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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Case No. 2016 AP 1887
Circuit Court Case No. 2015 CV 467

City of New Richmond,

Plaintiff-Respondent,

v.

Warren Wayne Slocum,

Defendant-Appellant,

BRIEF OF PLAINTIFF-RESPONDENT

Appeal from Judgment Entered August 8, 2016,
in the Circuit Court for St. Croix County,
The Honorable Edward F. Vlack Presiding

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STATEMENT OF ORAL ARGUMENT AND PUBLICATION

The Appellant, Warren Slocum ("Slocum"), has requested oral argument and publication. In accord with Wis. Stat. § 809.22, the Respondent, the City of New Richmond ("City"), submit that the Briefs of the parties will fully develop the limited arguments necessary to dispose of this Appeal. As such, oral argument will be of little or no value to the Court so as not to justify the additional expenditure of court time or cost to the parties to this Appeal.

In accord with Wis. Stat. § 809.23, this case does not meet the standards for publication. It will not establish a new rule of law. Instead, it will apply existing statutes and case law to the issues. Nor will it apply an established rule of law to a unique fact situation, significantly different from the facts considered in prior appellate decisions. Finally, it will not resolve any conflict between prior decisions. Nor will it contribute to legal literature by collecting case law or reciting legislative history. Furthermore, it will not decide a case of substantial or continuing public interest.

SUPPLEMENTAL STATEMENT OF CASE

Wis. Stat. § 809.19(1)(d) requires that an Appellant include a Statement of the Case in his Brief, consisting of a description of the nature of the case, its procedural status leading to the appeal, the disposition of the trial court, a statement of relevant facts and references to the record. Slocum intermingles his denominated Statement of the Case with portions of his argument and has inaccurately and incompletely set forth the status of the case. Accordingly, the City supplements Slocum's Statement as follows.

On January 29, 2015, Ms. Patricia Burke was at her residence at 1548-A Gunston Drive, New Richmond Wisconsin. (R. at 46, Trial Tr. 11:18-12:1, April 26, 2016.)[1] Her husband, Mike Burke, was at home sleeping because he was not feeling well. (*Id*. at 12:8-10.) At approximately 8:15 p.m. the doorbell started ringing while Ms. Burke was readying herself for bed and talking to her daughter via Skype (*Id*. at 12:1-19.) Ms. Burke decided she was not going to answer the doorbell given the time of night and the ringing eventually stopped. (*Id*.) After the ringing stopped, Ms.

[1] Citations to the Record in this brief are to the 3rd Amended Index of Court Record.

Burke's dog started viciously barking towards the window in Ms. Burke's daughter's bedroom. (*Id*. at 12:16-25.) Ms. Burke thought this was very strange and "started getting spooked." (*Id*. at 12:12-25.) At this point she exited her daughter's room, went into the kitchen area and the doorbell started ringing again; there was also pounding on the door and jiggling of the door knob which caused Ms. Burke to become very frightened. (*Id*. at 13:1-9.) The disturbance eventually stopped; again, Ms. Burke did not answer the door. (*Id*. at 13:7-9.)

For a third time, at approximately 10:00 p.m. the same disturbance began. (*Id*. at 13:10-12.) The doorbell started ringing and a person was pounding on the door and jiggling the doorknob. (*Id*. at 13:10-15.) At one point, Ms. Burke peeked around the corner to ensure that the deadbolt was still locked. (*Id.* at 13:16-19.) She was, "very, very scared. [she was] shaking and terrified actually that somebody was trying to get into – break into [her] apartment." (*Id*. at 13:20-22.)

Because Ms. Burke was afraid and did not know who was ringing the doorbell and pounding on her door, she called 911. (*Id.* at 14:16-19.) In the background of the 911 recording, a constant ringing of the doorbell can be heard for

over two minutes. (R. at 27 Ex. 2) The ringing was so intense that it was acknowledged by dispatch. (*Id*.) On the call, Ms. Burke indicates that she does not know who the person is with certainty, asks dispatch to please hurry on numerous occasions, and states that she is "too scared to go to the door." (*Id*.) When asked at the circuit court trial how Ms. Burke was feeling on the night of the incident she responded, "I was very scared. Terrified, actually." (R. at 46, Trial Tr. 27:5-6.)

It was later learned that Slocum was engaging in the aforementioned conduct when he was attempting service upon Ms. Burke's husband, Mike Burke, with regards to a tax matter involving the Township of Star Prairie. (*See* Appellant Br.) Slocum admitted that his attempt to serve Mr. Burke was near 10:00 p.m. (R. at 46, Trial Tr. 93:19-22, 103:19-20.) Slocum testified that he was required to serve the documents on Mr. Burke prior to January 31, 2015 but that he had not attempted service prior to the night of January 29, 2015. (*Id*. at 99:3-6, 104:16-18.) Slocum alleges in his brief that he had tried other methods of service; however, according to Slocum, Mr. Burke denied each occurrence of attempted service. (*Id*. at 104:8-15.) Despite being asked whether there were any additional details he wanted to offer regarding the

incident on at least twelve occasions by Judge Vlack, Slocum did not offer additional details at trial.[2] (*See Id.* at 100:22-108:24.)

