, both in his voluminous pleadings to the circuit court and again on appeal, Griswold consistently provides extreme run-on sentences, confusing cross-references, and inadequately developed arguments. This court attempts here to identify all discernible arguments. Any purported argument not identified in this opinion is insufficiently clear or supported to merit discussion.[3]

I. Ductwork as Unjust Enrichment to Griswold

¶11 Unjust enrichment is a claim for equitable relief, and a circuit court's decision to grant equitable relief is sustained on appeal absent an erroneous exercise of discretion. *See* ***Ludyjan v. Continental Cas. Co.***, 2008 WI App 41, ¶6, 308 Wis. 2d 398, 747 N.W.2d 745. If such a discretionary decision rests on an incorrect view of the law, which Griswold asserts is the case here, it is an erroneous exercise of discretion. *See* ***id.*** This court reviews de novo an assertion that a circuit court applied an improper legal standard. ***Ulrich v. Zemke***, 2002 WI App 246, ¶8, 258 Wis. 2d 180, 654 N.W.2d 458.

¶12 Griswold argues that the court erred in entering a money judgment in favor of the Antoniaks based on a theory that Griswold was unjustly enriched by the ductwork in light of the unpaid balance on the project.

---

[3] The court may give leeway to a pro se party, but pro se parties must still comply with relevant rules of procedural and substantive law. *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). One well-established rule of procedure is that the court need not address arguments that are inadequately briefed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶13 Before addressing Griswold's primary legal argument, this court first briefly explains its two reasons for rejecting a separate challenge that Griswold makes to the money judgment, namely, that "Griswold had never been provided notice of the possibility of Antoniak raising" an unjust enrichment claim. First, this assertion is undeveloped in Griswold's appellate briefing and is rejected on that basis. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Second, it appears that the written counterclaim, as addressed by the parties during the course of litigation, provided adequate notice. *See* WIS. STAT. § 802.02(1)(a) (requiring "a short and plain statement of the claim, … showing that the pleader is entitled to relief"); *see also* WIS. STAT. § 799.06(1) (all pleadings in small claims cases, beyond the initial complaint, may be oral).

¶14 Turning to his main legal argument, Griswold contends that the circuit court failed to recognize that, as a matter of law, Griswold was not a party to, or in privity with any party to, the Wierzbicki-Antoniak agreement. Thus, according to Griswold, unjust enrichment was not "a cognizable claim against Griswold," but instead the *only* potential cause of action available to the Antoniaks against anyone related to the ductwork would have been a contract action against Wierzbicki. Additional, discernible challenges by Griswold to the circuit court's unjust enrichment determination are addressed separately below.

¶15 In order to show unjust enrichment, the party claiming unjust enrichment, here the Antoniaks, must prove three elements: (1) the claimant "conferred a benefit upon" the other party, here Griswold; (2) the other party "had an appreciation or knowledge of the benefit"; and (3) the other party "accepted or retained the benefit under circumstances making it inequitable for the [other party] to retain the benefit without payment of its value." *See* ***Buckett v. Jante***, 2009 WI App 55, ¶10, 316 Wis. 2d 804, 767 N.W.2d 376. The circuit court in this case

determined that the Antoniaks had conferred the benefit of the ductwork on property in which Griswold had an interest, with Griswold's at least eventual appreciation or knowledge, and that Griswold's retention of the ductwork required payment as a matter of equity.

¶16 Griswold does not appear to dispute that the ductwork was performed or that the amount outstanding from the invoice was not fairly owed to the Antoniaks. For example, he repeatedly acknowledges that the Antoniaks might have had a valid contract action against Wierzbicki for payment of the balance due on the project.

¶17 Instead, Griswold argues that the Wierzbicki-Antoniak agreement "controlled [the Antoniaks' counter]claim and its existence instantly removed [the Antoniaks' counter]claim from even remotely ever becoming one of a matter of equity." Stated in other words, in Griswold's view, the circuit court improperly "convert[ed]" what Griswold acknowledges was a viable potential breach of contract claim by the Antoniaks against Wierzbicki into an unjust enrichment claim by the Antoniaks against Griswold.

