COURT OF APPEALS
DECISION
DATED AND FILED

July 2, 2013

Diane M. Fremgen
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.

Appeal No. 2012AP811 **Cir. Ct. No. 2011CV16702**

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

ANTHONY JONES,

PLAINTIFF-APPELLANT,

V.

DENNIS NUTTING AND US BANK,

DEFENDANTS-RESPONDENTS,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

INTERVENOR.

APPEAL from an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Anthony Jones, *pro se*, appeals from an order dismissing his lawsuit against Dennis Nutting and US Bank. We affirm.

BACKGROUND

¶2 In 2009, Jones filed a lawsuit on behalf of JASA Development Construction, LLC.[1] *See* ***Anthony I. Jones dba JASA Development Construction, LLC v. Dennis Nutting and US Bank***, No. 2009CV18691 (Milwaukee Cnty. Cir. Ct.). The complaint alleged that Jones was JASA's "sole manager and employee" and that "the plaintiff" entered into a construction contract with a woman named Sheila Nguyen. Jones alleged that Nguyen's lender for the construction project, US Bank, and the expeditor hired by US Bank, Dennis Nutting, were liable for: (1) wrongful interference with contract; (2) discrimination based on race; (3) punitive damages; and (4) injury to business.

¶3 The trial court dismissed the action on grounds that it could not be brought by a non-lawyer representing the LLC. The trial court explained at a hearing:

> Mr. Jones was not acting personally in the contract he entered into. He entered into it as a representative of the corporation. In Wisconsin, a corporation in a large claims action must be represented by a lawyer….
>
> ….

[1] The Record and contract at issue at times refer to J.A.S.A., rather than JASA. For consistency, we will use the name JASA unless we are directly quoting a document.

The Record also indicates that Jones sometimes indicates that he is known as "Anthony Jones aka Hashim Hasan."

Finally, we accept at face value Jones's representation that JASA is, in fact, an LLC as that type of limited liability entity is defined in WIS. STAT. ch. 183.

> … [T]he case is dismissed without costs, without prejudice, in light of the fact that this action could not be brought by Mr. Jones in his individual capacity since the contract that is the basis for any cause of action was entered into by Mr. Jones on behalf of the corporation and not as an individual.

Jones appealed, but the appeal was dismissed for lack of jurisdiction. *See* No. 2010AP1134, unpublished order (July 19, 2010).

¶4 In October 2011, Jones filed the lawsuit that is the subject of this appeal. He listed "Anthony Jones" as the plaintiff and Nutting and US Bank as the defendants. The complaint was substantially the same as the complaint Jones filed in 2009, except he changed some language and, most notably, removed all references to JASA.

¶5 Nutting and US Bank filed answers that raised numerous defenses, including the defense that Jones was not the proper party to the lawsuit. Nutting moved for substitution of the real party in interest; US Bank supported the motion. *See* WIS. STAT. § 803.01(1) (2011–12).[2]

¶6 Nutting's motion argued that the real party in interest was JASA, rather than Jones. Nutting analyzed the construction contract between Nguyen and

[2] WISCONSIN STAT. § 803.01(1) provides:

> REAL PARTY IN INTEREST. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

All references to the Wisconsin Statutes are to the 2011–12 version unless otherwise noted.

JASA. At the top of the contract is the name "J.A.S.A. DEVELOPMENT CONSTRUCTION, LLC" and contact information, including an email address that incorporates the words "jasa" and "construction." The contract section entitled "PROPOSAL/ESTIMATE" states that JASA "submits the following estimate and specifications for improvements to your property" and that "[t]he estimate provided by JASA is based on the observation of the site." It explicitly states that "JASA" is providing an estimate. The rest of the contract contains many references to JASA. The only reference to Jones appears on page five, where the signature line is typed: "Respectfully submitted, J.A.S.A. Development Construction, LLC[,] Hashim A. Jones Associates" and is followed by a handwritten signature that appears to state: "A. Jones Hashim Hasan assoc. Jasa Const."

