OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

January 18, 2024

To:

Hon. Thomas J. Walsh
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Sherre K. Chevalier
Electronic Notice

Stacie H. Rosenzweig
Electronic Notice

Daniel D. Hawk
Electronic Notice

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

2022AP2144 Daniel D. Hawk v. Eugenia L. Hedlund
(L. C. No. 2022CV620)

Before Stark, P.J., Hruz and Gill, 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).

Daniel Hawk, pro se, appeals an order dismissing his claims against Eugenia Hedlund and Wisconsin Judicare Inc. 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 (2021-22).[1] We summarily affirm the order dismissing Hawk's claims.

Hawk filed a summons and complaint on May 26, 2022, listing Hedlund and Judicare as defendants. The complaint alleged that Hedlund, an attorney, and Judicare, her employer,

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

omitted information and provided false and misleading information when applying for a temporary restraining order (TRO) against Hawk on behalf of Hawk's then-wife, Judy Cornelius-Hawk.[2] Hawk alleged that Hedlund and Judicare took these actions to give Cornelius-Hawk a better position in their divorce case. He asserted that "[c]ommitting and supporting lying under oath to obtain a known false TRO to deliberately harm or in the alternative restrict the Plaintiff, is an Intentional Tort." Hawk cited WIS. STAT. § 893.57, the statute of limitations for intentional tort claims, and 28 CFR § 35.134, which prohibits retaliation for exercising one's rights under the Americans with Disabilities Act (ADA). He also alleged "constitutional deprivations of Double Jeopardy." He sought an award of $1 million in damages.

Hedlund and Judicare moved to dismiss Hawk's complaint for failure to state a claim on which relief could be granted. Hawk filed a response opposing the motion to dismiss, which included multiple attachments. The circuit court declined to consider those attachments and issued a written order granting the motion to dismiss.

In its written order, the circuit court explained that the allegations in Hawk's complaint were insufficient to state a claim for any intentional tort. The court also concluded that the complaint failed to state a claim under 28 CFR § 35.134 because the complaint did not allege that Hawk had a disability or that his disability entitled him to coverage under the ADA. The court next concluded that Hawk's complaint failed to state a claim "for violation of his double

[2] The complaint does not specifically allege that the TRO application was filed on behalf of Cornelius-Hawk. However, the complaint alleges that, in connection with the TRO application, Hedlund and Judicare: (1) "supported lies inferring the Plaintiff was harassing Mrs. Hawk by stating the Plaintiff was driving past the marital residence"; and (2) "supported the idea that Mrs. Hawk was afraid for her life." These allegations support a reasonable inference that the TRO application was filed on Cornelius-Hawk's behalf.

jeopardy rights" because Hedlund and Judicare "do not have the capacity to prosecute anyone for a criminal offense," the complaint did not allege that Hedlund and Judicare prosecuted Hawk for any crime, and there were "no allegations in the complaint that Hawk was ever subjected to any criminal offenses related to the facts underlying the divorce or the TRO petition." Finally, the court concluded that the complaint failed to state a claim for perjury because perjury "is a criminal offense that only the state can prosecute." *See* WIS. STAT. § 946.31(1).

Hawk now appeals the circuit court's order granting Hedlund and Judicare's motion to dismiss. In his appellate brief, Hawk does not challenge the legal analysis in the court's order dismissing his claims.[3] Instead, Hawk argues that the court erred by refusing to consider the documents that were attached to his response to the motion to dismiss.

This argument fails because a motion to dismiss for failure to state a claim "tests the legal sufficiency of the complaint." ***Data Key Partners v. Permira Advisers LLC***, 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693 (citation omitted). To withstand a motion to dismiss, a complaint "must allege facts that, if true, plausibly suggest a violation of applicable law." ***Id.***, ¶21. When considering a motion to dismiss, a court must "accept as true all facts well-pleaded in the complaint and the reasonable inferences therefrom," but a court "cannot add facts in the process of construing a complaint." ***Id.***, ¶19. Stated differently, a court's review of a motion to dismiss is generally limited to the factual allegations within the four corners of the plaintiff's

[3] Hawk did not file a reply brief in this appeal. In their response brief, Hedlund and Judicare argue that the circuit court properly determined that Hawk's complaint failed to state a claim for any intentional tort, for a violation of 28 C.F.R. § 35.134, for a double jeopardy violation, or for perjury. By failing to file a reply brief, Hawk has not disputed these arguments, and we therefore deem them conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

complaint. ***Pagoudis v. Keidl***, 2023 WI 27, ¶4, 406 Wis. 2d 542, 988 N.W.2d 606. Here, the circuit court determined that the facts alleged within the four corners of Hawk's complaint were insufficient to state a claim on which relief could be granted. As noted above, Hawk does not develop any argument challenging the court's legal analysis in that regard.