¶18 Griswold's argument appears to rest on multiple assumptions or misconceptions about the substantive laws governing contracts and unjust enrichment. However, it is sufficient for current purposes to explain that the Antoniaks' unjust enrichment counterclaim against Griswold is not necessarily dependent on, or foreclosed by, the contractual relationship between the Antoniaks and Wierzbicki. There is nothing in the elements of unjust enrichment to suggest that the Antoniaks' counterclaim against Griswold would be defeated by the existence of a contract that was only between the Antoniaks and Wierzbicki. Stated another way, Griswold need not have been party to, or in privity with any

party to, any contract with the Antoniaks in order for the Antoniaks to have conferred a benefit on Griswold, for Griswold to have known of that benefit, and for Griswold to have accepted or retained that benefit.

¶19 Griswold cites case law for the proposition that "the doctrine of unjust enrichment does not apply where the parties have entered into a contract." *See* ***Continental Cas. Co. v. Wisconsin Patients Comp. Fund***, 164 Wis. 2d 110, 118, 473 N.W.2d 584 (Ct. App. 1991). While cases like ***Continental Casualty*** might support an argument that the Antoniaks cannot pursue an unjust enrichment claim against a *party* to a contract for the ductwork, Griswold fails to develop any argument showing why such cases would bar an unjust enrichment claim against someone, like Griswold, who claims *not* to be a party, or in privity with a party, to the contract. Griswold does not provide authority for the proposition that the existence of a contract necessarily bars an unjust enrichment claim against someone who is *not* a party, or in privity with a party, to the contract. Nor does Griswold point to any particular term in the contract that would support his argument that the contract bars an unjust enrichment claim against him.

¶20 Separately, while the argument is not developed, Griswold apparently intends to argue that another defect in the court's decision to issue the money judgment involves the court's alleged failure to recognize the legal significance of Griswold's changing ownership status regarding the farm property during relevant time periods. Griswold's argument appears to be that, as of the time of the Wierzbicki-Antoniak agreement, Griswold had no, or perhaps a lesser, ownership interest in the farm than he later obtained, and that this difference in ownership interest has legal significance for purposes of unjust enrichment. Whatever Griswold precisely intends to argue in this regard, it is not only undeveloped as a legal argument, but also without merit. That is because the

circuit court was entitled to rely on the following statement Griswold made to the court: "I have had a one hundred percent ownership interest in [the property] from day one, since we purchased it roughly in 1998 or '99." Based on this statement, it does not matter if changing ownership status could have legal significance, since Griswold asserted a long term, "one hundred percent" interest in the property. Moreover, even if Griswold had an ownership interest that was less than one hundred percent at the time that the ductwork was installed, his argument does not show why a less than one hundred percent ownership interest would undercut the Antoniaks' unjust enrichment claim.

¶21 This court now turns to additional challenges by Griswold to the circuit court's unjust enrichment decision that are less clearly framed as arguments about applicable law.

¶22 Griswold seems to argue that the court could not reasonably conclude that he accepted the benefit of the ductwork or that he failed to reject it. Griswold seems to base this argument on an alleged lack of proof that he knew about the ductwork "when it was so installed," and on a statement he made to the court during the course of the de novo trial that he was "willing to give [the Antoniaks] back their [ductwork] installation." These undeveloped assertions are insufficient to show that the court erred in concluding that Griswold accepted the benefit of the ductwork, particularly given Griswold's statement to the court, referred to above, that he owned the property "one hundred percent" since about 1999, giving him a large incentive to keep abreast of substantial improvements to the property. *Cf.* ***Buckett***, 316 Wis. 2d 804, ¶17 (referring to whether the party alleged to have been unjustly enriched had "fair opportunity to accept or reject the benefit when he or she learns of or appreciates the benefit." (citing ***Dunnebacke Co. v. Pittman***, 216 Wis. 305, 257 N.W. 30 (1934))).