When Ms. Burke was asked whether "unreasonable" in her response or "hyper-sensitive" she indicated, "Absolutely not." (*Id*. at 28:20-24.) When asked again whether her response was reasonable, she repeated that she believed that someone one was trying to break into her house and that her response was reasonable. (*Id*. at 29:10-18.) When asked what manner was particularly offensive, Ms. Burke indicated, "[r]inging the doorbell, the pounding on the door, the jiggling of the doorknob, the constant ringing- ding, ding, ding, ding, ding, ding, ding. That is excessive. The pounding on the door, the going around the home, peeking in the window in the background, aggressive behavior I believe unnecessary. [Slocum] went over and above." (*Id*. at 32:12-22.)

At trial, Ms. Burke identified three picture Exhibits.

[2] For instance, Slocum failed to detail the other alleged attempts he made at service and chose not to call Mr. Burke as a witness to testify regarding his alleged refusal to accept service. (*See generally* R. at 46, 100:22-108:24; R. at 45, Mot. Tr. 19:7-18 [where the Court ruled, with no objection from the City, that Slocum had the ability to testify as to why he was serving the documents on Mr. Burke]; *Id*. at 21:5-12 [where Slocum asks whether he could introduce past service attempts and Judge Vlack indicates he has not yet ruled on the issue]. The City's Motions in Limine (R. at 19) did not attempt to preclude this information and it was, in fact, never precluded.)

When the exhibits were moved to be admitted Slocum was asked whether he had any objections to the City of New Richmond's Exhibits. (*Id.* at 26:17-21.) Slocum's response was "No objection at all." (*Id.*) Exhibit 1 showed the latch on Ms. Burke's front door with a wood strip missing; the wood strip came off and can be seen on the photograph as being on the floor. (R. at 27 Ex. 1; R. at 46, Trial Tr. 16:1-16.) This wood strip was not removed from the door prior to January 29, 2017. (R. at 46, Trial Tr. 16:14-16.) Exhibits 3 and 4 were pictures taken looking outside of the window that Ms. Burke's dog was viciously barking towards and showing footprints outside the window in the snow. (R. at 27 Exs. 3, 4; R. at 46, Trial Tr. 16:17-21, 17:6-14.) These footprints were not present prior to January 29, 2015. (R. at 46, Trial Tr. 17:3-5, 15-17.)

The New Richmond Police Department issued a Citation to Slocum for Disorderly Conduct in violation of Ordinance No. 50-88 on January 30, 2015. (R. at 3.) The municipal trial was held before the Honorable Renee D. Keating on August 18, 2015. On September 3, 2015, Slocum appealed the judgment of the municipal court by completing and filing the Notice of Right to Appeal with the municipal

court. (R. at 2.) On September 4, 2015, Slocum filed a Petition for Waiver of Fees and Costs – Affidavit of Indigency via facsimile with the St. Croix County Circuit Court. (R. at 1.) The Final Pretrial was held April 18, 2016. (R. at 45.) The circuit court trial was held April 26, 2016 before the Honorable Edward F. Vlack. (R. at 46.) As a result of the testimony presented, Judge Vlack issued a written Order filed July 20, 2016 whereby Slocum was found to have violated the City of New Richmond's Municipal Ordinance Sec. 50-88(a)(1) of Disorderly Conduct. (R. at 28.) Slocum filed a Notice of Appeal with the circuit court on September 23, 2016. (R. at 33.)

ARGUMENT

1. The Appeal Should Be Dismissed For a Failure to Follow Appellate Procedure in Wis. Stat. § 809.19. In the Alternative, Slocum's Statemement of the Case and Statement of the Facts Should Be Disregarded to the Extent that there Was No Evidence Introduced at Trial to Support Slocum's Factual Assertions and Allegations.

Slocum's brief to this Court fails to make proper citations to the record and attempts to introduce new evidence that was not presented to the circuit court in support of his arguments. The briefing by Slocum is procedurally improper and the Court should dismiss the appeal in its entirety or, in

the alternative, must disregard any fact stated in Slocum's brief which was not presented to the lower court.

At trial, Slocum did not attempt to introduce any evidence about the specific methods he allegedly used to attempt service on Mr. Burke prior to the night of January 29, 2015, nor did he attempt to bring Mr. Burke in as a witness. (See R. at 46.) This evidence was not precluded by the City's Motions in Limine. (*See supra,* n. 2.) Despite Slocum's failure to introduce, or attempt to introduce such evidence at the circuit court, Slocum attempts to introduce the following facts for the first time in his brief:

> 1. "The recipient of the process service of legal documents is a clerk-treasurer in a rural township (Star Prairie)…" (Appellant Br. 2.)
>
> 2. "In order to avoid civil process service, for example, he even closed his office for several days…" (*Id*. at 2-3.)
>
> 3. Mr. Burke, "concocted an elaborate ruse" regarding Slocum's attempted service. (*Id*. at 3.)
>
> 4. Mr. Burke was a "powerful, well-connected local official." (*Id*.)
>
> 5. Mr. Burke was "well know, and well-liked by the local city police department…" (*Id*.)
>
> 6. "[L]ocal authorities, including the Chief of Police of New Richmond, were complicit in promoting the recipient's narrative of wrong

doing." (*Id.*)

Despite Judge Vlack asking whether Slocum had additional evidence on numerous occasions and giving Slocum the opportunity to bring in additional witnesses (i.e. Mr. Burke) there was no testimony surrounding these purported facts. The introduction of these facts would not have been precluded by the City's Motion in Limine. (*See supra*, n. 2.)

