COURT OF APPEALS
DECISION
DATED AND RELEASED

January 30, 1997

NOTICE

No. 95-3290

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ROBERT L. GUCK,

Plaintiff-Appellant,

v.

GARY MCCAUGHTRY, EUGENE NIMMER, and CINDY HILT,

Defendants-Respondents.

APPEAL from an order of the circuit court for Dodge County: JOHN R. STORCK, Judge. *Affirmed in part; reversed in part and cause remanded with directions*.

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

EICH, C.J. Robert L. Guck appeals from an order dismissing his complaint in a personal injury action against Gary McCaughtry, the warden at the Waupun Correctional Institution, and Cindy Hilt, a WCI nursing supervisor, and denying his request to amend the complaint.

Guck, a WCI inmate, is a diabetic with multiple end-stage complications arising from the disease. One of those complications is neuropathy, a deterioration of the nervous system that left him with little or no sensation in his legs and feet. At the time of his injuries, he had been placed in a part of the prison known as the Self-Care Unit, in a bed so located that his feet came into contact with a steam radiator. As a result of that contact—which he could not feel—he suffered serious and severe burns to his feet and legs.

Guck sued McCaughtry and Hilt,[1] claiming that his injuries were caused by (1) McCaughtry's violation of duties imposed upon him under the safe-place law and (2) McCaughtry's and Hilt's negligence in placing Guck in a bed located adjacent to a radiator that lacked a protective cover. Considering cross-motions for summary judgment, the trial court ruled that: (1) the safe-place law did not create any cause of action against either McCaughtry or Hilt;[2] (2) McCaughtry is immune from liability on Guck's allegations of general negligence because his responsibilities with respect to prison operations are broadly stated and highly discretionary; and (3) the negligence claim against Hilt must be dismissed because it is undisputed that she had no duties or responsibilities relating to Guck's placement in the Self-Care Unit. As indicated, the court also denied Guck's request to amend his complaint—presumably to add as a defendant the person responsible for his placement in the Self-Care Unit.

---

[1] Guck also sued Eugene Nimmer, WCI's director of buildings and grounds, but he has not appealed Nimmer's dismissal from the action.

[2] Hilt was not named in the safe-place-law portions of Guck's complaint, and we do not know why the trial court included her in this portion of its decision. On appeal, while Guck states at one point in his brief that the safe-place standard of care "appears also to apply to Defendant Hilt since at the time of the accident she was the ... [m]anager [of the unit in which Guck was injured]," he does not develop any legal arguments on the point. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis.2d 239, 244-45, 430 N.W.2d 366, 369 (Ct. App. 1988). In any event, "agents or supervisory personnel" have been uniformly held not to be "owners" within the meaning of the safe-place law. *See* ***Ruppa v. American States Ins. Co.***, 91 Wis.2d 628, 643, 284 N.W.2d 318, 324 (1979). As Guck's own evidence establishes, Hilt was employed at WCI as a "Nursing Supervisor 2"; while she was the "Administrative manager of the ... Health Services Unit," she was immediately responsible to a "Nursing Supervisor 3," and eventually, through the WCI chain of command, to McCaughtry.

We affirm the dismissal of the negligence claims, concluding that because neither McCaughtry nor Hilt had any duties or responsibilities with respect to the instrumentalities or conditions causing Guck's injuries, they could not be negligent as a matter of law. We also conclude, however, that the trial court erred in dismissing the safe-place-law portion of Guck's complaint for failure to state a claim for which relief may be granted.[3] Under Wisconsin's "notice-pleading" rules, Guck's complaint gives fair notice of the claim based on allegations that WCI is a public building within the meaning of the statute. And whether, as a matter of fact and law, it is such a building and whether McCaughtry may be considered its "owner" are questions implicating factual issues that are not properly resolved on a summary-judgment motion. We therefore reverse the portion of the court's judgment dismissing the safe-place claim against McCaughtry and remand to the trial court for such further proceedings as, in its discretion, it deems appropriate. Finally, because the record does not indicate that the trial court exercised its discretion in denying Guck's request to amend his complaint, a remand is necessary on this issue as well to permit the court to consider the request on its merits.

