

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

May 1, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2644

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

THOMAS A. BRAUN,

PLAINTIFF-APPELLANT,

V.

**PAUL DUREN, JERRY DUREN, JUDY ROSE,
JANICE BRAUN AND LAVONA CUNNINGHAM,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

EICH, C.J. Thomas A. Braun, appearing *pro se*, appeals from an order dismissing his complaint for money damages for “harassment” and denying his motion for leave to file a second amended complaint.

The amended complaint is lengthy and often difficult to follow. Thomas alleges that his aunt, Janice Braun, and his two uncles, Paul and Jerry Duren, intentionally harassed him in the course of several family conflicts over the care of their mother (his grandmother), Clara Duren, during her final illness. We are unsure of the amount of damages he seeks in the amended complaint. His first complaint, however, sought damages of \$200,000 (or more) against each of them—all based on allegations that they violated § 947.013, STATS., which makes it a crime to “harass” or “intimidate” another person.

The amended complaint also attempts to state claims against a woman hired to care for Clara, Judy Rose, and a friend of Clara’s, Lavonna Cunningham, who Thomas alleges “harassed” him in the course of their testimony during a court hearing on Clara’s motion for a temporary “domestic abuse” restraining order against him. Again, we are unsure of the damages claimed against these defendants, although the initial complaint sought \$225,000 from Rose.

Janice Braun and Paul and Jerry Duren moved to dismiss, arguing that (1) Thomas was suing for an intentional tort and (2) because the last incident alleged in the complaint occurred in either January or February 1993, the applicable two-year statute of limitations, § 893.57, STATS., expired long before January 16, 1996, the date the action was filed.¹ Rose and Cunningham moved to dismiss on similar grounds and because Thomas’s only claim against them related to their testimony at a court hearing, which, under the law, is “absolutely

¹ The statute provides: “An action to recover damages for libel, slander, assault, battery, invasion of privacy ... or other intentional tort ... shall be commenced within 2 years after the cause of action accrues or be barred.” We note in this regard that Clara Braun died in the summer of 1993, more than two and one-half years before the complaint was filed.

privileged” as long as it relates to the issues being tried. The trial court granted both motions and denied Thomas’s motion to file an amended complaint. Thomas appeals.

We are satisfied that the trial court properly dismissed the action against all parties.

With respect to Janice Braun and Paul and Jerry Duren, it is undisputed that all of the acts upon which Thomas’s amended complaint is based occurred prior to February 12, 1993—approximately three years prior to the filing of this action. It is equally plain that the acts complained of are “intentional torts” within the meaning of § 893.57, STATS. In his complaint, Thomas cites some sixty-five separate incidents in which he claims the defendants “harassed” him—including yelling at him, threatening him with everything from filing sexual assault charges against him to turning him in for illegal deer-hunting, physically assaulting and battering him, spreading lies about him, slandering him, and harassing him in dozens of other ways. All are intentional acts and thus subject to the two-year limitation of § 893.57.²

² Even if it could be said, giving the complaint the most liberal reading possible, that Thomas was attempting to also state a claim for negligent infliction of emotional distress, the action still was not filed within three years of the last-claimed act, and thus was similarly untimely under the three-year statute of limitations applicable to such actions, § 893.54(1), STATS.

We conclude, therefore, that the trial court properly dismissed the action against Janice Braun and Paul and Jerry Duren on statute of limitations grounds.³

As to Thomas's complaint against Rose and Cunningham, as we noted above, he alleges only that they "harassed" him in their testimony at the restraining-order hearing. This action, too, is subject to dismissal on grounds that the law on which it is based, § 947.013, STATS., does not provide any basis for a private cause of action. *See supra* note 3.

We also agree with the defendants that it is well settled in Wisconsin that "[s]tatements made in the course of judicial proceedings are absolutely privileged and insulate the speaker from liability so long as the statements 'bear a proper relationship to the issues.'" *Snow v. Koepl*, 159 Wis.2d 77, 80, 464 N.W.2d 215, 216 (Ct. App. 1990) (quoted source omitted). Unfortunately, none of the defendants has pointed us to any place in the record where information may be found concerning the nature of the proceedings in which Rose and Cunningham testified. Thomas's appendix to his reply brief, however, indicates that it was a "domestic abuse" proceeding instituted against him by his mother, and the allegations in his amended complaint pertaining to the testimony upon which his claim is based establish conclusively that the testimony related to Clara's care, which was one of the subjects of the hearing. It follows that the trial court properly dismissed Thomas's complaint against Rose and Cunningham.

³ While the trial court did not reach the issue, defendants also point out that, as we held in *Drab v. Anderson*, 143 Wis.2d 568, 573, 422 N.W.2d 144, 146 (Ct. App. 1988), § 947.013, STATS., the legal basis for Thomas's action, does not create or provide a private cause of action for its violation. The complaint was thus subject to dismissal on that ground also.

Finally, we consider whether the trial court appropriately exercised its discretion in denying Thomas's motion to file a second amended complaint. We will not reverse a discretionary determination by the trial court if the record shows that discretion was exercised and we can perceive a reasonable basis for the court's decision. *Prahl v. Brosamle*, 142 Wis.2d 658, 667, 420 N.W.2d 372, 376 (Ct. App. 1987).

The proposed second amended complaint Thomas seeks to file in this action continues to demand \$200,000 from each of the defendants based on, in Thomas's words, a "PLOT TO THREATEN TO KILL PLAINTIFF AND ACTION TAKEN TO KILL/INJURE/DAMAGE PLAINTIFF AND HIS PROPERTY BY MANIPULATION." According to the proposed complaint, each of the defendants (and two other relatives not named in the earlier complaints), through their acts and words—and Rose and Cunningham, again, through their testimony at the temporary injunction hearing—undertook to harass him. In short, the proposed second amended complaint does not differ in any appreciable way from the first two pleadings—including the fact that all of the acts alleged occurred more than two years prior to the filing of this action.⁴

The trial court did not specifically address the contents of the proposed second amended complaint in denying the motion to amend. In cases "[w]here the trial court fails to adequately explain the reasons for its [discretionary] decision, we will independently review the record to determine whether it provides a reasonable basis for the trial court's ... ruling." *State v.*

⁴ As we discussed above, the Rose/Cunningham testimony occurred within the limitation period. As we have held, however, they are immune from liability to Thomas for their testimony at the injunction hearing.

Clark, 179 Wis.2d 484, 490, 507 N.W.2d 172, 174 (Ct. App. 1993). Because the proposed complaint does little more than carry forward the same allegations that resulted in dismissal of the earlier complaint, the trial court's reasoning underlying that dismissal also carries forward, and we cannot say that the court erroneously exercised its discretion in denying Thomas's motion to file the proposed complaint and in dismissing his action with prejudice.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