Wis. Stat. § 809.19(1)(d) indicates that an Appellant's brief must include,

> [a] statement of the case, which must include: a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the trial court; and a statement of facts relevant to the issues presented for review, with appropriate references to the record.

(emphasis added.) This Court is not to consider facts outside of the record "even though stated as such in the briefs." *Keplin v. Hardware Mut. Cas. Co.*, 24 Wis. 2d 319, 326, 129 N.W.2d 321 (1964). "Any and all factual matters referred to in the briefs which are not set forth in the complaint are disregarded." *Onderdonk v. Lamb*, 79 Wis. 2d 241, 249, 255 N.W.2d 507 (1977). Slocum's brief sections titled Statement of the Case and Statement of the Facts make few Record citations and no pinpoint citations. This is because most of the

facts that he includes, such as those listed above, were not introduced into evidence and are not a part of the record.

The fact that Slocum is proceeding *pro se* does not allow him additional latitude to circumvent procedural rules. Self-representation comes with the responsibility to comply with relevant rules of procedural and substantive law. *See Waushara County v. Graf,* 166 Wis.2d 442, 452, 480 N.W.2d 16 (1992). The right to proceed *pro se* does not grant the *pro se* litigant "'a license not to comply with relevant rules of procedural and substantive law.' " *Id.* (internal citation omitted). *Pro se* appellants are bound by the same rules that apply to attorneys and Slocum's failure to comply with those rules must not be overlooked by the Court. *See id.*

Furthermore, Slocum's arguments are underdeveloped and fall below even liberal thresholds for a *pro se* applicant. *See M.C.I., Inc. v. Elbin,* 146 Wis.2d 239, 244–45, 430 N.W.2d 366 (Wis. Ct. App. 1988)[3]. The court must not consider underdeveloped arguments. *Id*. Slocum fails to identify what facts of record support his claim, or where such facts may be found in the record. This Court should not

[3] See also *Slocum v. Star Prairie Twp.* where this exact language was used to describe Slocum's prior filings in the Wisconsin Court of Appeals. 2016 WI App 34, ¶ 7, 369 Wis. 2d 74, 879 N.W.2d 809 (unpublished, per curiam) (see N. 4).

search the record for evidence to support a party's argument. *See Stuart v. Weisflog's Showroom Gallery, Inc.*, 2006 WI App 109, ¶ 36, 293 Wis.2d 668, 721 N.W.2d 127.

Wisconsin Appellate Courts have repeatedly and specifically found that Slocum is an experienced litigator and admonished him regarding his failure to follow rules of appellate procedure. Prior Wisconsin Appellate Courts have found as follows[4]:

> We are very troubled by the vast amount of public resources expended on Slocum's matters that have occupied the court system for years. Slocum's frivolous and extensive filings are now distressingly common. This court, as well as the circuit court, has a very high caseload, and yet great patience has been shown to Slocum in the face of his barrage of filings. *We have been lenient in the face of Slocum's pro se filings that fail to conform to the rules of appellate procedure.* However, Slocum's abuse of the judicial system has the cumulative effect of clogging the processes of the courts and placing unwarranted burdens on judges and staff, to the detriment of other litigants having meritorious and deserving claims. We will not allow Slocum's endless filings to continue. Slocum's abuse of the judicial process must end.

[4] While some of the following excerpts are taken from unpublished opinions seemingly in violation of Wis. Stat. § 809.23(3), the City notes that the cases are not cited as precedent or authority but merely provided for informational purposes, which is allowed under the rule. *See Brandt v. Labor & Indus. Review Comm'n*, 160 Wis. 2d 353, 364, 466 N.W.2d 673 (Ct. App. 1991), *aff'd*, 166 Wis. 2d 623, 480 N.W.2d 494 (1992) ("[W]e note that Rule 809.23(3), Stats., is not a total gag rule… [t]he Rule does not purport to bar the citation of unpublished court of appeals decisions for other informational purposes.")

Slocum v. Star Prairie Twp., 2016 WI App 34, ¶ 13, 369 Wis. 2d 74, 879 N.W.2d 809 (unpublished, per curiam)(emphasis added).

> Furthermore, *Slocum is now an experienced litigator* and failure to conform to the requirements of Wis. Stat. Rule 809.19 regarding briefing on appeal may also result in sanctions including dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty or costs, or other action as the court considers appropriate. *See* Wis. Stat. Rule 809.83(2).

Id. at ¶ 15 (emphasis added).

> Slocum often provides no pin-point citation whatsoever for citations to legal authority, and insufficient record citations. These shortcomings have unnecessarily complicated our review in this and other appeals Slocum filed.

Id. at n. 3.

> We conclude further sanctions are also warranted, as repeated cautions and admonitions have proven ineffective to cease Slocum's vexatious and abusive conduct. *See Minniecheske v. Griesbach*, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Wis. Ct. App. 1991).
>
> Accordingly, the clerk of this court is instructed to return unfiled any document Slocum submits relating to any matter arising from, relating to, or involving Star Prairie Township's property tax assessments of Slocum's real property, until such time as Slocum provides the clerk of this court proof that all sanctions issued by this court against Slocum awarding costs, fees and reasonable attorney fees have been paid in full. Costs in the present case are awarded on appeal to Respondents.

Warren Slocum v. Star Prairie Twp. Bd., No. 2014AP1093, 2017 WL 831168, at *2 (Wis. Ct. App. Feb. 28, 2017)

Slocum fails to provide relevant record citations pursuant to Appellate Procedure and, in fact, most of the facts

he cites in his brief cannot be found on the record. As such, this appeal should be dismissed in its entirety and costs should be awarded given Slocum's long record of appellate filings and frequent admonitions regarding appropriate procedure. At a minimum, all facts that are not supported by the record must be stricken.

