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DISTRICT II

March 5, 2025

To:

Hon. Michael P. Maxwell
Circuit Court Judge
Electronic Notice

Pat J. Schott
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Lauren Knauf
Electronic Notice

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

2023AP315

Lauren Knauf v. Jonathan Knudsen
(L.C. #2021CV868)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Lauren Knauf, pro se, appeals the circuit court's summary judgment in favor of Jonathan and Erin Knudsen. She argues: (1) the court erred in granting Attorney Rudolph Kuss's motion to withdraw from representing her; (2) the court was biased against her; (3) she was not properly served with the defendants' second set of requests for admission; (4) the court's decision to extend the discovery deadline was improper; (5) the court erred in granting summary judgment in favor of the Knudsens; and (6) the court improperly awarded sanctions against her. 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 We affirm.

Knauf purchased a home from the Knudsens in 2015. As part of the sale, the Knudsens completed a Real Estate Condition Report stating that they were unaware of any defects in the plumbing system, mold, or water damage in the property. In 2020, Knauf discovered mold and water damage in the basement and attic. She alleged that these defects stemmed from leaks and damage that existed during the Knudsens' ownership and claimed that the Knudsens concealed these issues with contact paper and paint. Knauf subsequently incurred remediation expenses and initiated this action.

During discovery, the Knudsens obtained evidence, including the home inspection report from Knauf's pre-purchase inspection in 2015, which showed no mold, unusual water leaks, or rot in the property at the time of sale. Additionally, Knauf's deposition revealed that she had no direct knowledge of water leaks or mold during the Knudsens' ownership. Both of Knauf's experts testified by deposition that they could not establish the timing of the water damage or mold, nor confirm that these conditions existed before Knauf's purchase of the home.

Shortly thereafter, Attorney Kuss moved to withdraw as counsel for Knauf, citing an irreconcilable conflict. The circuit court granted the motion. Following Kuss's withdrawal, Knauf proceeded pro se. The Knudsens served a second set of requests for admission via United States mail to Knauf's address on file, to which Knauf did not respond.

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

The Knudsens moved for summary judgment. Knauf argued that the second requests for admission were improperly served and should be disregarded, but the circuit court determined that service was proper. However, the court did not rely on the admissions in granting summary judgment. Instead, the court relied on undisputed facts, including Knauf's admissions during a deposition and information in the pre-purchase inspection report, to find that there was no genuine issue of material fact regarding the alleged defects. The court granted summary judgment in favor of the Knudsens because Knauf could not establish that the mold or water damage existed at the time of sale in 2015, assuming that the facts she and her experts alleged were true. The court imposed sanctions against Knauf, finding that her claims lacked factual support and that she had continued her action without justification after Attorney Kuss withdrew. The court ordered Knauf to pay the Knudsens \$33,289, the attorney fees that they incurred after Kuss's withdrawal.

Knauf first argues that the circuit court erroneously exercised its discretion in granting Attorney Kuss's motion to withdraw from representing her. An attorney may move to withdraw if "the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement." SCR 20:1.16(b)(4). Whether counsel should be allowed to withdraw is committed to the court's discretion. *See State v. Lomax*, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988). "A discretionary determination 'must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.'" *Id.* Kuss cited an irreconcilable conflict with Knauf, explaining that she had refused to follow his advice on a material matter. Based on these circumstances, the court had authority to relieve Kuss of further representation of Knauf. Knauf has presented no persuasive argument that

supports her claim that this decision was an improper exercise of discretion. Therefore, we reject this argument.

Knauf next argues that the circuit court was biased against her. Knauf failed to raise this argument during the court proceedings and has therefore forfeited her right to raise it on appeal. See *Soletski v. Krueger Int'l, Inc.*, 2019 WI App 7, ¶¶23-24, 385 Wis. 2d 787, 924 N.W.2d 207 (arguments not raised in the circuit court are generally forfeited on appeal). The forfeiture rule helps to promote fair and efficient litigation because “if a particular argument is not raised before a circuit court, an opposing party cannot develop a record as it pertains to that argument, and we cannot conduct a meaningful review.” *Id.*, ¶24. Because Knauf did not timely raise this argument, we do not consider it further.