¶7 Nutting also analyzed the allegations in the complaint. Nutting argued that Jones's four claims "all involve alleged damage to the corporation and not to Mr. Jones individually." For instance, Nutting explained, the race discrimination claim alleged that Nutting treats contracting companies differently "based on the race of their princip[als]," and the claim did not include an allegation that the defendants "discriminated against [Jones] individually, in any respect outside of his work with J.A.S.A." Nutting's motion further argued that the injury-to-business and interference-with-contract causes of action "cannot by their very nature be brought by anyone other than the business" because alleged harm and damages are to the business. Finally, Nutting asserted that the punitive damages claim "similarly deals only with claims of the corporation," noting that the complaint alleges that Nutting "nearly ruined plaintiff's business, created serious problems between plaintiff and his subcontractors, [and] created serious problems between plaintiff and his client."

¶8 Nutting's motion asked the trial court to "dismiss Mr. Jones' causes of action with prejudice and order that the proper party in interest—J.A.S.A.—be substituted and that counsel appear on its behalf."

¶9 In response, Jones argued that: (1) Nutting lacked standing to bring the motion; and (2) LLCs are not required to have a lawyer represent the LLC because LLCs and corporations are not the same. At the motion hearing, Jones also argued that Nguyen's contract was with Jones. He explained that the contract was "submitted as the individual, although the LLC and the individual are one [and] the same." In response to Nutting's and US Bank's concern that if the case were to proceed with Jones as the plaintiff, JASA could later try to bring its own claims, Jones responded: "I don't see where the LLC would even have a … capacity … [to] re[-]sue the defendants for what the court … had decided already. I think that's ludicrous." Jones asked the trial court to deny the motion and allow him "to appear before this court and represent this lawsuit in my individual capacity."

¶10 Nutting urged the trial court to grant its motion and, further, to dismiss Jones's action because the trial court in the 2009 case had already ruled that Jones could not represent JASA in court.

¶11 The trial court issued a written decision granting the motion to substitute JASA as the real party in interest. The trial court explained:

> The law is clear. Claims that arise from injuries to a company generally belong to the company and not to any of its employees or members. Thus, in such a situation, the company is the real party in interest….
>
> ….
>
> Applying the law to the facts of this case, the Court finds that Jones is not the proper party in interest in this

> case. J.A.S.A. is the real party in interest. The transaction that led to the four claims that Jones asserts arises from a contract between J.A.S.A. and its customer, Nguyen. The contract at issue makes no mention of Jones in his personal capacity. Additionally, the manner in which Jones frames his four claims all relate to the harm that J.A.S.A. suffered as a result of its dealings with Nguyen. In the discrimination claim, Jones alleges that the contracting companies are treated differently by the Defendants based on the race of their princip[al]s. Jones has not made any claim that the Defendants have discriminated against him individually. The punitive damages claim similarly deals only with claims of the company. Jones alleges that Nutting's conduct nearly ruined the Plaintiff's business. Finally, the injury to business and interference with contract claims specifically derive from the contract between J.A.S.A. and Nguyen.
>
> In light of all of these facts, it is evident that J.A.S.A., not Jones, has a right to control and receive the fruits of this litigation. As a result, J.A.S.A. is the proper party in this matter.

(Citation omitted.)

¶12 The trial court also concluded that "a corporation must appear by [an] attorney and not by some other agent." Further, it said that dismissal was warranted because "Jones adamantly opposes seeking counsel to represent him or J.A.S.A." The trial court explained: "At the hearing … Jones made it clear that he will not join J.A.S.A. (along with its required legal representation) as the proper party in interest in this matter. As a result, the Court will enter an order dismissing all of Jones'[s] claims against the Defendants." (Footnote omitted.)