2. The Trial Court's Decision to Proceed With a Bench Trial was Appropriate.

Article I, Section 5 of the Wisconsin Constitution provides that "the right of trial by jury shall remain inviolate." However, that same section makes clear that "a jury may be waived by the parties in all cases in the manner prescribed by law." Wis. Const. Art. I, § 5. Wis. Stats. §§ 800.14(4) and 814.61(4), combined, is one example of how waiver may be effectuated. Wis. Stat. § 800.14(4) states:

> An appeal from a judgment where trial has been held shall be on the record unless, within 20 days after notice of appeal has been filed with the municipal court under sub. (1), either party requests that a new trial be held to the circuit court. The new trial shall be conducted by the court without a jury unless either party requests a 6-person jury trial and *posts the jury fee under 814.61 (4) within 10 days after the order for a new trial.*

(emphasis added.) Wis. Stat. § 814.61(4) states:

> JURY FEE. For a jury in all civil actions ... a nonrefundable fee of $6 per juror demanded to hear the case to be paid by the party demanding a jury within the time permitted to demand a jury trial. *If the jury fee is*

> *not paid, no jury may be called in the action, and the action may be tried to the court without a jury.*

(emphasis added.) The statutes clearly provide that the failure to pay a jury fee is a basis for finding waiver of the right to trial by jury. Because the venue of this case is St. Croix County, the time permitted to pay the jury fee is further dictated by St. Croix County Local Rules. The local rule states, "if the jury fee is not paid in a timely manner, the matter shall be a bench trial unless otherwise ordered by the assigned judge." St. Croix County Local Rule 213.01 (for civil actions) and 213.03 (ordinance actions).

A reasonable jury fee does not violate the right of trial by jury as guaranteed by the Wisconsin Constitution. *Phelps v. Physicians Ins. Co. of Wisconsin*, 2005 WI 85, ¶ 31, 282 Wis. 2d 69, 698 N.W.2d 643. The Court noted that, "[j]ury fees have been rather uniformly found to be compatible with a right to a jury trial." *Id.* (internal citations omitted). Furthermore, the Court quoted the following language as providing a rationale for such fees:

> The Constitution does not guarantee to the citizen the right to litigate without expense, but simply protects him from imposition of such terms as unreasonably and injuriously interfere with his right to a remedy in the law, or impede the due administration of justice.

Id. (internal citations omitted). Furthermore, "while a defendant has a right to trial by jury in a civil case, he has no vested right under art. I, sec. 5, to the manner or time in which that right may be exercised or waived, since these are merely procedural matters to be determined by law." *State ex rel. Prentice v. County Court*, 70 Wis.2d 230, 240, 234 N.W.2d 283 (1975).

Slocum filed a form Petition for Waiver of Fees and Costs – Affidavit of Indigency and Order – via facsimile with the Circuit Court on September 4, 2015, stating under oath that "because of poverty, I am unable to pay filing and service fees." (R. at 1, Petition for Waiver Sept. 4, 2015.) This Petition did *not* request or make any reference to a waiver of jury fees. (*Id*.) The Honorable R. Michael Waterman signed the Order on September 30, 2015, finding that "The action may be commenced without payment of filing fees… The sheriff shall serve all necessary documents without payment of service fees…" (*Id*.)

Subsequent to Judge Waterman signing the Order regarding filing fees, the case was transferred to the Honorable Edward F. Vlack. (R. at 7, 8.) On October 6, 2015, Nancy Bierbrauer, Judicial Assistant to Judge Vlack, penned

a letter to Slocum stating the "…Order that you filed is only for filing fees. In regard to your request to have jury fees waived, Judge Vlack will only consider an original Petition for Waiver of Fees and Costs (not a fax or photocopy)." (R. at 9 (emphasis and parenthesis in original).)

At the final pretrial conference on April 18, 2016 where the issue was discussed as to whether the trial would be to the bench or to a jury, Judge Vlack referenced the October 6, 2015 letter, again reiterating

> …what you filed was only requested regarding filing fees. If you wanted to have a waiver of the jury fee, you had to submit an original request…. If you think it [waiver of jury fee] was satisfied before, you need to show me that – I need to see that. So, right now we're at a trial to the Court.

(R. at 45, Mot. Tr. 29:23-30:20, April 18, 2016.) Slocum has never produced evidence that, prior to April 18, 2016, he filed an original Petition for waiver of jury fees, or that he had ever requested a waiver of jury fees in any manner.