I. Standard of Review

Summary judgment is appropriate in cases where there is no genuine issue of material fact and the moving party has established his or her entitlement to judgment as a matter of law. ***Germanotta v. National Indem. Co.***, 119 Wis.2d 293, 296, 349 N.W.2d 733, 735 (Ct. App. 1984). In deciding the motion, the trial court first considers the pleadings to determine whether the complaint states a claim for which relief may be granted and whether the answer states a defense. ***State Bank v. Elsen***, 128 Wis.2d 508, 511, 383 N.W.2d 916, 917 (Ct. App. 1986). If they do, the evidentiary facts submitted by the parties are examined to determine first whether the moving party has made a *prima facie* case for summary judgment and, if so, whether the opposing party's affidavits and proofs raise an issue of material fact. ***Id.*** If a material factual issue exists, summary judgment is improper. It is only where there is no dispute as to the material facts or inferences that the court considers the legal

[3] While, as indicated, the trial court granted summary judgment on the issue, its decision makes it clear that the court decided the matter solely on the first element of the summary-judgment methodology: whether the complaint states a claim for which relief may be granted. *See* ***State Bank v. Elsen***, 128 Wis.2d 508, 511, 383 N.W.2d 916, 917 (Ct. App. 1986). We discuss the scope of our review of such decisions below. *See infra* note 6.

issues raised by the motion. ***Id***. Our review of the trial court's decision is *de novo*, and we apply the identical methodology. ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987).

II. Safe-Place Law

So far as is relevant to this action, the safe-place law, § 101.11(1), STATS., requires "every owner of ... a public building ... [to] maintain such ... public building as to render the same safe."[4] The term "safe," as so used, is defined to mean "such freedom from danger to the life, health, safety or welfare of employe[e]s or frequenters, or the public, or tenants ... as the nature of the ... public building[] will reasonably permit." Section 101.01(2)(h), STATS., 1993-94.

The safe-place-law claim stated in Guck's complaint is based on allegations that WCI is a "public building," and that McCaughtry, as the "person in control," had a duty to maintain it in a safe condition, which he breached. McCaughtry's answer denied the allegations and he moved for summary judgment dismissing the complaint on grounds, among others, that, as a matter of law, a state prison is not a public building within the meaning of the law. The trial court held the safe-place law inapplicable, although on grounds other than those argued by McCaughtry.

Because the trial court never considered the complaint's "public-building" allegations—or, beyond that, whether the evidentiary materials submitted by the parties raised disputed factual issues, or stated *prima facie* claims or defenses, with respect to that claim[5]—we are left with a limited

---

[4] The law also applies to "employer[s]" and "place[s] of employment." Guck concedes, however, that WCI is not a "place of employment" within the meaning of the law. He argues that the law applies to McCaughtry on the basis that the prison is a "public building" and that McCaughtry has "control or custody" over such building.

[5] Nor do we know whether, and if so to what extent, the evidentiary materials submitted by the parties on the summary-judgment motion relate to the "public-building" issue. As indicated, the trial court did not consider any such materials in arriving at its decision, and the parties, in their briefs on appeal, have not referred us to any portions of the record either supporting or negating WCI's status as a public building within the meaning of the safe-place law. It is a long-standing rule that a party offering depositions,

appellate issue: whether Guck's complaint stated a safe-place cause of action against McCaughtry as the "owner" of a "public building" within the meaning of the law.[6]