DISCUSSION

¶13 Jones identifies four issues in his statement of the issues, which we paraphrase as follows: (1) whether Jones is the real party in interest; (2) whether the trial court ignored the facts and wrongly applied the law to decide the case; (3) whether Jones has the right to represent his legal interest in the case; and

(4) whether the trial court correctly dismissed the case.[3] Jones's brief, however, addresses all of the issues together, in the argument section. We will address the main issues Jones raises. To the extent we do not address particular subarguments Jones makes in his brief, we reject them because they are unpersuasive, undeveloped, inadequate, or raised for the first time on appeal or in his reply brief.[4] *See* ***League of Women Voters v. Madison Cmty. Found.***, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 140, 707 N.W.2d 285, 291 (we do not decide undeveloped arguments); ***Vesely v. Security First Nat'l Bank of Sheboygan Trust Dep't***, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593, 598 n.5 (Ct. App. 1985) (we do not decide inadequately briefed arguments); ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577, 584 (1997) ("As a general rule, this court will not address issues for the first time on appeal."); ***Northwest Wholesale Lumber, Inc. v. Anderson***, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502, 508 n.11 (Ct. App. 1995) (it is a well-established rule of appellate practice that the court will not consider arguments raised for the first time in a reply brief).

I. Whether Jones is a real party in interest and whether the trial court misapplied the facts and law.

¶14 We begin with whether Jones is the real party in interest, which also involves Jones's second allegation: that the trial court ignored the facts and the law. "A real party in interest is 'one who has a right to control and receive the

[3] We have listed the issues in a different order than Jones presented them.

[4] For instance, Jones argues in two sentences: "The [trial] court failed to apply an equitable solution where equitable doctrine is void [sic]…. The court should have applied an equitable solution to a case of first impression." There was no request for equitable relief in the trial court, and Jones has not adequately explained what he means. We decline to abandon our neutrality to develop an argument for him. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 170, 769 N.W.2d 82, 93.

fruits of the litigation.'" ***Wausau Tile, Inc. v. County Concrete Corp.***, 226 Wis. 2d 235, 253, 593 N.W.2d 445, 454 (1999) (citation omitted).

¶15 We agree with the trial court that JASA is the real party in interest. The construction contract that was allegedly affected by the actions of Nutting and US Bank was between JASA and Nguyen. The potential damages caused by those actions belong to the LLC; Jones was not the proper party to the proceeding. *See* WIS. STAT. § 183.0305. While Jones, as a member of the LCC, may be able to bring an action in the name of the LLC, *see* WIS. STAT. § 183.1101, he did not do so in this case.[5] Because JASA is the real party in interest, we agree with the trial court's decision to grant Nutting's motion to substitute JASA for Jones in the action. We reject Jones's assertion that the trial court misapplied the law or facts on that issue.

II. Whether Jones can represent "his legal interest in the case."

¶16 We have concluded that the real party in interest is JASA, so Jones's issue with respect to representation becomes whether he can represent the LLC. Jones concedes that if JASA were a corporation, "it would require an attorney[']s representation." Jones contends, however, that LLCs are different from corporations with respect to whether a non-lawyer can represent the entity in litigation.[6] He asserts: "Looking at the plain language of [WIS. STAT. §] 757.30[,

[5] Moreover, if Jones wants to bring suit in the LLC's name pursuant to WIS. STAT. § 183.1101, he is still required to have a lawyer represent the LLC, for reasons we discuss in Section II.

[6] Jones also argues that the ruling of the trial court in his 2009 court case—that a lawyer has to represent JASA—"has no place" in this litigation. While the trial court in this case was made aware of the prior ruling, it did not defer to that ruling or apply issue preclusion. Instead, the trial court independently concluded, like the trial court in the earlier case, that LLCs must be represented by a lawyer in litigation.

it] is clear for corporations but not clear as [to] how courts should apply it to individuals and LLCs." Jones does not discuss ***Jadair Inc, v. United States Fire Ins. Co.***, 209 Wis. 2d 187, 562 N.W.2d 401 (1997), the case interpreting § 757.30(2) that the trial court relied on when it concluded that Jones could not represent the LLC.