On April 22, 2016, four days before trial was scheduled, Slocum filed another form Petition and Order for Waiver of Fees and Costs – Affidavit of Indigency and Order *via facsimile* with the Circuit Court, stating under oath that "I am unable to pay filing and service fees and all fees

associated w/ jury trial." (R. at 23, Petition for Waiver, April 22, 2016.) This order was never signed. (*Id.*)

Prior to proceeding with trial on April 26, 2016, the Court once again addressed the issue of whether the matter was to be a court or jury trial. On the morning of trial Judge Vlack opened with the following statement: "…One of the questions regarding this is if this was trial to the Court or a Jury and it was my determination yesterday that there had never been a jury fee paid or a cost petition." (R. at 46, Trial Tr. 1:9-12.) The record further goes on to provide:

> THE COURT: The file reflects that on October 6th there was a letter sent to you by Nancy Bierbrauer, the Judicial Assistant, copy to Ms. Bannink, stating that the Petition of Waiver for Fees that you filed was only filing fees. Second paragraph said quote, in regard to request to have jury fees waived, Judge Vlack will only consider an original Petition for Waiver of Fees and Costs, not a fax or photocopy. You may file that with the Clerk of Court's office, end of quote.
>
> MR. SLOCUM: Well, I just filed an original.
>
> THE COURT: And that's untimely…
> …
>
> THE COURT: Under 800.14(4) it indicates that an Appeal from the Municipal Court is conducted by the Court unless there's a request for jury fee - jury trial fee paid under 814.61(4) within 10 days after the Order for a new trial…
> …
>
> THE COURT: Under 814.61(4) that must be paid within the 10 days and that's paid to the St. Croix County Clerk of Court. And again, Mr. Slocum, the letter to you October 6th indicated that that had to be submitted to the Clerk of Court with a separate, original

> Petition for Waiver. Considering the one you filed Friday and today is untimely.
> …
>
> THE COURT: Had it been submitted within 10 days of the letter, I would have accepted it.

(*Id.* at 4:3-12, 5:17-20, 6:1-11.)

There is no question that Slocum did not pay the jury fee; the issue relates to whether or not he appropriately filed for a waiver of such fees. The first time that Slocum filed a Petition for waiver of *jury fees* was on April 22, 2016, four days before trial. (*See* R at 1, 23.) This was filed via facsimile, without an original signature. (R. at 23.) This is despite being sent a letter on October 6, 2015 indicating that a Petition with an original signature is necessary. (R. at 9.) Pursuant to Wis. Stat. § 804.14(4) the jury fee must be paid within 10 days after the order for a new trial. Furthermore, pursuant to St. Croix County Local Rules 213.01 and 213.03, if a jury fee is not paid in a timely manner, the matter shall be a bench trial. The judge correctly and reasonably determined that a petition for waiver of jury fees, filed a mere four days before trial, and in blatant disregard of the Court's letter dated October 6, 2016, was not timely. As such, the ruling that the trial was to be a bench trial should be upheld.

3. The Court Did Not "Inequitably Construct Evidence

and Testimony."

a) The Trial Court's Rulings on the City's Motions in Limine were not Erroneous.

"The purpose of [a] motion in limine is to obtain an advance ruling on admissibility of certain evidence." *State v. Wright,* 2003 WI App 252, ¶ 37, 268 Wis.2d 694, 673 N.W.2d 386. "[Appellate court's] review a circuit court's decision to admit or exclude evidence under an erroneous exercise of discretion standard." *Martindale v. Ripp,* 2001 WI 113, ¶ 28, 246 Wis.2d 67, 629 N.W.2d 698. Applying this standard, appellate courts must uphold the circuit court's decision if it examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion. *Id.*

Wis. Stat. § 904.01 defines relevant evidence as, "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Generally, relevant evidence is admissible and irrelevant evidence is not admissible. Wis. Stat. § 904.02. However, even though evidence may have some probative value, if that probative value is outweighed by the likelihood

of confusion of the issues, delay, or waste of time, the evidence can and should be excluded. Wis. Stat. § 904.03.

Here, Slocum was charged with violating the City of New Richmond's municipal ordinance 50-88(a)(1) for Disorderly Conduct. The applicable elements are as follows:

> (a) *Disorderly conduct prohibited*: No person within the City shall:
>
> 1. In any public or private place engage in violent, noisy, riotous, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct which tends to cause or provoke an immediate disturbance of public order or tends to annoy or disturb any other person.

The City filed a Motion in Limine dated March 29, 2016 that included thirteen items. (R. at 19.) All thirteen items were sought to be excluded on the grounds that each was irrelevant, would confuse the issues, be a waste of time, and result in delay. (*Id.*)

This matter was heard at the final pretrial conference on April 18, 2016. (R. at 45.) When Slocum was given the opportunity to be fully heard on the each of the Motions in Limine, he failed to provide to the Court why the information sought to be excluded was relevant. The judge allowed Slocum to be heard on each of the thirteen Motions in Limine and appropriately applied Wis. Stats. §§ 904.01, 904.02, and

904.03 when coming to his rulings to exclude certain evidence.

For instance, with regards to Motion in Limine No. 1 the Judge stated: "At the time of trial, unless I'm given a good reason why something that happened after January 29th is relevant, that's not going to come in." (R. at 45, Mot. Tr. 8:6-8.) With regards to Motion in Limine No. 2 the Judge stated: "Unless you can tie it in, it's not going to come in." (*Id*. at 10:7-8.) As to Motion in Limine No. 4 the Judge stated: "Well, I don't see any relevance at this point, but again, if you have something specific. But right now I don't see the relevance." (*Id.* at 17:1-3.) Despite repeatedly being asked for the relevance of all evidence sought to be excluded in the Motions in Limine, Slocum was not able to provide such information.

Slocum fails to outline which Motion in Limine rulings that he takes issue with. He makes bald conclusions that evidence should have been admitted that, "would have identified and explained the actual context and circumstances of the case." (Appellant Br. 4.) He also argues that, "[b]y excluding evidence regarding the circumstances and context of the case, the local judge erred." (*Id*. at 5.)