Knauf next contends that she was not properly served with the Knudsens’ second set of requests for admission. This argument is unavailing. The requests were served via United States mail to the address Knauf provided to the circuit court, consistent with WIS. STAT. § 801.14(2) (service by mail is complete upon mailing). Knauf never agreed to accept service solely by email and did not seek an extension of time to respond. Moreover, the court did not rely on the deemed admissions in granting summary judgment, instead citing Knauf’s deposition testimony and other undisputed facts. Therefore, Knauf is not entitled to relief based on this argument.

Knauf next contends that the circuit court’s decision to extend the discovery deadline was improper. We reject this argument. Attorney Kuss stipulated to the extension before he was given permission to withdraw. Knauf forfeited any objection to the extension because she did not raise the issue in court after Kuss withdrew. See *Soletski*, 385 Wis. 2d 78, ¶24. She did not move to set aside the stipulation, nor did she move for additional time to respond to the requests

to admit. More importantly, the court did not rely on her deemed admissions in the second set of requests to admit when it granted summary judgment. Therefore, even if the court's decision to grant the stipulation to extend the discovery deadline had been in error, it had no impact on its decision.

Knauf next argues that the circuit court improperly granted summary judgment to the Knudsens. Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *See* WIS. STAT. § 802.08(2); ***Johnson v. Johnson***, 179 Wis. 2d 574, 580, 508 N.W.2d 19 (Ct. App. 1993). Knauf and her experts proffered no evidence that, if true, would establish that the mold or water damage was present when the property was sold to her in 2015. She now contends that Kuss should have undertaken more discovery, but she did not request more time for discovery when she began representing herself and then subsequently hired another attorney. The court properly concluded that the Knudsens were entitled to summary judgment because, based on the undisputed facts, they were entitled to judgment as a matter of law.

Knauf next argues that the circuit court erred in awarding the Knudsens sanctions of \$33,289. Sanctions may be imposed against a litigant for pursuing claims that have no evidentiary support. *See* WIS. STAT. § 802.05(c); ***Jandrt v. Jerome Foods, Inc.***, 227 Wis. 2d 531, 566, 597 N.W.2d 744 (1999) (upholding an award of sanctions where there was no expert witness support for the claims asserted by the plaintiffs). The court found that Knauf's claims lacked evidentiary support. The court also found that she had continued her action after Attorney Kuss warned her that there was no evidence to support her claim and warned her that she may be sanctioned if she continued to pursue her action. The court awarded the Knudsens attorney fees

they incurred only after Kuss withdrew. Because Knauf continued her case without justification at that point, the court properly awarded attorney fees to the Knudsens.

Finally, we address the Knudsens' motion for sanctions on appeal, which was timely filed. *See* WIS. STAT. RULE 809.25(3)(a). The Knudsens argue that that Knauf's appeal is frivolous and move this court to order Knauf to pay their costs, fees, and reasonable attorney fees incurred in defending the appeal. Knauf opposes the motion. "[A]n appeal is frivolous if '[t]he party ... knew, or should have known, that the appeal ... was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.'" *Schapiro v. Pokos*, 2011 Wis. App 97, ¶20, 334 Wis. 2d 694, 802 N.W.2d 204. "If an appeal ... is found to be frivolous by the court, the court shall award to the successful party costs, fees, and reasonable attorney fees under this section." RULE 809.25(3)(a). "Whether an appeal is frivolous is a question of law." *Pokos*, 334 Wis. 2d 694, ¶20. "To award costs and attorney fees, an appellate court must conclude that the entire appeal is frivolous." *Id.* After reviewing the arguments on appeal, we cannot conclude that Knauf's entire appeal is frivolous. Therefore, we deny the motion for sanctions under RULE 809.25(3)(a).

Therefore,

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

IT IS FURTHER ordered that the motion for sanctions is denied.

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

Samuel A. Christensen
Clerk of Court of Appeals