Taking the latter first, McCaughtry, citing ***Flynn v. Chippewa County***, 244 Wis. 455, 12 N.W.2d 683 (1944), renews the argument he advanced below: that, as a matter of law, the safe-place law does not apply to jails or, by implication, to prisons. In ***Flynn***, a county-jail inmate was injured when he fell down the stairs leading to a basement furnace room under the portion of the jail devoted to the sheriff's residence; one of the issues in the case was whether the inmate could state a safe-place-law claim against the county under the "public building" provisions of § 101.11(1), STATS. ***Id***. at 456, 12 N.W.2d at 683. The supreme court did not, as McCaughtry's argument suggests, hold that the Chippewa County Jail was not a public building *per se*. Rather, the court concluded that "[t]he portion of the jail in which the injury occurred was not maintained as a public building" because it was not maintained for the use of either the public or the inmates of the jail. ***Id***. at 458, 12 N.W.2d at 684.

In a later case, ***Lealiou v. Quatsoe***, 15 Wis.2d 128, 112 N.W.2d 193 (1961), the court characterized ***Flynn*** as representing one of two "fundamental[ly] different approaches" to construing the "public building"

(..continued)
adverse examinations or other evidentiary materials in support of, or in opposition to, a motion for summary judgment must specify the particular portions of the materials on which he or she relies, ***Commercial Discount Corp. v. Milwaukee Western Bank***, 61 Wis.2d 671, 678, 214 N.W.2d 33, 36 (1974), and the failure to do so generally bars their consideration on appeal. ***In re Cherokee Park Plat***, 113 Wis.2d 112, 120, 334 N.W.2d 580, 584 (Ct. App. 1983).

[6] The initial question on a summary-judgment motion is the same as that on a § 802.06(2), STATS., motion to dismiss: whether the complaint states a claim upon which relief may be granted. ***Prah v. Maretti***, 108 Wis.2d 223, 228, 321 N.W.2d 182, 185 (1982). The test is: taking the facts as true, construing the complaint liberally, and giving the plaintiff the benefit of all inferences, dismissal is warranted only if it is "quite clear" that under no conditions can the plaintiff prevail. ***Heinritz v. Lawrence University***, 194 Wis.2d 606, 610-11, 535 N.W.2d 81, 83 (Ct. App. 1995); ***Joyce v. County of Dunn***, 192 Wis.2d 699, 704, 531 N.W.2d 628, 630 (Ct. App. 1995). Wisconsin is a "notice-pleading" state: "fair notice" of a claim is all that is required in a pleading; ascertaining its precise factual basis is left to discovery. ***Hertlein v. Huchthausen***, 133 Wis.2d 67, 72, 393 N.W.2d 299, 301 (Ct. App. 1986).

provisions of the safe-place law: the view that no safe-place duty exists where "the building, as a whole or that part of the building where the accident happened, was not ... maintained as a public building." ***Id.*** at 131, 112 N.W.2d at 195. Discarding the ***Flynn*** approach, the ***Lealiou*** court said that the better view, also supported by a line of cases, is one that employs a two-step process: (1) "apply[ing] the phrase `public building' to the building as a whole ... [to] determine ... whether the structure [i]s a public building"; and (2) "if so, then ... determin[ing] the owner's duty to the particular plaintiff either to construct or to repair or to maintain the particular location in a safe condition as the nature of that location would reasonably permit." ***Id***. at 132, 112 N.W.2d at 195.

We revisited the question most recently—albeit briefly—in ***Henderson v. Milwaukee County***, 198 Wis.2d 747, 543 N.W.2d 544 (Ct. App. 1995), where we rejected an argument that the safe-place law was inapplicable to the Milwaukee County House of Correction because it was not open to the public. Our reading of ***Henderson*** leads us to conclude that we never considered the issue on its merits in that case, but relied instead on the county's answer to the complaint where it admitted that it was "an ... owner of a public building" within the meaning of the law. ***Id***. at 753 n.4, 543 N.W.2d at 547. And while we quoted ***Lealiou***'s criticism of the ***Flynn*** rationale, stating that it "support[ed] Henderson's contention that the safe-place statute applies to a stairway on the grounds of the House of Correction," we never analyzed—or even mentioned—the language of § 101.01(2)(g), STATS., 1993-94, which defines the term "public building."[7] ***Id.*** at 754, 543 N.W.2d at 548.