Slocum does make reference to any specific Motion in Limine that he believes was in error through the following statement, "For example, both the City's Police Chief, and the intended recipient of the legal documents have established histories of misconduct and corruption in office that was disallowed as evidence by the local judge." (Appellant Br. 4.) First, there was no exclusion from Slocum being allowed to present evidence that Mr. Burke, "the intended recipient of the legal documents," had a history of misconduct or corruption. (*See* R. at 19, 45.) The remaining portion refers, by methods of deduction, to Motion in Limine No. 3. Motion in Limine No. 3 precluded Slocum from talking about the City of New Richmond Chief's allegedly "checkered career" due to relevance. As to this one example, Slocum does not argue why the ruling was contrary to the law. Slocum made no showing at the pretrial conference or at the trial of what this evidence would have shown or how this evidence would have been relevant to whether or not Slocum committed disorderly conduct on January 29, 2015. (*See* R. at 45, 46.)

Other than this *one example*, Slocum does not indicate which rulings he is appealing. Slocum does list two factual allegations that would arguably have been excluded as a

result of the City's Motion in Limine.[5] While it is not believed a response is necessary as Slocum has not indicated that he appeals the exclusion of these alleged facts, they will be addressed below. These two factual allegations are as follows:

> 1. Police later "threatened [Slocum] with actual arrest, if additional attempts were made to perform the civil process service." (Appellant Br. 3)
>
> 2. Police later "repeatedly and consistently refused to perform the civil process service [Slocum had] subsequently paid them to perform." (Appellant Br. 3)

Both of these alleged factual allegations relate to the City's Motion in Limine No. 1 and were arguably precluded from admission due to rulings on this Motion. Slocum made no argument at the April 18th, 2016 hearing regarding why these specific facts were relevant to whether or not disorderly conduct was committed. (R. at 45, Mot. Tr. 2:23-9:5.) Slocum also never attempted to introduce any facts or prove relevancy at the time of trial. (*See* R. at 45, Mot. Tr.) Finally, as previously stated, other than citing these facts in his Brief, Slocum makes no arguments that these facts were improperly

[5] These uncited factual allegations were included in Slocum's Statement of the Case, however, Slocum made no argument in his Appellate Brief that these facts were improperly excluded.

excluded as a result of the Motions in Limine.

The Court of Appeals must not consider underdeveloped arguments. *See M.C.I., Inc. v. Elbin,* 146 Wis.2d at 244-45. Judge Vlack's rulings on the motions in limine were a product of allowing arguments from both sides. After hearing the argument, Judge Vlack conducted his analysis using appropriate application of the statutes and legal standards to reach reasonable conclusions. His rulings were not erroneous and should be upheld.

b) The Introduction of Evidence by the City was not Contrary to the City's Motions in Limine and Slocum's Failure to Object at Trial Waives Any Such Argument to the Contrary.

Slocum states that, "While the Plaintiff received the local judge's approval to constrain evidence and testimony in the case (R. at 44, 48)[6], the Plaintiff violated its own constraints, by providing evidence outside of its own limitations and constraints, in the form of exhibits involving actions that took place well after the time limits imposed by the local judge." (Appellant Br. 2.) Slocum does not identify which Motions in Limine he contends were violated. As such,

[6] Because a 3rd Amended Index was filed after Slocum's Appellate Brief, the citations listed here are to the 2nd Amended Index and do not correspond to the citations listed in this brief. Corresponding entries for the 3rd amended appendix are 45, 49.

on this basis alone Slocum's argument fails as the Court is not required to search the record nor consider undeveloped arguments. With that being said, the City assumes Slocum is referring to Motion in Limine No. 1 which requests, "an order directing Mr. Slocum that all references to any events that occurred after the incident on January 29, 2015 are prohibited." (R. at 19.)[7]

Ms. Burke testified as to three pictures which the City assumes are the subject of Mr. Slocum's appeal, Exhibits 1, 3, and 4. When these exhibits were moved for admittance at trial, Slocum was asked whether he had any objections to any of the City's Exhibits, his response was, "[n]o objection at all." (R. at 46, Trial Tr. 26:17-21.) The Exhibits are pictures showing the broken wood strip from the latch on the door and footprints in the snow outside of Ms. Burke's daughter's window, all of which were not present prior to the incident in question. (*See id*. at 16:1-21, 17:6-14).

The City's introduction of these Exhibits and associated testimony was not contrary to the Motions in Limine granted. The City's Motion in Limine requested that,

[7] This assumption comes not from argument at trial or Slocum's Appellate Brief, but instead from Slocum's arguments at the pretrial hearing. (R. at 45, Mot. Tr. 11:13-23.)

"Mr. Slocum be precluded, in limine, from any mention of the aforementioned items…" (R. at 19.) The Motion sought exclusion of testimony from Mr. Slocum and Slocum never sought a reciprocal Motion in Limine. Thus, testimony produced from the City cannot be in violation of the Motions in Limine. Second, and more importantly, Mr. Slocum clearly did not object to the Exhibits at the time testimony was given. Wis. Stat. § 901.03 provides that:

> **(1) Effect of erroneous ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and
>
> (a) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
>
> (b) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

Based on Slocum's failure to object at trial and his jovial acceptance of such Exhibits, Wis. Stat. § 901.03 is dispositive. Slocum waived this argument. Furthermore, Slocum has not argued that a substantial right of the party was affected. The court must not consider underdeveloped arguments. *See M.C.I., Inc. v. Elbin,* 146 Wis.2d at 244–45. Slocum clearly was made aware of such evidence and had

been provided these pictures well before trial at the circuit court. (R. at 45, Mot. Tr. 11:13-19.)

