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DISTRICT II

April 30, 2025

To:

Hon. Michael S. Gibbs
Circuit Court Judge
Electronic Notice

Terry E. Johnson
Electronic Notice

Desiree Bongers
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Lizabeth Rozum
Electronic Notice

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

2023AP1341

Kimberly Laura Penix v. Lizabeth Rozum (L.C. #2021CV6)

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

Lizabeth Rozum, pro se, appeals a judgment granting summary judgment in favor of Kimberly Laura Penix and awarding Penix a money judgment with costs and attorney's fees in a total amount of \$32,099.27. 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.

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

Rozum contracted with Penix, who is a licensed Wisconsin attorney, for representation in connection with a Winnebago County Circuit Court case and associated appeal. In January 2021, Penix commenced this lawsuit against Rozum, alleging that Rozum had failed to pay amounts due under the contract and had issued worthless checks to induce Penix to represent Rozum at trial. Rozum answered and counterclaimed, seeking \$100,000 for Penix's alleged legal malpractice in connection with the underlying litigation.

This case languished and was ultimately assigned to the Honorable Michael S. Gibbs. Following a flurry of pro se filings by Rozum, the circuit court entered an amended scheduling order that, among other things, set a July 11, 2023 trial date; required the parties' in-person attendance at a June 9, 2023 pretrial hearing; required expert witness disclosures by April 1, 2023; and required all motions to be filed by May 26, 2023, together with an index identifying the date of filing and status of the motion. Only motions listed on the index would be heard at the June 9 pretrial hearing.

On May 26, 2023, Penix filed a motions index identifying, as matters to be decided on June 9, a motion for summary judgment on her claims against Rozum and a motion for summary judgment on Rozum's counterclaim. Rozum did not disclose any expert witnesses to support her legal malpractice counterclaim. Rozum also did not file an index containing a list of motions to be addressed on June 9. Instead, Rozum made more than a dozen disjointed and frenetic filings before filing a March 17, 2023 notice that she would "no longer engage with the corruption of the Courts" and would "never step foot in WI."² Rozum nonetheless continued filing letters,

² Rozum lives in Arizona. Penix lives in Colorado.

exhibits, supplements, and other documents, including after the motions date set by the scheduling order.

Rozum did not appear as ordered at the pretrial hearing on June 9, 2023. Penix appeared pro se as to her own claims, and with counsel as to Rozum's legal malpractice counterclaim. The circuit court first took up Penix's motion for summary judgment on the counterclaim. The court determined that summary judgment was appropriate based on Rozum's failure to identify an expert witness, which was necessary to establish a breach of the standard of care.

Next, the circuit court addressed Penix's motion for summary judgment on her claims against Rozum. The court determined that, despite Rozum's multitude of filings, she had not properly responded to the summary judgment motion, nor had she materially rebutted Penix's evidentiary showing regarding nonpayment of the debt. Accordingly, the court concluded that Penix was entitled to summary judgment on her claims against Rozum.

Finally, the circuit court addressed Rozum's nonappearance. It concluded that Rozum had failed to appear as required and had failed to comply with the scheduling order. As sanctions, the court granted Penix's motion to strike Rozum's answer and counterclaim, and it concluded Penix was entitled to judgment for that reason as well. Rozum now appeals.

Rozum's briefing is long on grievance and short on legal analysis. As best we can understand the briefing, Rozum challenges the circuit court's jurisdiction, venue in Winnebago County, the propriety of the court's amended scheduling order, and the grant of summary judgment in favor of Penix. We could decline to address many of these issues as lacking adequate development. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Nonetheless, in light of Rozum's pro se status, we will address the issues as we

understand them. *See State ex rel. Wren v. Richardson*, 2019 WI 110, ¶25, 389 Wis. 2d 516, 936 N.W.2d 587 (noting that we construe pro se briefs to “make the most intelligible argument we can discern”).

Rozum first argues that the circuit court lacked personal and subject matter jurisdiction. As to the latter, a circuit court in this state is never without subject matter jurisdiction. *City of Eau Claire v. Booth*, 2016 WI 65, ¶¶14-16, 370 Wis. 2d 595, 882 N.W.2d 738. As to the former, personal jurisdiction must be raised either by responsive pleading or by a motion filed before a responsive pleading. WIS. STAT. § 802.06(2)(a)3. & (2)(b). Rozum has not established that she timely raised personal jurisdiction as an issue; she therefore waived any such objection. *See Studelska v. Avercamp*, 178 Wis. 2d 457, 462, 504 N.W.2d 125 (Ct. App. 1993); *see also* § 802.06(8).³

Next, Rozum challenges venue in Winnebago County. At a minimum, a portion of the legal services were rendered in Winnebago County, making venue there proper under WIS. STAT. § 801.50(2)(a). *See State ex rel. Webster Mfg. Co. v. Reid*, 177 Wis. 612, 616-17, 188 N.W. 67 (1922) (“[I]n the absence of circumstances indicating the contrary, where a breach of contract occurs it will be deemed to occur at the place where the contract is to be performed.”). In any event, improper venue does not constitute reversible error. *See* § 801.50(1) (“A defect in venue shall not affect the validity of any order or judgment.”).

³ Even if Rozum had objected to personal jurisdiction in her answer, the answer was stricken for her failure to comply with the circuit court’s amended scheduling order.

Rozum has failed to advance any basis to challenge the circuit court's amended scheduling order or its management of the case. The court was plainly empowered to set dates for discovery, dispositive motions, and expert witness disclosures. *See* WIS. STAT. § 802.10. The court was also empowered with authority to sanction Rozum for violations of its order. *See* WIS. STAT. § 805.03. Rozum offers no argument as to why sanctions under that statute (here, the striking of her answer and counterclaim) were improper for her generally undisputed violations of the scheduling order.

Lastly, Rozum appears to challenge the grant of summary judgment in Penix's favor on both of Penix's claims and on Rozum's counterclaim. Rozum's reply brief, though, appears to principally assert lack of jurisdiction, arguing it is not even necessary to reach the merits of the summary judgment issue. Having rejected Rozum's jurisdictional arguments, we are left with no real argument opposing the grant of summary judgment.⁴

In any event, summary judgment appears to have been appropriate. Rozum has not called into question the circuit court's conclusion that Penix's motion for summary judgment on her claims was adequately supported. Rozum also has not directed us to any evidentiary submission of hers opposing the motion. When a motion for summary judgment is made and properly supported, an adverse party "may not rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial." WIS. STAT. § 802.08(3).

⁴ We note Rozum also provides virtually no record citations for the extensive factual matters contained in her briefing, significantly complicating this court's task in an appeal that contains over 300 docket entries.

Summary judgment was also appropriate on Rozum’s counterclaim. “Expert testimony is generally necessary in legal malpractice cases to establish the parameters of acceptable professional conduct, given the underlying fact situation.” *Helmbrecht v. St. Paul Ins. Co.*, 122 Wis. 2d 94, 112, 362 N.W.2d 118 (1985). Rozum failed to identify an expert witness to support her legal malpractice claim pursuant to the amended scheduling order despite ample opportunity to do so.

Based on the foregoing,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals