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05-17-2022
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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2021AP2220

BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBIN LAVANCE PERKINS,

Defendant-Appellant.

APPEAL FROM DECISION AND ORDER DENYING
MOTION FOR RELIEF FROM JUDGMENT,
THE HONORABLE VALERIE BAILEY-RIHN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

INTRODUCTION	5
ARUGMENT	8
I. This Court should dismiss Perkins’s appeal because his opening brief does not comply with Wis. Stat. § (Rule) 809.19(1) and (2).	8
II. Alternatively, the circuit court correctly concluded that Perkins had no reasonable prospect of success on the merits of the eviction.....	11
A. Standard of review.....	11
B. The circuit court correctly concluded that Perkins had no meritorious defense to the eviction judgment.....	12
CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases

<i>Keplin v. Hardware Mut. Cas. Co.</i> , 24 Wis. 2d 319, 129 N.W.2d 321 (1964)	8
<i>Larry v. Harris</i> , 2007 WI App 132, 301 Wis. 2d 243, 733 N.W.2d 911, abrogated on different grounds, 2008 WI 81, 311 Wis. 2d 326, 752 N.W.2d 279	11, 12
<i>LeMere v. LeMere</i> , 2003 WI 67, 262 Wis. 2d 426, 663 N.W.2d 789.....	11
<i>Riley v. Town of Hamilton</i> , 153 Wis. 2d 582, 451 N.W.2d 454 (Ct. App. 1989).....	8, 10
<i>State v. Bons</i> , 2007 WI App 124, 301 Wis. 2d 227, 731 N.W.2d 367...	9, 10
<i>State v. Butler</i> , 2009 WI App 52, 317 Wis. 2d 515, 768 N.W.2d 46.....	9, 10
<i>State v. Pettit</i> , 171 Wis. 2d 627, 492 N.W.2d 633 (Ct. App. 1992).....	8
<i>State v. Shaffer</i> , 96 Wis. 2d 531, 292 N.W.2d 370 (Ct. App. 1980).....	10
<i>Tam v. Luk</i> , 154 Wis. 2d 282, 453 N.W.2d 158 (Ct. App. 1990).....	8
<i>Tufail v. Midwest Hosp., LLC</i> , 2013 WI 62, 348 Wis. 2d 631, 833 N.W.2d 586.....	5, 11, 12
<i>Waushara Cnty. v. Graf</i> , 166 Wis. 2d 442, 480 N.W.2d 16 (1992)	10

Statutes

Wis. Stat. § 806.07	6, 13
Wis. Stat. § (Rule) 809.19(1).....	5, <i>passim</i>

Wis. Stat. § (Rule) 809.19(1)(a)	8
Wis. Stat. § (Rule) 809.19(1)(c)–(d)	8
Wis. Stat. § (Rule) 809.19(1)(e)	8, 9, 10
Wis. Stat. § (Rule) 809.19(2).....	5, <i>passim</i>
Wis. Stat. § (Rule) 809.19(2)(a)	9
Wis. Stat. § (Rule) 809.23(1)(a)	6
Wis. Stat. § (Rule) 809.83(2).....	8, 9, 10

INTRODUCTION

Robin Perkins seeks to overturn the circuit court's denial of his motion for relief from his eviction judgment. The circuit court denied Perkins's motion by determining, in part, that he had no reasonable prospect of success on the merits. The circuit court's decision is both supported by case law and the undisputed record.

Perkins's eligibility to lease the apartment was predicated on his status as a graduate student with the University of Wisconsin-Madison ("UW-Madison" or "the University"). When Perkins lost his status as a UW-Madison student, the University was within its rights to terminate his lease. These lease terms were unambiguous and were thus binding. *Tufail v. Midwest Hosp., LLC*, 2013 WI 62, ¶¶ 25–26, 348 Wis. 2d 631, 833 N.W.2d 586. Consequently, Perkins had no reasonable prospect of success on the merits of the eviction action.

Therefore, the Court should affirm the eviction.

Further, this Court need not even address the merits because Perkins's opening brief does not comply with the rules of appellate procedure. This Court could affirm on that basis alone.

ISSUES PRESENTED

Should this Court dismiss Perkins's appeal and affirm the circuit court because his opening brief does not comply with the requirements in Wis. Stat. § (Rule) 809.19(1) and (2)?

The circuit court did not address the issue.

This Court should answer yes.

Alternatively, did the circuit court correctly conclude that Perkins had no reasonable prospect of success on the merits and deny his motion for relief from judgment?

The circuit court did not address the issue.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unwarranted because the issues can be adequately addressed in the parties' briefs. Publication is unwarranted because this case meets none of the criteria for publication in Wis. Stat. § (Rule) 809.23(1)(a).

STATEMENT OF THE CASE

Perkins signed a lease with University Apartments for the graduate student apartment at 104 Eagle Heights, Apt. 1 with a lease term from July 1, 2021–June 30, 2022. (R. 3:1.)

The lease included several eligibility requirements, including that “[o]ccupancy of the Eagle Heights 100s area apartments is limited to University of Wisconsin-Madison single graduate students.” (R. 3:1.) Further,

To be “eligible” for occupancy at University Apartments, a graduate student must carry a minimum of two credits per academic year semester unless the student is a dissertator, then three credits per academic year semester are required. An undergraduate student or approved special student must carry a minimum of six credits per academic year semester to become and remain eligible.

(R. 3:1.)

Under the lease, if Perkins failed to maintain his eligible status his lease was subject to termination.

If Lessee is no longer eligible for University Apartments as defined in Item 2 of this Lease, this Lease may be terminated by the Division upon a minimum of 14 days written notice to the Lessee and Lessee agrees to vacate the premises within the notice period specified.

(R. 3:3.)

Perkins lost his eligible status for housing at Eagle Heights. (R. 6:1.) On November 10, 2021, the University officially suspended Perkins, which terminated his status as

a UW-Madison student. (R. 6:1.) Five days later, the University sent Perkins a letter via certified mail informing him that University Apartments was terminating his lease effective December 1, 2021. (R. 6:1.) The letter was received on November 18, which was 14 days before the lease termination date. (R. 6:2.) Also, the University affixed a copy of the termination notice on the door of the apartment. (R. 2:3.)

Following the termination of his lease, Perkins did not surrender the apartment, holding over after termination. (R. 2:3.)

Ten days later, the University filed an eviction to remove Perkins. (R. 2:3.) Perkins did not appear at the hearing and default judgment was entered against him. (R. 14:1.)

Later that day, Perkins submitted a written motion to reopen the judgment. (R. 17:1.) Perkins's motion was denied for failure to demonstrate a reasonable prospect of success on the merits. (R. 18:1.) Two days later, Perkins submitted a demand for trial. (R. 19:1.) The circuit court construed Perkins's motion to reopen and demand for trial as a motion for relief from a judgment under Wis. Stat. § 806.07. (R. 21:1.) The circuit court denied this motion finding Perkins has no reasonable prospect of success on the merits, because he "is not currently a student at the UW and so is not eligible to live at Eagle Heights in the graduate student housing." (R. 21:2.)

Additionally, the circuit court found that Perkins failed to demonstrate excusable neglect for failing to appear at the zoom eviction hearing. (R. 21:2.) His contention "that 'the information was provided not by the Court' [wa]s insufficient to constitute a reasonable basis for excusable neglect." (R. 21:2.) Perkins was personally served with the information for the zoom hearing. (R. 21:2.) "The statutes are clear that personal service of the summons and complaint and other

documents by a process server complies with the statutes.”
(R. 21:2.)

ARUGMENT

I. This Court should dismiss Perkins’s appeal because his opening brief does not comply with Wis. Stat. § (Rule) 809.19(1) and (2).

This Court should dismiss Perkins’s appeal and summarily affirm the circuit court without reaching the merits of his appeal because of his clear failure to comply with the requirements in Wis. Stat. § (Rule) 809.19(1) and (2). *See* Wis. Stat. § (Rule) 809.83(2).

Wisconsin Stat. § (Rule) 809.19(1) sets forth this Court’s requirements of an appellant’s brief. Some of the requirements are a table of contents, a table of cases, a statement on oral argument and publication, and a statement of the case (including procedural status and statement of facts, among other things). Wis. Stat. § (Rule) 809.19(1)(a), (c)–(d).

A brief must also have an argument that includes citations to authorities, statutes, and parts of the record. Wis. Stat. § (Rule) 809.19(1)(e). This Court has held that it will ignore arguments that do not cite legal authority or the record. *See State v. Pettit*, 171 Wis. 2d 627, 643, 492 N.W.2d 633 (Ct. App. 1992); *Tam v. Luk*, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990). Indeed, “it is not the duty of th[e] court to sift and glean the record in extenso to find facts which will support an assignment of error.” *Keplin v. Hardware Mut. Cas. Co.*, 24 Wis. 2d 319, 324, 129 N.W.2d 321 (1964). Doing “no more than . . . stat[ing] the proposition without any elaboration” is considered unacceptable briefing. *Riley v. Town of Hamilton*, 153 Wis. 2d 582, 588, 451 N.W.2d 454 (Ct. App. 1989).

In addition, an appellant's brief shall include "a short appendix" that, at least, must include "the findings or opinion of the circuit court" and "limited portions of the record essential to an understanding of the issues raised." Wis. Stat. § (Rule) 809.19(2)(a). Because a "deficient appendix place[s] an unwarranted burden on" the reviewing court, a violation of Wis. Stat. § (Rule) 809.19(2)—by failing to file an appendix altogether—is a sufficient basis to dismiss the appeal or impose costs on the party. *State v. Bons*, 2007 WI App 124, ¶ 25, 301 Wis. 2d 227, 731 N.W.2d 367 (holding that lack of appendix triggers Wis. Stat. § (Rule) 809.83(2) penalties); Wis. Stat. § (Rule) 809.83(2) (allowing dismissal as a penalty for non-compliance).

Perkins's opening brief has many shortcomings. His brief does not contain a table of cases or a statement on oral argument and publication as required by Wis. Stat. § (Rule) 809.19(1). Most importantly, although his brief contains a section entitled "argument," he does not develop any legal arguments at all. An appellant must develop legal argument through case citation, comparison, and legal reasoning. *State v. Butler*, 2009 WI App 52, ¶ 17, 317 Wis. 2d 515, 768 N.W.2d 46. Here, Perkins's argument section comprises a total of three sentences. In section I., he writes: "Case was dismissed because defendant did not file a brief." In section II., Perkins states in the heading: "EVEN IF Appellant WAS not able to submit A brief ON plaintiffs', THIS COURT SHOULD ADOPT THE "Ignorance of Law" DOCTRINE SO Appellant CAN Be returned to his contractual agreement with the Plaintiff." Following the section II. heading, Perkins states: "Homeless, broke, college student." And his argument sections lack any citations to authorities, statutes, and parts of the record as required by Wis. Stat. § (Rule) 809.19(1)(e). Under any reasonable view, Perkins's opening brief contains no development through case citation, comparison, or legal

reasoning. *Butler*, 317 Wis. 2d 515, ¶ 17. Consequently, Perkins's opening submission is unacceptable briefing. *See Riley*, 153 Wis. 2d at 588.

Additionally, Perkins's brief does not include an appendix as required by Wis. Stat. § (Rule) 809.19(2). Without that integral document, this Court's "full understanding of the case is put on hold until [this Court] can ferret it out in the record." *Bons*, 301 Wis. 2d 227, ¶ 27 (Brown, J., concurring). Combined with a brief that does not cite the record or legal authority, that task becomes nigh-impossible. The failure to comply with rules of appellate procedure "is grounds for dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate." Wis. Stat. § (Rule) 809.83(2); *see also State v. Shaffer*, 96 Wis. 2d 531, 545–46, 292 N.W.2d 370 (Ct. App. 1980).

Finally, Perkins may contend that this Court should overlook his failures to comply with the appellate rules because he is pro se. Not so. "Pro se appellants must satisfy all procedural requirements, unless those requirements are waived" *Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). And this Court cannot waive the Wis. Stat. § (Rule) 809.19(1)(e) requirements, because "almost any of the briefing requirements may be waived, except the basic requirements that the brief state the issues, provide the facts necessary to understand them, and present an argument on the issues." *Id.* (citation omitted). Given that Perkins's brief fails to present facts supported by the record and a developed argument, this Court should ignore his "arguments" entirely.

Without any legal argument presented by Perkins in his opening brief, and a lack of appendix, this Court can and should affirm the circuit court through "dismissal of the appeal," regardless of Perkins's pro se status. Wis. Stat. § (Rule) 809.83(2).

II. Alternatively, the circuit court correctly concluded that Perkins had no reasonable prospect of success on the merits of the eviction.

The circuit court entered default judgment against Perkins. He filed two post-judgment motions that the court construed as a motion for relief from judgment. The circuit court denied it on the ground that Perkins has no reasonable prospect of success on the merits, because he was no longer a student at the University and so he was not eligible to live in graduate housing. On appeal, Perkins must show that the circuit court erroneously exercised its discretion in declining to reopen the case. Given the lack of legal argument in his brief, Perkins completely fails to meet his burden. This Court should affirm.

A. Standard of review.

“A [trial] court’s order denying a motion for relief under sec. 806.07 will not be reversed on appeal unless there has been a clear [erroneous exercise] of discretion. An appellate court will not find an [erroneous exercise] of discretion if the record shows that the [trial] court exercised its discretion and that there is a reasonable basis for the court’s determination.” *Larry v. Harris*, 2007 WI App 132, ¶ 20, 301 Wis. 2d 243, 733 N.W.2d 911 (alterations in original) (citation omitted), abrogated on different grounds, 2008 WI 81, ¶ 20, 311 Wis. 2d 326, 752 N.W.2d 279. “A circuit court erroneously exercises its discretion if it makes an error of law or neglects to base its decision upon facts in the record.’ [This Court] decide[s] ‘any questions of law which may arise during our review of an exercise of discretion independently of the circuit court’” *LeMere v. LeMere*, 2003 WI 67, ¶ 14, 262 Wis. 2d 426, 663 N.W.2d 789 (citations omitted).

Also, the interpretation of a contract, such as a lease, presents a question of law, which the Court reviews *de novo*. *Tufail*, 348 Wis. 2d 631, ¶ 22.

B. The circuit court correctly concluded that Perkins had no meritorious defense to the eviction judgment.

On a motion for relief from judgment, the court may reasonably exercise its discretion by granting relief to a movant who has a factually meritorious defense to the judgment in question. *Larry*, 301 Wis. 2d 243, ¶ 20. Likewise, it is reasonable for the court to deny relief when a movant has no factually meritorious defense to the judgment in question. Such is the case here, where the circuit court reasonably denied Perkins’s motion for relief on the basis that he had no prospect of success on the merits of the eviction.

Perkins has no meritorious defense for holding over beyond his lease. When Perkins lost his student status, he lost his contractual rights to live at 104 Eagle Heights, Apt 1. The lease is unambiguous on this point. “[U]nambiguous contract language controls contract interpretation.’ Where the terms of a contract are clear and unambiguous, [the Court] construe[s] the contract according to its literal terms.” *Tufail*, 348 Wis. 2d 631, ¶¶ 25–26 (citation omitted).

Perkins’s lease unambiguously states under its eligibility requires that “[o]ccupancy of the Eagle Heights 100s area apartments is limited to University of Wisconsin-Madison single graduate students.” (R. 3:1.) The lease clearly states under section 5.D.:

5. LESSEE’S PERSONAL AND STUDENT STATUS

....

- D. If Lessee is no longer eligible for University Apartments as defined in Item 2 of this Lease, *this Lease may be terminated by the Division upon a minimum of 14 days written notice to the Lessee* and Lessee agrees to vacate the premises within the notice period specified.

(R. 3:3) (emphasis added).

The University acted within its rights and properly terminated Perkins's lease. When Perkins lost his UW-Madison student status on November 10, 2021, Perkins lost his eligibility to live at 104 Eagle Heights, Apt 1. (R. 6:1.) In response, the University terminated his lease pursuant section 5.D. (R. 6:1.) The University provided appropriate notice of the termination by both certified mail and posting notice on the property. (R. 6:2; 2:3.) And the notice period the University provided was 14 days or longer. (R.6:2; 2:3.)

Pursuant to the lease terms and the undisputed record, Perkins's holdover at 104 Eagle Heights, Apt. 1 was unlawful. Thus, he had no reasonable prospect of success on the merits. And Perkins does not argue that the circuit court erred, let alone whether it erred in law or in fact. Nothing Perkins has put forward even hints at the circuit court erroneously exercising its discretion in holding that he had no prospect of success on the merits. The circuit court therefore properly denied his motion for relief from a judgment under Wis. Stat. § 806.07.

CONCLUSION

For the reasons described above, the Court should affirm the circuit court.

Dated this 17th day of May 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 2530 words.

Dated this 17th day of May 2022.

Electronically signed by:

Beauregard W. Patterson
BEAUREGARD W. PATTERSON
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 17th day of May 2022.

Electronically signed by:

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