We thus do not see ***Henderson*** as either expanding or revitalizing ***Flynn***, or as limiting ***Lealiou***. Indeed, the net result of all this judicial activity is that, after ***Lealiou***, whatever force ***Flynn*** once may have had for the proposition that a jail is not a public building as a matter of law has been wholly dissipated. We consider, therefore, that the methodology adopted in ***Lealiou***—"first determining whether the structure is a public building and then determining the owner's particular duty to the plaintiff," ***Lealiou***, 15 Wis.2d at 133, 112 N.W.2d at 195—governs resolution of this issue.

---

[7] The statute provides that, with exceptions not relevant here, a "public building" "means any structure, including exterior parts ... used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants." Section 101.01(2)(g), STATS., 1993-94.

Considering Guck's safe-place-law allegations in this light—and under the rules applicable to such an inquiry which we have discussed above—we conclude that his complaint was not subject to dismissal for failure to state a claim with respect to the "public building" issue.

We next consider whether McCaughtry may be considered an "owner" within the meaning of the law. It is well established that "agents or supervisory personnel of the principal owner" of a building are not themselves "owners" for safe-place-law purposes. ***Ruppa v. American States Ins. Co.***, 91 Wis.2d 628, 643, 284 N.W.2d 318, 324 (1979). The supreme court has also said, however, that whether a particular person may be considered an owner is a fact-dependent inquiry—one "hinge[ing] on such facts as possession, control, dominion or supervision," and that the problem in a given case "is to determine how much control or supervision constitutes *de facto* ownership." ***Luterbach v. Mochon, Schutte, Hackworthy, Juerisson, Inc.***, 84 Wis.2d 1, 8-9, 267 N.W.2d 13, 16 (1978).[8]

[8] In ***Luterbach v. Mochon, Schutte, Hackworthy, Juerisson, Inc.***, 84 Wis.2d 1, 267 N.W.2d 13 (1978), the question was easily resolved. The plaintiff, an employee of a general contractor, was injured on a construction site and sought to assert a safe-place-law claim against the architect. The court rejected the claim based on "the limited nature of the architect's supervisory duties as set forth in the owner-architect contract." ***Id.*** at 9-10, 267

(..continued)
N.W.2d at 17.

In "employment" cases—where safe-place liability is sought not against an owner but against an employer—the supreme court has held:

> [T]he duty of complying with [the safe-place law] is on the employer, here the corporate employer. It cannot be delegated to or placed upon ... officers or employees. Their liability must rest upon common-law failure to exercise ordinary care toward an employee to whom, under the circumstances, they owed a duty—not upon the increased standard of care that the safe-place law imposes on an employer.

Pitrowski v. Taylor, 55 Wis.2d 615, 627-28, 201 N.W.2d 52, 58 (1972) (footnote omitted).

McCaughtry's position is that the issue is controlled by ***Holzworth v. State***, 238 Wis. 63, 298 N.W. 163 (1941), a case that, though almost sixty years old, involved the same definition of "owner" as is in force today.[9] In that case, a young man injured at Camp Randall stadium during a University of Wisconsin football game sued both the state and the board of regents, asserting claims under the safe-place law. McCaughtry characterizes ***Holzworth*** as holding that, even though the individual regents "clearly were `officers' who had control and custody of [the] stadium," the court dismissed the plaintiff's safe-place claims against them. We disagree with that characterization. The issue before the ***Holzworth*** court was not whether the regents were "owners" under the statute because of the custody and control they exercised over the stadium. Rather, it was whether the enactment of the safe-place law should be considered the state's consent to be sued for acts for which it otherwise would be immune, and the court concluded that it should not. ***Id***. at 67-68, 298 N.W. at 165. With respect to the regents, the court said only that "the trial court correctly held that in any event the Board of Regents was not liable." ***Id***. at 68, 298 N.W. at 165. The only explanation advanced by the ***Holzworth*** court for its ruling is an unexplained citation to ***Sullivan v. Board of Regents of Normal Schs.***, 209 Wis. 242, 244 N.W. 563 (1932)—a case holding only that because the board of regents was "merely an arm or agency of the state," it was cloaked with the same defenses and immunities as the state itself. ***Id***. at 245, 244 N.W. at 564.

As with the public-building issue, McCaughtry's status as an "owner" involves a fact-laden and problematic inquiry into whether the nature of his "control, dominion and supervision" of the institution is such that he may be considered its *de facto* owner under § 101.01(2)(e), STATS., 1993-94. *See* ***Luterbach***, 84 Wis.2d at 9, 267 N.W.2d at 16. Neither issue has been litigated, for, as we have noted, the parties and the trial court treated the issue as one of law.

It may be that, at trial or in further pretrial proceedings in the trial court, Guck will not be able to put forth sufficient facts to establish that Waupun is a public building—or that McCaughtry is its "owner" within the meaning of the safe-place law. At this stage of the proceedings—and on this record—

[9] Section 101.01(13), STATS., 1939, provided that "[t]he term `owner' shall ... include every person ... state ... and other public or quasi-public corporations as well as any manager ... officer, or other person having ... control or custody of any ... public building ...." The identical language appears in § 101.01(2)(e), STATS., 1993-94.

however, his allegations to that effect are not subject to dismissal under the foregoing rules.

We are left with little choice, then, but to reverse and remand on the safe-place-law issue, leaving it to the parties, and the sound discretion of the trial court, whether to proceed to trial on this claim or to seek its resolution in further pretrial motion proceedings.[10]

III. McCaughtry's Negligence

As indicated, Guck claimed that McCaughtry[11] was negligent in allowing Guck's bed to be placed where it was and in failing to see to it that the steam radiator adjacent to Guck's bed—and others elsewhere in the prison—was shielded. The trial court ruled that McCaughtry was immune from liability with respect to those claims because they involved "discretionary," as opposed to "ministerial," acts.

Section 893.80(4), STATS., states that no action may be maintained against public agencies or employees "for acts done in the exercise of legislative, quasi-legislative, judicial, or quasi-judicial functions." The statutory terms "quasi-legislative" and "quasi-judicial" have been recognized as synonymous with "discretionary acts." ***Kara B. v. Dane County***, 198 Wis.2d 24, 54, 542 N.W.2d 777, 790 (Ct. App. 1995), *aff'd*, 205 Wis.2d 140, 555 N.W.2d 630 (1996). Thus, a public officer is immune from suit where the act or acts complained of are "discretionary," as opposed to merely "ministerial," and the terms have been discussed and applied in several cases.

Generally, a discretionary or quasi-legislative or quasi-judicial act involves the exercise of judgment and discretion. A nonimmune "ministerial" act, on the other hand, is one where the duty is "`absolute, certain and

---

[10] In their briefs to this court, the parties do not argue questions of governmental or other forms of immunity with respect to Guck's safe-place-law claim. Their immunity arguments are limited to the negligence issue, which we discuss in Part III.

[11] We consider Guck's negligence claim against Hilt in Part IV.

imperative, involving merely the performance of a specific task', and `the time, mode and occasion for its performance' are defined `with such certainty that nothing remains for the exercise of judgment and discretion.'" ***Id***. (quoted source omitted).[12]

Guck supports his argument that McCaughtry's responsibilities as warden of the prison fit the above definition of ministerial duties by paraphrasing a dozen or so paragraphs culled from a twenty-four-page "Mission Statement [of] Goals and Objectives" of the Wisconsin Department of Corrections, stating, among other things, that the Department will "[p]rovide a safe environment for inmates," "[e]stablish ... maintenance standards in all institutions," "[e]nsure staff are trained to perform their duties," and "[d]eliver health services in a manner consistent with principles of professional practice and legal requirements." The argument appears to be that if McCaughtry had followed those—and, presumably, other—procedures with respect to the placement of Guck's bed and provision of a shield for the radiator, Guck would not have been injured. He claims that McCaughtry was negligent in failing to do so, and that such negligence caused his injuries.

The listed departmental "goals and objectives" are, as the name suggests, broadly written statements of policy to be implemented by the various managers and wardens in the performance of their duties in correctional facilities around the state. They are similar in nature—and in breadth—to the duties specifically assigned to prison wardens by statute:

---

[12] There are two other instances in which immunity does not attach: (1) "`[w]here there exists a known present danger of such force that the time, mode and occasion for performance is evident with such certainty that nothing remains for the exercise of judgment and discretion,'" ***Kimps v. Hill***, 187 Wis.2d 508, 513, 523 N.W.2d 281, 284 (Ct. App. 1995), *aff'd*, 200 Wis.2d 1, 546 N.W.2d 151 (1996); and (2) where the public officer's challenged decision involves the exercise of nongovernmental discretion—although this exception has been applied only in "medical discretion" cases. ***Linville v. City of Janesville***, 174 Wis.2d 571, 584-85, 497 N.W.2d 465, 471 (Ct. App. 1993), *aff'd*, 184 Wis.2d 705, 516 N.W.2d 427 (1994). We discuss the first exception below. As to the second, Guck has not disputed Hilt's affidavit statement that she had no involvement in any medical care or treatment provided to him.

> The warden ... of each state prison shall have charge and custody of the prison and all lands, belongings, furniture, implements, stock and provisions and every other species of property within the same or pertaining thereto. The warden ... shall enforce the regulations of the department for the administration of the prison and for the government of its officers and the discipline of its inmates.

Section 302.04, STATS.

We do not believe these broadly stated goals and standards represent the type of duties that may be characterized as "ministerial"—duties which are so "absolute, certain and imperative ... that nothing remains for judgment or discretion." ***Lister v. Board of Regents***, 72 Wis.2d 282, 301, 240 N.W.2d 610, 622 (1976). In ***Larsen v. Wisconsin Power & Light Co.***, 120 Wis.2d 508, 518-19, 355 N.W.2d 557, 562-63 (Ct. App. 1984), we considered supervisory duties stated in substantially similar terms to be wholly discretionary.[13] The

---

[13] In ***Larsen v. Wisconsin Power & Light Co.***, 120 Wis.2d 508, 355 N.W.2d 557 (Ct. App. 1984), the plaintiffs were relatives of a woman who had been asphyxiated by a motel-room space heater. Among others, they sued two employees of the hotel inspection office of the Wisconsin Department of Health and Social Services—the man who inspected the motel heater in question and his supervisor. We concluded that both were immune from liability—the inspector because "[t]he timing of inspection, and even the decision to inspect this particular heater, was left to the exercise of his discretion," and the supervisor, Roy Clary, because his duties were generally stated and supervisory in nature:

> Clary ... was obligated to supervise and train [the inspector] in regard to space heater inspection. The manner of supervision and training was entirely discretionary. Clary's job description included, among other things, "[s]upervision of section's program of hotels ... licensure, inspection and evaluation ... [analysis of] section's operating procedures and ... staff's reports ... [inspection of] licensed facilities in company with field staff ... to evaluate new equipment or procedures" and evaluation of staff performance. This job description imposes no specific duty regarding space heater inspection that could constitute a ministerial duty.