Finally, all of Judge Vlack's rulings on the Motions in Limine were subject to modification if relevancy was able to be shown at trial.[8] *Farfaras v. Citizens Bank & Trust of Chi.*, 433 F.3d 558, 565 (7th Cir.2006) (citing *Luce v. United States*, 469 U.S. 38, 41–42, 105 S. Ct. 460, 463 (1984)). The City clearly showed the relevancy of the photographs when they were admitted.

The photographs corresponded directly with the facts cited by Ms. Burke—that the door handle was violently "jiggled" and that her dog violently barked at the window when circumstantial evidence of the footprints shows that Mr. Slocum was walking around the house to peer into the windows of the apartment. (R. at 46, Trial Tr. 12:16-25, 13:10-15, 16:22-17:2.) Ms. Burke testified that prior to the incident the wood on the door was not splintered and that the footprints were not around her apartment. (*Id*. at 16:14-16, 17:3-5, 17:15-17.) She indicated that she took these pictures

[8] For instance, see the transcript from the Motion hearing where Judge Vlack indicated, "At the time of trial, unless I'm given a good reason why something that happened after January 29th is relevant, that's not going to come in." (R. at 45, Mot. Tr. 8:6-8.) Judge Vlack gave a similar ruling on numerous occasions. (*See* R. at 45.)

the morning following the incident. (*Id*. at 17:6-6-10, 46:19-3.) Despite being asked on numerous occasions if Slocum had additional evidence to offer, he never disputed that he walked around the house peering in Ms. Burke's windows. (*See id*.) He also never disputed the vigor at which Ms. Burke alleged Slocum shook her doorknob. (*Id*.)

As such, the evidence introduced was not contrary to the City's Motion in Limine and, even if so, any such argument was waived when Slocum failed to object to such evidence at trial.

4. The Trial Court's Findings of Fact Were Not Clearly Erroneous and Should be Upheld.

Slocum contends that Judge Vlack failed to take into account the hyper-sensitives of Ms. Burke in this case because Ms. Burke improperly believed that "ringing a doorbell equates with an attempt to forcefully break into her home, when simple orderly, civil process service was instead being properly and responsibly engaged in." (Appellant Br. 6.)

The record shows that Slocum's conduct was more intrusive than a simple ringing of a doorbell. Ms. Burke testified that Slocum was ringing the doorbell repetitiously

for minutes, pounding on the door, violently jiggling the doorknob, walking around the house peeking in windows, and that this all occurred after 10:00 p.m. (R. at 46, Trial Tr. 13:10-15, 16:1-17:17.) This testimony was corroborated by Slocum's own admissions, photographs, and a simultaneous 911 recording, all which were presented at trial. While Slocum may contend that he merely rang the doorbell, credibility of the conflicting testimony must be weighed by the trier of fact who "is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness's testimony." *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶ 19, 257 Wis. 2d 421, 651 N.W.2d 345. Here, Judge Vlack, as the trier of fact, gave greater weight to Ms. Burke's testimony in determining that Slocum's conduct would disturb an individual of normal sensibilities.

Judge Vlack, as the fact finder, found the facts as follows:

> Mr. Slocum acknowledged that he was attempting to serve process on Michael Burke at his personal residence at 10:00 p.m. on January 29, 2015. According to Ms. Burke, Mr. Slocum repetitively rang the Burke's doorbell. Mr. Burke was asleep at the time, while Ms. Burke was awake. According to the testimony, Mr. Slocum shook the handle of the door and walked around the house peering in windows. Ms. Burke eventually called 911, believing someone was trying to break into the house. At trial, photographs were submitted that

> showed damage to the door as well as foot prints outside the home.

(R. at 28, Decision and Order July 20, 2016.)

The Court must not set aside the circuit court's finding of facts unless they are "clearly erroneous." Wis. Stat. § 805.17(2) and (4). When reviewing the trial court's factual findings, appellate courts are to "search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court could have reached but did not." *See Noble v. Noble*, 2005 WI App 227, ¶ 15, 287 Wis.2d 699, 706 N.W.2d 166. Appellate courts are to assume the trial court made the findings of fact necessary to support its decision, and we accept any such implicit findings if supported by the record. *See Town of Avon v. Oliver*, 2002 WI App 97, ¶ 23, 253 Wis.2d 647, 644 N.W.2d 260. Judge Vlack's findings of fact were not clearly erroneous.

Finally, Judge Vlack's application of the law to the facts was appropriate. Judge Vlack found that:

> While action of serving process is not in and of itself unlawful, the manner one uses to serve process can subject one to legal consequences. In this case, in summary, it was late in the evening, dark out, and the actions of Mr. Slocum clearly disturbed and frightened Ms. Burke. This Court concludes that the City of New Richmond has met its burden.

(R. at 28, Decision and Order July 20, 2016.)