On a motion to dismiss for failure to state a claim, when "matters outside of the pleadings are presented to *and not excluded by the court*, the motion shall be treated as one for summary judgment." WIS. STAT. § 802.06(2)(b) (emphasis added). However, "[c]onversion of a motion to dismiss into a motion for summary judgment is not required under … § 802.06(2)(b)." ***CTI of Ne. Wis., LLC v. Herrell***, 2003 WI App 19, ¶6, 259 Wis. 2d 756, 656 N.W.2d 794 (2002). Instead, "conversion is left to the [circuit] court's discretion." ***Id.***, ¶8. A court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law, and uses a demonstrated rational process to reach a reasonable conclusion. ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789.

On appeal, Hawk asserts in conclusory fashion that the circuit court erroneously exercised its discretion by refusing to consider the documents attached to his response to the motion to dismiss. He does not, however, develop any argument explaining *why* he believes that the court erroneously exercised its discretion in that regard, nor does he cite any legal authority in support of that proposition.[4] This court need not address undeveloped arguments or

[4] In support of his claim that the circuit court erroneously exercised its discretion, Hawk provides the following quotation, which he attributes to our supreme court's decision in ***Buchen v. Wisconsin Tobacco Co.***, 59 Wis. 2d 461, 465, 208 N.W.2d 373 (1973): "The trial court must undertake a reasonable inquiry and examination of the facts as the basis of its decision." This language, however, does not appear anywhere in ***Buchen***.

(continued)

arguments that are unsupported by references to legal authority. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). In any event, having reviewed the record, we perceive no basis to conclude that the court erroneously exercised its discretion by declining to consider the documents that Hawk provided and by instead employing the well-established legal analysis that applies to a motion to dismiss for failure to state a claim.

Hawk also argues that by "[i]gnoring" his exhibits, the circuit court "show[ed] bias and deference" to Hedlund because she is an attorney. Hawk does not, however, recite the legal standards for a judicial bias claim or explain how the court's conduct in this case met those standards. *See* ***State v. Goodson***, 2009 WI App 107, ¶¶8-9, 320 Wis. 2d 166, 771 N.W.2d 385 (explaining the legal standards for a judicial bias claim); *see also* ***Pettit***, 171 Wis. 2d at 646-47 (court of appeals need not address undeveloped arguments or arguments unsupported by legal authority). An adverse ruling, by itself, is generally insufficient to establish bias. *See* ***Liteky v. United States***, 510 U.S. 540, 555 (1994). Under these circumstances, Hawk has failed to overcome the presumption that the court acted fairly, impartially, and without bias. *See* ***Goodson***, 320 Wis. 2d 166, ¶8.

Hawk further asserts that he had "the right to a full and fair opportunity to participate in the [l]ower [c]ourt proceedings." Hawk exercised that right, however, by filing a response to the motion to dismiss. The circuit court considered his response before reaching its decision. As explained above, the court was not required to consider the documents attached to Hawk's

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Furthermore, any assertion that the circuit court in this case failed to undertake a reasonable inquiry and examination of the facts would be meritless. The court's written decision shows that it appropriately considered and examined the factual allegations *in Hawk's complaint* before granting Hedlund and Judicare's motion to dismiss. Again, the court was not required to consider matters outside the pleadings when ruling on that motion.

response, *see* ***CTI of Ne. Wis.***, 259 Wis. 2d 756, ¶6, and Hawk has not presented a developed argument that the court erroneously exercised its discretion by refusing to do so. "The fundamental requirements of procedural due process are notice and an opportunity to be heard," ***Sweet v. Berge***, 113 Wis. 2d 61, 64, 334 N.W.2d 559 (Ct. App. 1983), and Hawk was afforded both in this case.

Finally, Hawk asserts that his complaint "clearly stated a claim" because

> [l]awyers are members of the Court and are subjected to or in the alternative required to uphold the law. Hiding Oneida Gateway's usurping of federal and State of Wisconsin Excise Taxes on expensive automobiles by running them through the Plaintiff-Appellant's home on the Oneida Indian Reservation is a violation of both federal and State law. Similarly, to hide HOW Landscaping Indian unlawful Indian Preference bid rigging is or ought to be a violation of State Law. A claim exists because a lawyer cannot violate either federal or state laws.

This argument lacks merit because Hawk's complaint does not contain any allegations regarding the usurping of excise taxes on automobiles or "Indian Preference bid rigging." Again, Hawk does not develop any argument that the circuit court erred by concluding that the factual allegations *in his complaint* failed to state a claim on which relief could be granted.

Therefore,

IT IS ORDERED that the order is summarily affirmed. 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