Id. at 517-18, 355 N.W.2d at 562. We also considered the Department's "general mission," which was to

supreme court reached a similar result on similar facts in ***Kimps v. Hill***, 200 Wis.2d 1, 546 N.W.2d 151 (1996). The plaintiff in that case was injured when a standard—the pole of a volleyball net—in a college gym separated from its base and fell on her foot. ***Id***. at 6, 546 N.W.2d at 154. She sought to hold the school's safety officer, among others, liable for her injuries, and he claimed immunity. Noting that he was aware of a similar incident in the past, the plaintiff argued that the safety officer's job description, which required him to "`[i]nvestigate all incidents and take action to correct the condition or procedure that caused the accident,'" created a ministerial duty, once he was aware of a prior incident, to ensure the proper repair of the standards. ***Id***. at 14, 546 N.W.2d at 157. The supreme court rejected the argument, citing the ***Lister*** definition of "ministerial," (..continued)

> "administer and enforce the rules and the laws relating to the public health and safety in hotels ... ascertain and prescribe what alterations, improvements or other means or methods are necessary to protect the public health and safety therein [and to] prescribe rules and fix standards ...."

Id. at 518, 355 N.W.2d at 563 (quoted source omitted). We said,

> This general mandate ... made neither Clary nor [the inspector] liable for space heater safety at the ... Motel. The stated and laudable goal of public safety does not convert the discretionary elements of regulatory enforcement into a ministerial act for which Clary and [the inspector] could be held liable.

Id. at 518-19, 355 N.W.2d at 563.

and concluded that "[t]he `time, mode and occasion' for performing an investigation of the [earlier] accident and determination of the appropriate corrective action to be taken remained totally within [the safety officer]'s judgment and discretion." ***Id.*** at 15, 546 N.W.2d at 157-58.

We reach a similar conclusion here. Guck has not established that McCaughtry violated any ministerial duty with respect to the claimed causes of Guck's injuries.[14]

IV. Hilt's Negligence

Guck argues that Hilt, as the manager of WCI's Health Services Unit, was responsible for the overall operation of the unit and had a ministerial duty to coordinate medical and related staff "to provide quality health care ... in an efficient and effective manner,"[15] which she violated by "[a]llowing a diabetic

---

[14] Guck argues briefly that the "known danger" exception to the immunity rule should apply to defeat McCaughtry's defense. As we noted earlier, *supra* note 12, even if the alleged breach of duty is not "ministerial," as the cases define the term, immunity may still be denied when a "known present danger of such force" exists that the necessity for the performance of some act is "`evident with such certainty that nothing remains for the exercise of judgment and discretion.'" ***Linville***, 174 Wis.2d at 587, 497 N.W.2d at 472 (quoting ***C.L. v. Olson***, 143 Wis.2d 701, 717, 422 N.W.2d 614, 620 (1988)). The defendant's appreciation of the danger and the obvious and unequivocal need to act on it create the "ministerial" duty.

As indicated in ***Linville***, in order for this exception to apply, the defendant must have known of the danger. There is no evidence that McCaughtry—or Hilt—had any knowledge either of the placement of Guck's bed near the radiator or, as Guck claimed, of an earlier incident in which an uncovered radiator burned someone else. Guck's claim in this regard is based on the affidavit of two long-time prison nurses who recalled a "long-ago" incident in which an inmate was similarly burned. As respondents point out, however, the nurses' estimates establish that the incident occurred well before either Hilt or McCaughtry came to Waupun. Such allegations do not contradict the affidavits of both Hilt and McCaughtry that they were not personally familiar with the radiators in the Self-Care Unit, nor did they have any responsibility or duty to be so informed or any knowledge of past radiator-burn incidents. Guck has not established the application of the "known danger" exception.

[15] With respect to Hilt's duties, Guck summarizes several entries from a lengthy document listing some thirty-eight "major goals" of her position—including coordinating prison medical staff "to provide quality health care," directing "the follow-up and follow-

with severe neuropathy to be placed in a bed with a significant likelihood of burn injuries."

It is undisputed that the Health Services Unit is separate from the Self-Care Unit where Guck was injured. The Health Services Unit is a clinic providing medical care to Waupun inmates; the Self-Care Unit is a residential facility located elsewhere in the building. Hilt, a registered nurse, manages the clinic and also provides health care to clinic patients. She did not provide care to Guck prior to his injury. Like all other prison residential areas, the Self-Care Unit is supervised by the associate warden in charge of security.

