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DISTRICT II

December 17, 2025

To:

Hon. Michael P. Maxwell
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Erica R. Karch
Electronic Notice

Eugene M. LaFlamme
Electronic Notice

Melva Kottwitz
766 Summit Avenue
Oconomowoc, WI 53066

You are hereby notified that the Court has entered the following opinion and order:

2024AP1236 Emergency Disaster Recovery, Inc. v. Melva Kottwitz
(L.C. #2023CV803)

Before Neubauer, P.J., Gundrum, and Lazar, JJ.

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).

Melva Kottwitz appeals pro se from an order of the circuit court granting Emergency Disaster Recovery, Inc.'s (EDR) motions to dismiss Kottwitz's counterclaim and for summary judgment. 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 (2023-24).[1] For the following reasons, we affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

In April 2021, a fire caused damage to a property owned by Kottwitz and occupied by members of her family. EDR and Kottwitz entered into a contract in which EDR agreed to provide fire damage and restoration work on the property, and Kottwitz agreed to pay EDR for its work on the property. After EDR completed its work, it invoiced Kottwitz for $200,969.03. Kottwitz paid $137,581.09, and after some back and forth, EDR credited Kottwitz $1,712.08, leaving an unpaid balance of $61,675.86 plus interest. EDR forwarded the adjusted invoice to Kottwitz on August 11, 2022. Kottwitz has not paid any amount of the unpaid balance.

On August 19, 2022, EDR filed a claim for a lien on the property with the Waukesha County Clerk of Courts. Kottwitz objected but failed to attend the hearing on her objection, resulting in the denial of her objection to the placement of the lien. On December 5, 2022, EDR sent Kottwitz a Notice of Intent to Foreclose on the Construction Lien, and on May 22, 2023, it filed this action asserting foreclosure of its construction lien, breach of contract, and other claims. Kottwitz answered and filed a counterclaim, to which EDR answered. EDR filed a motion to dismiss Kottwitz's counterclaim and a motion for summary judgment as to its claims against Kottwitz. The circuit court granted EDR's motions.

Due to significant deficiencies in Kottwitz's appellate advocacy and briefing, we do not review the merits of the circuit court's order. Instead, we affirm because Kottwitz does not even begin to meet her burden to demonstrate that the court erred. *See* ***Gaethke v. Pozder***, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381 ("[O]n appeal 'it is the burden of the appellant to demonstrate that the [circuit] court erred.'" (second alteration in original; citation omitted)).

As noted by EDR, Kottwitz's brief fails to comply with several requirements of the rules of appellate procedure. Her brief does not contain a "statement of the issues presented for

review and how the [circuit] court decided them," and her statement of the case does not include the procedural status of the case or "the disposition in the [circuit] court," as required by WIS. STAT. RULE 809.19(1)(b) and (d). While Kottwitz's brief contains a statement of facts, it does not contain sufficient facts "relevant to the issues presented for review" or any references to the record as required by RULE 809.19(1)(d). The entirety of the fact section, as it appears in Kottwitz's brief, is as follows:

> the facts are since the onset of the dispute with EDR defendant over the Shoddy Workmanshi Paading the bill Defndant has always redided at 766 Summit Avenue Oconomowoc, Wisconsin sinse its purcahse by defdnt and therefore, the redinse I questions is protected for sizure to satify any judgment to satidy lein obtaind by EDR.

Although Kottwitz is representing herself in this appeal, her brief must still comply with the rules of appellate procedure. *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) ("The right to self-representation is '[not] a license not to comply with relevant rules of procedural … law.'" ***Id.*** (alteration in original; citation omitted)). While we liberally construe a pro se filing, we do not have "a duty to walk *pro se* litigants through the procedural requirements." ***Id.*** Compliance with the rules of appellate procedure ensures both fairness to the opposing party and the efficient working of this court.

In addition to failing to include a statement of the issues as required by WIS. RULE 809.19(1)(b), Kottwitz, as EDR notes, fails to "identify a single argument that the [circuit] court applied incorrect law, ruled based on incorrect law, or otherwise committed an appealable legal error." Because she fails to identify how the court erred, she also completely fails to develop any legal argument upon which we could reverse the court's decision on EDR's motions. "We will not address undeveloped arguments." *See* ***Clean Wis., Inc. v. PSC***, 2005 WI

93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768; *see also* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (an appellate court may decline to review issues that are insufficiently briefed or unsupported by legal authority). It is not our responsibility to develop arguments for a party, "and we will not abandon our neutrality" to do so for Kottwitz. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82; ***Doe 1 v. Madison Metro. Sch. Dist.***, 2022 WI 65, ¶35, 403 Wis. 2d 369, 976 N.W.2d 584 (stating that appellate courts "do not step out of [their] neutral role to develop or construct arguments for parties" (citation omitted)).

All that said, we briefly address one of Kottwitz's undeveloped assertions. She cites to ***bin-Rilla v. Israel***, 113 Wis. 2d 514, 335 N.W.2d 384 (1983), in support of an assertion that the circuit court should have overlooked her failings in this case and allowed the case to proceed.[2] While ***bin-Rilla*** does obligate courts to liberally construe pro se pleadings, ***id.*** at 522, and we generally grant all pro se filings "a degree of leeway," ***State ex rel. Wren v. Richardson***, 2019 WI 110, ¶25, 389 Wis. 2d 516, 936 N.W.2d 587, "by definition, 'a degree of leeway' means the additional leniency will run out at some point," ***id.*** (citation omitted). Here, as set forth in the court's oral decision at the hearing on EDR's motions, to which Kottwitz appeared late,[3] Kottwitz's failings were too extensive for the court to overlook:

> I don't find that Ms. Kottwitz has complied with the [c]ourt's scheduling order with regard to naming witnesses or experts. It's undisputed that she has not responded to the request for

[2] Kottwitz's brief is not entirely clear on this point. She mentions that the circuit court should have "invo[k]ed" ***bin-Rilla v. Israel***, 113 Wis. 2d 514, 335 N.W.2d 384 (1983), as to an affidavit, a demand for a jury trial, and a motion to appear in person rather than by Zoom.

[3] Despite appearing late, the circuit court allowed Kottwitz to present her argument.

> interrogatories or production of documents. So I do find that she has not properly prosecuted her counterclaims, and, therefore, either on the merits or as a sanction for failure to prosecute, the [c]ourt is going to dismiss those counterclaims against the plaintiff.
>
> ….
>
> Then with regard to the motion for summary judgment, although Ms. Kottwitz did file some form of a response which the [c]ourt has reviewed, what I don't believe that that response does is place material facts in dispute, so the [c]ourt does adopt the facts as outlined [by EDR].

For all the foregoing reasons, including that Kottwitz fails to identify how the circuit court erred or develop any arguments to show that it erred, we affirm.[4]

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals

[4] To the extent Kottwitz asserts that the circuit court erred because she resided at the property and, therefore, she either wasn't properly served or foreclosure of the property (her homestead) is not available, she has forfeited her right to raise these issues on appeal. As far as we can tell, Kottwitz did not assert or aver before the court that she resided at the property, and she did not assert that she was improperly served. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 ("It is a fundamental principle of appellate review that issues must be preserved at the circuit court. Issues that are not preserved at the circuit court, even alleged constitutional errors, generally will not be considered on appeal."); ***State v. D.E.C.***, 2025 WI App 9, ¶67, 415 Wis. 2d 161, 17 N.W.3d 67 (2024) ("Application of the forfeiture rule is appropriate in many instances to ensure that parties and circuit courts have 'notice and a fair opportunity to address issues and arguments, enabling courts to avoid or correct any errors with minimal disruption of the judicial process.'" (citation omitted)).