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DISTRICT II

March 11, 2026

To:

Hon. Heather R. Iverson
Circuit Court Judge
Electronic Notice

Lori A. Kuehn
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Ethan M. Padway
Electronic Notice

M. Nicol Padway
Electronic Notice

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

2024AP2185

Lori Kuehn v. Nicholas Phillip Gordon (L.C. #2024CV765)

Before Gundrum, Grogan, 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).

Lori Kuehn appeals from an order dismissing her complaint against Nicholas Phillip Gordon and his business, Now Outdoors, LLC. The circuit court found that Kuehn's amended complaint alleging breach of contract, negligent infliction of emotional distress, and defamation failed to state a claim upon which relief can be granted pursuant to WIS. STAT. § 802.06(2)(a)6. (2023-24).¹ 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.

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

The following facts were alleged in Kuehn’s complaint. Gordon, through his business, Now Outdoors, LLC, provides guided outdoor adventure trips. Kuehn went on three trips through Now Outdoors, during which consensual sexual encounters occurred between her and Gordon. Kuehn paid Now Outdoors a guide fee of \$3,400 for a fourth trip, which was to take place in Peru. She also incurred expenses for airfare, vaccinations, and gear. She flew to Peru with Gordon a few days before the other participants were scheduled to arrive based on his promise to room with her. Upon her arrival in Peru, Gordon told her she would be rooming with someone else. Kuehn protested and argued with Gordon, after which Gordon removed her from the trip and refused to reimburse her for trip expenses. Gordon stated she was not entitled to a refund because she had signed a waiver, but Kuehn alleges she did not sign one. Kuehn threatened to tell Gordon’s wife about their affair. Shortly thereafter, Gordon posted to a Facebook group with “several members” the following message: “**Attention Facebook Friends:** A disgruntled participant who has been **promptly removed** from a NOW Outdoors International Trip **today** and is actively harassing me, my family and friends, other participants, and NOW Outdoors with threats, defamatory comments, and false statements.”

Kuehn brought suit against Gordon and Now Outdoors on July 22, 2024, and filed an amended complaint on September 11, 2024. The amended complaint asserted three claims: breach of contract, negligent infliction of emotional distress, and defamation. Defendants filed a motion to dismiss the amended complaint. The circuit court granted the motion and entered an order dismissing the amended complaint in its entirety, pursuant to WIS. STAT. § 802.06(2)(a)6.

On appeal, Kuehn challenges the dismissal of the three claims in her amended complaint. Whether a complaint “states a claim upon which relief can be granted is a question of law for our independent review; however, we benefit from discussions of the ... circuit court.” *Data Key*

Partners v. Permira Advisers LLC, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693. “When testing the legal sufficiency of a claim, all facts alleged in the complaint, as well as all reasonable inferences from those facts, are accepted as true.” *Kaloti Enters., Inc. v. Kellogg Sales Co.*, 2005 WI 111, ¶11, 283 Wis. 2d 555, 699 N.W.2d 205. However, “legal conclusions stated in the complaint are not accepted as true, and they are insufficient to enable a complaint to withstand a motion to dismiss.” *Data Key Partners*, 356 Wis. 2d 665, ¶19.

A claim for breach of contract must allege facts sufficient to establish: “(1) a contract between the plaintiff and the defendant that creates obligations flowing from the defendant to the plaintiff; (2) failure of the defendant to do what it undertook to do; and (3) damages.” *Brew City Redevelopment Grp., LLC v. The Ferchill Grp.*, 2006 WI App 39, ¶11, 289 Wis. 2d 795, 714 N.W.2d 582, *aff’d*, *Brew City Redevelopment Grp., LLC v. The Ferchill Grp.*, 2006 WI 128, 297 Wis. 2d 606, 724 N.W.2d 879. Kuehn makes the conclusory allegation that she “entered into a valid contract where [she] paid money in exchange for a guided backpacking trip to Peru.” But the complaint fails to allege the contract’s material terms, such as when or how a contract was formed and who the parties were. Indeed, one could reasonably infer from the facts alleged that her participation in the trip was informal based on her intimate relationship with Gordon. We agree with the circuit court that Kuehn’s allegations are too vague and conclusory to state a claim for breach of contract. Therefore, we affirm the court’s dismissal of this claim.

Kuehn also fails to state a claim for negligent infliction of emotional distress. To survive a motion to dismiss, Kuehn must allege facts sufficient to establish: (1) negligent conduct; (2) causation; and (3) severe emotional distress. *Bowen v. Lumbermens Mut. Cas. Co.*, 183 Wis. 2d 627, 654, 517 N.W.2d 432 (1994). Kuehn alleges a hostile confrontation with Gordon, being removed from the trip, and a Facebook post about the conflict. This is a far cry from the

traumatic facts Wisconsin courts recognize as sufficient to establish severe emotional distress. *See, e.g., id.* at 634-35, 659 (mother arrived on the scene moments after her 14-year-old son had been hit by a car and witnessed his gruesome injuries and prolonged rescue attempt as he was trapped beneath defendant's car); *La Fleur by Blackey v. Mosher*, 109 Wis. 2d 112, 113-14, 119-21, 325 N.W.2d 314 (1982) (14-year-old child confined alone in a jail cell for over 13 hours without food, water, blankets, or contact with her parents). Moreover, as a matter of public policy, a cognizable negligent infliction of emotional distress claim must arise from an "extraordinary" experience; emotional trauma, even severe, will not give rise to a claim if it results from normal life experiences. *Bowen*, 183 Wis. 2d at 657-59. We agree with the circuit court in concluding that Kuehn's allegations of interpersonal conflict and a ruined backpacking trip fail to meet the high bar set by our supreme court in *Bowen*.

Turning to Kuehn's last claim, we determine that she has not sufficiently alleged a cause of action for defamation. The elements of defamation are: (1) a false statement; (2) communicated to a person other than the one defamed; and (3) the communication is unprivileged and harms one's reputation. *Laughland v. Beckett*, 2015 WI App 70, ¶22, 365 Wis. 2d 148, 870 N.W.2d 466. Furthermore, for a statement to be defamatory, it must "refer to some ascertained or ascertainable person, and that person must be the plaintiff." *Wagner v. Allen Media Broadcasting*, 2024 WI App 9, ¶33, 410 Wis. 2d 666, 3 N.W.3d 758 (quoting *Arnold v. Ingram*, 151 Wis. 438, 452, 138 N.W. 111 (1912)); accord *Luthey v. Kronschnabl*, 239 Wis. 375, 379, 1 N.W.2d 799 (1942). Here, the Facebook post does not identify Kuehn by name, sex, appearance, or other characteristic, and Kuehn does not allege sufficient facts regarding the members of the Facebook group to conclude that they could nevertheless ascertain

her identity. She alleges only that the group had “several members.” Accordingly, we agree with the circuit court that Kuehn failed to state a claim for defamation and affirm dismissal.

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