There is, in short—and as the trial court determined—no evidence indicating that Hilt had anything to do with Guck's assignment to the Self-Care Unit, much less to a particular bed in that unit. The trial court properly granted summary judgment dismissing Guck's action against her.

V. Guck's Request to Amend His Complaint

At the oral arguments to the trial court on the parties' cross-motions for summary judgment, the respondents put forth many of the same arguments they advance on this appeal—that neither McCaughtry nor Hilt had any ministerial duty with respect to the conditions giving rise to Guck's injuries, and, particularly, that Hilt's job responsibilities were unrelated to the unit where Guck was injured or his placement in that unit. At the conclusion of the hearing, Guck's counsel asked that, in the event the court were to grant the respondents' motion, he be allowed the opportunity to amend his complaint. Guck's counsel made the same request in his brief to the court. Counsel wrote to the court after the hearing, and before the decision was issued, renewing his request.

In its decision on the motions, the trial court stated as follows:

> Lastly, at the ... hearing, the Plaintiff's attorney requested that in the event that this Court granted

(..continued)
through of treatment plans," and "[c]ommunicating [information] to ... staff."

> the Defendants' Motion for Summary Judgment, the Plaintiff be granted a period of (60) sixty days to amend the Amended Complaint. The Plaintiff renewed that request in a letter to the Court .... The Defendants' counsel, in a letter to the Court ... objected to this motion. The Court notes that the Plaintiff ... amended the Complaint [once before]. Despite indicating a desire to amend the Amended Complaint, the Plaintiff has not filed any motion or scheduled any hearing concerning further amendment of the pleadings. Accordingly, the Plaintiff's request for additional time to amend the Amended Complaint is denied.

Whether to permit amendment of a pleading is discretionary with the trial court. ***Rendler v. Markos***, 154 Wis.2d 420, 433, 453 N.W.2d 202, 207 (Ct. App. 1990). The term "discretion" contemplates a reasoning process that considers the applicable law and the facts of record, leading to a conclusion a reasonable judge could reach. ***Schneller v. St. Mary's Hosp. Medical Ctr.***, 155 Wis.2d 365, 374, 455 N.W.2d 250, 254 (Ct. App. 1990), *aff'd*, 162 Wis.2d 296, 470 N.W.2d 873 (1991).

The trial court denied Guck's request because: (1) he amended his complaint once before; and (2) despite his oral and written requests that he be permitted to amend the complaint, Guck failed to file a formal motion or schedule a hearing with the court's clerk. While we allow trial courts considerable latitude with respect to discretionary decisions, the record in this case is insufficient for us to conclude that the court engaged in "`a process of reasoning'" in which the facts and applicable law were considered in arriving at "`a conclusion based on logic and founded on proper legal standards.'" ***Burkes v. Hales***, 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (Ct. App. 1991) (quoted source omitted).

We have recognized in prior cases that where the reasons stated by the court for its discretionary decisions are inadequate under these standards, we may look to the record ourselves to determine whether it provides a reasonable basis for decision. ***State v. Clark***, 179 Wis.2d 484, 490, 507 N.W.2d 172, 174 (Ct. App. 1993). In this case, however, the record is silent as to the conditions under which the prior amendment was allowed. Indeed, it

appears that those conditions were not even known to the trial court, as the amendment was made at a time when the action was venued in another county, prior to its removal to Dodge County. Nor is there anything in the record to indicate the existence of rules of practice in the trial court with respect to the formal requisites of amendment requests, or requiring attorneys to schedule hearings. We cannot ascertain why counsel's failures in this regard are so egregious as to warrant denial of the request and dismissal with prejudice on this record.

We therefore reverse on this issue and remand to the trial court with directions to reconsider its denial of Guck's request to amend his complaint. The court may, in its discretion, schedule further briefing or hearing on the request, or may decide the matter, exercising its discretion to grant or deny the request, on the existing record. No costs are awarded to either party on this appeal.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.