

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 11, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 97-0869

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. RODOSBALDO POZO,

PETITIONER-APPELLANT,

v.

**SHERIFF KARL HALVERSON AND INVESTIGATOR KURT
PAPENFUSS,**

RESPONDENTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for La Crosse County:
DENNIS G. MONTABON, Judge. *Affirmed.*

ROGGENSACK, J.¹ Rodosbaldo Pozo appeals a summary judgment dismissing his small claims action, which sought the return of money seized from him incident to an arrest, but later returned by court order to someone

¹ This appeal is decided by one judge pursuant to § 752.31(2)(a), STATS.

else. This court affirms the trial court's dismissal because Pozo failed to comply with the notice of claim statute.

BACKGROUND

On March 14, 1995, Pozo and Gabriele Volten were arrested on several drug-related charges. Deputy Tim Devine of the La Crosse County Sheriff's Department seized \$1,872.00² from Pozo and \$10,000.00 from Volten. Pozo was subsequently convicted of manufacturing cocaine with intent to deliver and possession of a controlled substance without a tax stamp, and he was sentenced to thirty-three years in prison.

On July 12, 1995, Volten moved the La Crosse County Circuit Court to have her seized property returned. On August 28, 1995, after a hearing at which Volten, but not Pozo, was present, the circuit court held that both the money seized from Volten and that seized from Pozo should be returned to its proper owner, Volten. The court ordered cashier checks in the amounts of \$10,000.00 and \$1,872.00 to be delivered to Volten's attorney, who advised the court that Pozo had been notified of the proceeding.

Pozo, however, denied that he had ever received notice of the hearing. He attempted to file a small claims complaint against the Honorable Romona Gonzales and Assistant District Attorney Todd Bjerke seeking the return of the money which Judge Gonzales had determined belonged to Volten. However, he was unable to commence that action without paying fees, because the trial court determined that complaint failed to state a claim against the named

² The plaintiff's complaint requests the return of only \$1,752.00, but the record indicates that \$1,872 in cash was seized.

defendants. On August 20, 1996, Pozo filed the present action against La Crosse County Sheriff Karl Halverson and Investigator Kurt Papenfuss, alleging that he was denied a hearing on the forfeiture of his seized property, citing § 973.076, STATS., § 901.09, STATS., the Fourth and Fourteenth Amendments to the United States Constitution and Articles 1, 7, 8, 9, and 11 of the Wisconsin Constitution, and requesting the return of his money.

Halverson and Papenfuss moved for summary judgment under § 802.08, STATS., on September 16, 1996. Their motion was supported in part by the affidavit of La Crosse County Assistant Corporation Counsel David Lange, who stated that there was no record that Pozo had filed a notice of claim in the La Crosse County Clerk's Office regarding the return of the property at issue. The trial court granted the defendants relief on January 14, 1997, dismissing Pozo's action with prejudice, and assessing \$100 in costs against Pozo.

DISCUSSION

Standard of Review.

We review a grant of summary judgment *de novo*, applying the same methodology as the trial court. *Brownelli v. McCaughtry*, 182 Wis.2d 367, 372, 514 N.W.2d 48, 49 (Ct. App. 1994). We first examine the complaint, to determine whether it states a claim. Then we review the answer, to determine whether it joins an issue of fact or law, or whether the moving party is entitled to judgment as a matter of law. *Id.* If judgment is not then appropriate, we examine the moving party's affidavits, to determine whether that party has made a *prima facie* case for summary judgment. *Id.* If it has, we review the opposing party's affidavits "to determine whether there are any material facts in dispute which entitle the opposing party to a trial." *Id.* at 372-73, 514 N.W.2d at 49-50.

Notice of Claim.

Proper notice is a prerequisite to a state action against police officers who were acting in their official capacities. *See generally Felder v. Casey*, 150 Wis.2d 458, 441 N.W.2d 725 (1989). Section 893.80(1), STATS., provides in relevant part:

[N]o action may be brought or maintained against ... any officer ... of ... [a governmental] agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless:

(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the ... agency and on the officer ... under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the ... agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the ... agency or to the defendant officer ...; and

(b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant ... agency and the claim is disallowed.

Thus, § 893.80(1) has two prongs: first, the complainant must provide either actual or formal notice of the circumstances giving rise to the claim within 120 days of the triggering event (notice of injury); and second, the complainant must provide an itemized statement of the relief sought, including a specific dollar amount (notice of claim). *Vanstone v. Town of Delafield*, 191 Wis.2d 586, 591-96, 530 N.W.2d 16, 18-20 (Ct. App. 1995). Each of these components serves a distinct governmental interest. *Id.* at 593, 530 N.W.2d at 19. Giving notice of the alleged injury to the complainant allows the government entity involved to investigate and evaluate the claim, while giving notice of the complainant's claim

provides the government with an opportunity to try to settle the case and make appropriate budgetary decisions. *Id.*

Here, Halverson and Papenfuss alleged, based upon affidavits, that Pozo failed to comply with § 893.80, STATS. Pozo has not denied the allegation, and indeed, the record shows no basis to conclude that notice of his claim was ever filed with the county. Therefore, the proposition that Pozo has failed to comply with the notice of claim statute is admitted. *Schlieper v. DNR*, 188 Wis.2d 318, 322, 525 N.W.2d 99, 101 (Ct. App. 1994). Additionally, Pozo's contention that he should be excused from the notice of claim requirements because he is a foreigner without legal knowledge is entirely without legal citation. We will not consider arguments which are unsupported by reference to legal authority. *State v. Pettit*, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). Pozo's claim is procedurally barred due to his failure to comply with § 893.80, and was properly dismissed on that basis.

CONCLUSION

The trial court properly dismissed Pozo's complaint with prejudice.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4., STATS.