¶17 In ***Jadair***, our supreme court considered whether the president of a corporation—a non-lawyer—could sign a notice of appeal on behalf of the corporation. *See* ***id.***, 209 Wis. 2d at 191, 562 N.W.2d at 402. The court concluded that "[u]nder the plain language of the rules and statutes [governing the unauthorized practice of law,] … only lawyers can appear on behalf of, or perform legal service for, corporations in legal proceedings before Wisconsin courts."[7] ***Id.***, 209 Wis. 2d at 202, 562 N.W.2d at 407. ***Jadair***'s conclusion was based in part on the statute that provides penalties for the unauthorized practice of law: WIS. STAT. § 757.30. Interpreting § 757.30(2), the court held: "The practice of law includes appearing on behalf of some other person or entity in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state."[8] ***Jadair***, 209 Wis. 2d at 202, 562 N.W.2d at 407.

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[7] The court recognized that WIS. STAT. § 799.06(2) provides a statutory exception to this rule, allowing nonlawyers to sign small claims court documents on behalf of corporations. *See* ***Jadair Inc. v. United States Fire Ins. Co.***, 209 Wis. 2d 187, 202–203, 562 N.W.2d 401, 407 (1997).

[8] WISCONSIN STAT. § 757.30(2) (1997–98) provided:

> Every person who appears as agent, representative or attorney, for or on behalf of any other person, or any firm, partnership, association or corporation in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her

(continued)

¶18 ***Jadair*** also rejected the argument that denying an individual the right to represent a corporation is unconstitutional, reasoning that only "'natural person[s]'" have a right under article I, section 21(2) of the Wisconsin Constitution to represent himself or herself. *See* ***Jadair***, 209 Wis. 2d at 205, 562 N.W.2d at 408 (citation omitted).

¶19 Applying ***Jadair***'s holdings here, we conclude that Jones would be engaging in the practice of law if he were to represent the LLC—"some other person or entity"—in this case. *See* ***id.***, 209 Wis. 2d at 202, 562 N.W.2d at 407. Such representation is not permitted. *See* ***id.*** We acknowledge that Jones appears to be asserting that LLCs should be treated differently than corporations, but his argument is so inadequate—he does not even mention ***Jadair*** in his opening brief—that we do not consider it further. *See* ***Vesely***, 128 Wis. 2d at 255 n.5, 381 N.W.2d at 598 n.5; *see also* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 170, 769 N.W.2d 82, 93 ("[W]e will not abandon our neutrality to develop arguments" for a litigant.). Moreover, we are bound by the Wisconsin Supreme Court's interpretations of statutes, including WIS. STAT. § 737.30(2). *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246, 256 (1997) ("The supreme court is the only state court with the power to overrule, modify or withdraw language from a previous supreme court case.").

> usual or ordinary business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

The current version of the statute is identical, except it adds the words "circuit or supplemental" before the words "court commissioner." *See* § 757.30(2) (2011–12).

¶20 Finally, Jones argues that he is entitled to represent himself because he is a natural person, citing article I, section 21(2) of the Wisconsin Constitution. While Jones is entitled to represent himself in Wisconsin courts, we have already determined that the claims at issue in this case belong not to him, but to JASA, and JASA must be represented by a lawyer. *See* ***Jadair***, 209 Wis. 2d at 202, 562 N.W.2d at 407.

III. Whether the case was properly dismissed.

¶21 WISCONSIN STAT. § 803.01(1) provides in relevant part: "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest." Accordingly, after the trial court determined that JASA was the real party in interest, JASA could have opted to retain a lawyer, but Jones made it clear at the hearing that he "adamantly opposes seeking counsel" for JASA and is committed to personally pursuing the case in court. We have reviewed the hearing transcript and we agree with the trial court's assessment of Jones's position. We discern no error in the trial court's decision to dismiss the case.

By the Court.—Order affirmed.

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