¶23 Griswold also makes a confusing series of references apparently intended to support the proposition that Wierzbicki was prohibited from giving the trailer to Antoniak in the first place, either in part or wholly due to the effect of a court order issued in a separate action that addressed property over which Griswold and Wierzbicki had competing claims. First, this argument is rejected as undeveloped on appeal; it is too difficult to understand what Griswold is arguing both factually and legally in this regard. Second, it appears that any argument Griswold intends to make here also fails because he does not explain why, even if the Wierzbicki-Antoniak trailer transfer was improper or unlawful, this would render erroneous the court's unjust enrichment decision regarding Griswold's obligation to pay for the ductwork.

¶24 For all these reasons, Griswold fails to persuade this court that the circuit court erroneously exercised its discretion in issuing the money judgment based on a theory of unjust enrichment.

II. Attorney's Fees and Costs

¶25 In a very short argument, Griswold asserts that, because he prevailed in the replevin action, the court was precluded from awarding statutory fees and costs to the Antoniaks on their money judgment. This argument fails for two reasons. First, Griswold does not point to record evidence that he made this argument to the circuit court and it is not the obligation of this court to search the record for such evidence. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980) (appellate courts generally do not review issues raised for the first time on appeal); ***State v. West***, 179 Wis. 2d 182, 195-96, 507 N.W.2d 343 (Ct. App. 1993) (appellate courts not required to search the record to supply facts that may support appellant's argument), *aff'd*, 185 Wis. 2d 68, 517 N.W.2d 482 (1994).

Second, Griswold provides no legal authority supporting the proposition that the court was precluded from awarding statutory fees and costs to the Antoniaks based on their having prevailed on the money judgment issue.

III. Alleged "Offset"

¶26 Griswold challenges the circuit court's decision that it lacked a sufficient basis to conclude that, as Griswold now frames it, Griswold is entitled to a "possible offset" against the money judgment "for Antoniak's retention of Griswold's trailer." This court is not persuaded, because it appears that Griswold effectively seeks to relitigate on appeal the credibility determinations and the weighing of inferences that led the circuit court to conclude the following:

> There is no evidence as to the frequency of the use [of the trailer by the Antoniaks] or any evidence as to the value this Court would put on it. I don't even know whether [Darryl Antoniak], other than your suggestion that he moved some boilers, how often it was used, what purpose, or whether it would have any value to him at all.

Griswold fails to point to any aspect of the record revealing that the court's conclusion is based on any clearly erroneous fact finding or otherwise unsupported by the evidence. *See* ***Bank of Sun Prairie v. Opstein***, 86 Wis. 2d 669, 676, 273 N.W.2d 279 (1979) (review of circuit court fact finding is deferential, and "w[h]en more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by [trial judge]").

IV. Indigency Waiver

¶27 Griswold argues that the circuit court erred in denying his petition for a waiver of costs to produce a transcript for appeal. Once again, Griswold's argument is difficult to understand, but Griswold seems to be arguing that the

circuit court denied the petition based either on an erroneous fact finding that Griswold was not indigent or on an incorrect legal conclusion that the appellate issues Griswold intended to raise appeared to lack merit.

¶28 As to indigency, Griswold's argument is insufficiently developed to show any error in the circuit court's fact finding. As to Griswold's appellate issues, this court's decision shows that the circuit court correctly concluded that Griswold's appellate issues appeared to lack merit. Therefore, Griswold has presented this court with no reason to upset the circuit court's decision to deny Griswold's request for a waiver of the costs of producing a transcript.[4]

CONCLUSION

¶29 The circuit court did not erroneously exercise its discretion in awarding a money judgment for the value of the ductwork to the Antoniaks. The circuit court also did not erroneously exercise its discretion in awarding the Antoniaks statutory fees and costs for prevailing on their counterclaim, denying Griswold's request for a form of "offset" for the Antoniaks' use of the trailer, or denying Griswold's petition for waiver of costs to produce a transcript. Accordingly, this court affirms.

[4] Griswold may be arguing that the circuit court erred in its separate decision denying Griswold's separate petition for a waiver of costs associated with a writ of assistance. If so, Griswold's argument in that regard is too undeveloped for this court to address. Moreover, the court's decision on that petition plainly was issued several days after Griswold filed his notice of appeal, and Griswold has not shown that that decision is properly before this court.

By the Court.—Judgment affirmed.

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