The test for determining sufficiency of the evidence is whether "a reasonable trier of fact could be convinced of the defendant's guilt to the required degree of certitude by the evidence which it had a right to believe and accept as true." *City of Milwaukee v. Wilson*, 96 Wis. 2d 11, 21, 291 N.W.2d 452 (1980) (citing *Lock v. State*, 31 Wis.2d 110, 114-15, 142 N.W.2d 183 (1966)). The task as a reviewing court is limited, "to determining whether the evidence presented could have convinced a trier of fact, acting reasonably, that the appropriate burden of proof had been met." *City of Milwaukee*, 96 Wis. 2d at 21. While appellate courts are to review the application of law *de novo*, they are able to benefit from the lower court's analysis. *See City of Muskego v. Godec*, 167 Wis.2d 536, 545, 482 N.W.2d 79 (1992).

The appropriate burden for violation of a municipal ordinance, which is closely tied to a similar criminal statute, is proof by clear, satisfactory, and convincing evidence. *City of Milwaukee*, 96 Wis. 2d at 22 (citing *Madison v. Geier*, 27 Wis.2d 687, 693, 135 N.W.2d 761 (1965)).

Under New Richmond Municipal code, an individual is guilty of disorderly conduction when he "engage[s] in violent, noisy, riotous, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to tends to cause or provoke an immediate disturbance of public order or tends to annoy or disturb any other person." Sec. 50-88(a)(1). After hearing the testimony and weighing the evidence, Judge Vlack determined that Slocum's conduct violated New Richmond's Ordinance and that it "clearly disturbed and frightened Ms. Burke." (R. at 28, Decision and Order July 20, 2016.)

Slocum appears to challenge the sufficiency of the evidence by claiming that Judge Vlack "ignor[ed] the fact that there is a 'hypercritical individual' involved in this case." (Appellant Br. 6.) However, it is clearly established in the record that Judge Vlack was able to weigh Ms. Burke's testimony regarding Slocum's pounding on the door and jiggling of the door knob against Slocum's argument that he merely rang the doorbell. The judge determined that the evidence at trial established that Slocum's conduct was disturbing and that the City met its burden of clear, satisfactory, and convincing proof to find Slocum in violation

of Sec. 50-88(a)(1) of the City of New Richmond Municipal Code.

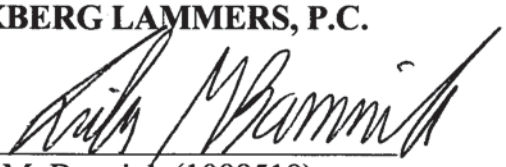
Slocum fails to make any argument in his brief that the factual findings by the trial court were clearly erroneous. He merely states that Judge Vlack did not consider the fact that the victim could have been hyper sensitive. Such a bald assertion, without additional facts or legal arguments for support, is not sufficient to satisfy the heavy burden of showing that the circuit court's finding of facts were clearly erroneous; and thus, this court must not set aside those finding of facts regarding Ms. Burke's sensitivities and should affirm the ruling of the circuit court based on the discretion of the circuit court to weigh the credibility of the witnesses.

CONCLUSION

Based upon the foregoing, the City of New Richmond respectfully requests that the Court either dismiss this appeal or affirm the ruling of the Circuit Court in its entirety.

Dated this 27th day of March, 2017.

ECKBERG LAMMERS, P.C.

By: 

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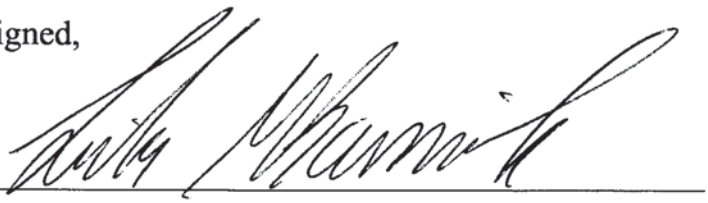
CERTIFICATION OF BRIEF FORMAT

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 6821 words.

Dated: March 27, 2017

Signed,



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CERTIFICATION OF ELECTRONIC FILING

I hereby certify that:

I have submitted an electronic copy of this brief of Plaintiff-Respondent, excluding the appendix which complies with the requirements of Wis. Stat. §§ 809.19(12) and (13).

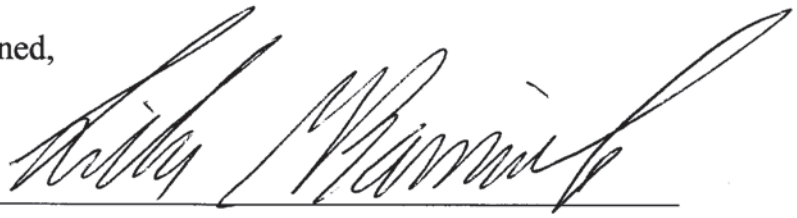
I further certify that:

The electronic brief of Plaintiff-Respondent is identical in content and format to the printed form of the brief of Plaintiff-Respondent filed as of this date.

A copy of this certificate has been served with the paper copies of the brief and filed with the Court and served on Warren Wayne Slocum, Defendant-Appellant.

Dated: March 27, 2017

Signed,



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CERTIFICATION OF MAILING

I certify that Plaintiff- Respondent's Brief was provided to a 3rd-party commercial carrier on March 27, 2017, for delivery to the Clerk of the Court of Appeals pursuant to Wis. Stat. § 809.80(3)(b)2. I further certify that the Brief was correctly addressed and the delivery fee was paid.

I further certify that Plaintiff- Respondent's Brief was provided to a 3rd-party commercial carrier on March 27, 2017, for delivery to Warren Wayne Slocum, Defendant-Appellant. I further certify that the Brief was correctly addressed and the delivery fee was paid.

Dated: March 27, 2017

Signed,

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