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DISTRICT II

November 27, 2024

To:

Hon. Daniel J. Borowski
Circuit Court Judge
Electronic Notice

Herbert Conrad Humke
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Michael D. Morris
Electronic Notice

James D. Kurtz
Electronic Notice

Dwight D. Darrow
Electronic Notice

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

2023AP1361

James D. Kurtz v. State of Wisconsin (L.C. #2017CV22)

Before Gundrum, P.J., 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).

James D. Kurtz appeals pro se from an order permanently enjoining him from recording any deed, lis pendens, or other document unless certain conditions are satisfied. Kurtz wants the order reversed because he contends it is unlawful. 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 affirm.

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

Kurtz has filed multiple appeals stemming from a Complaint he filed in 2017 involving his belief that others had denied him access to real and personal property. He has repeatedly filed actions, most recently several *lis pendens*, without a legal basis. In this appeal, he challenges an order the circuit court entered in July 2023 that “permanently enjoined” him from “recording any deed, *Lis Pendens*, or other document with any Wisconsin Register of Deeds Office unless”: (1) a circuit court certifies he has the “mental capacity to understand” that the recording is “grounded in fact or law”; or (2) a licensed attorney certifies the recording is “properly grounded in fact or law[.]” Kurtz believes the court’s order is unlawful either because the court lacked jurisdiction or because the order is unconstitutional. The Respondents contend that the court did not err and that it had the authority to impose the permanent injunction on Kurtz based on his history of filing frivolous actions. Further, the Respondents point out that the court’s order was reasonable and narrowly tailored to protect those who have been repeatedly subjected to Kurtz’s frivolous claims while also not imposing a significant burden on Kurtz. The Respondents also note that Kurtz’s brief fails to comply with the rules of appellate procedure, lacks citation to legal authority, and fails to set forth any legal basis to reverse the court’s order.²

Based on our review of the briefs and Record, we affirm the circuit court’s order. First, Kurtz’s brief is incomprehensible and fails to develop any argument telling us how the circuit court erred. As the appellant, Kurtz bears the burden of showing that the circuit court erred. *See Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. He fails to do so. In order to satisfy his burden, Kurtz needed to support his arguments “with citations to the

² The Respondents also contend that Kurtz failed to provide the transcript necessary for our review. This is incorrect. The Record does in fact contain the transcript from the June 13, 2023 motion hearing upon which the July 2023 order is based.

authorities, statutes and parts of the record relied on” and develop his arguments by applying the legal authorities cited to the facts of the case. *See* WIS. STAT. RULE 809.19(1)(e). His brief does not do so, and his general references to the Fourteenth Amendment³ and the Wisconsin Constitution are insufficient to satisfy this Rule. This court will not act “as both advocate and judge[.]” *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), by independently developing a litigant’s argument. *Gardner v. Gardner*, 190 Wis. 2d 216, 239 n.3, 527 N.W.2d 701 (Ct. App. 1994).

Second, Kurtz failed to file a Reply brief or statement that he would not be doing so as required by WIS. STAT. RULE 809.19(4)(a) (“The appellant shall file a reply brief, or a statement that a reply brief will not be filed[.]”), and by failing to do so, Kurtz has conceded the arguments the Respondents make as to why we should affirm the circuit court’s order. *See Apple Hill Farms Dev., LLP v. Price*, 2012 WI App 69, ¶14, 342 Wis. 2d 162, 816 N.W.2d 914 (failure to file a reply brief deemed a concession to respondent’s argument).

Third, the circuit court’s order states that it was entered “for the reasons set forth” at the June 13, 2023 motion hearing. At that hearing, the court found that Kurtz’s repeated filings lacked any “basis in law or fact” and that Kurtz’s filings constituted an “abuse” of “the system.” Specifically, the court found Kurtz’s latest lis pendens filings were his “newest way to continue to abuse the process and to not honor court orders including the decision of the Court of Appeals in this case” and that Kurtz would “continue to use the legal process to abuse and increase costs of litigation[.]” Further, the court found that Kurtz—despite being given the opportunity to

³ U.S. CONST. amend. XIV.

“explain himself”—“offered ... no reason to believe that he will not continue [the abuse] but has suggested he indeed will. He will continue to file lawsuits, he will continue to file Lis Pendens ..., and there’s just no substantiation for any of it in law or fact or a good faith extension thereof.” The court concluded that the permanent injunction was needed to “protect the system” and stop Kurtz’s abuse, and Kurtz has failed to establish that the court erred in doing so.

Based on the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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