

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 4, 1999

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. 97-3591**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**TONY WALKER,**

**PLAINTIFF-APPELLANT,**

**v.**

**GARY R. MCCAUGHTRY, LT. HAUTAMAKI,  
DON BEERBAUM, PETER A. HUIBREGTSE,  
LT. JANSSEN, LT. CORE,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Tony Walker appeals from a circuit court order dismissing his complaint arising from a prison discipline matter. The issues are whether the hearing was held in the proper time period and whether the finding of

guilt should be reversed because Walker was placed in solitary confinement without the care and advice of the physician. We affirm.

Walker sought leave to proceed under § 814.29, STATS., without payment of fees. His proposed pleading was captioned as a “complaint with provisional remedy of certiorari.” The circuit court issued an order concluding that Walker’s proposed complaint failed to state a claim except in two ways, and granted him leave to proceed without fees only as to those two claims. The court construed those claims as being in certiorari, and ordered the record returned. Walker did not prevail on those claims. In his appeal to this court, his only arguments concern two of the issues for which the circuit court did not grant him leave to proceed. However, we treat the circuit court’s first order as a prior nonfinal order that may be reviewed in this appeal.<sup>1</sup> *See* RULE 809.10(4), STATS.

Walker’s first argument is that his hearing was held less than two days after he received the hearing notice, which would be contrary to WIS. ADM. CODE § DOC 303.76(3). The circuit court did not address this issue after the return of the certiorari record. However, in the interest of judicial economy and because we apply the same standard the circuit court would have, we review the issue. Walker’s argument assumes that the DOC-1516 form he received the day before the hearing is the “notice of hearing” from which the time to hold the hearing runs under WIS. ADM. CODE § DOC 303.76(3). However, that is not

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<sup>1</sup> We do so because there is no authority under § 814.29(1), STATS., for a circuit court to grant leave to commence an action on only part of a proposed complaint. The fee waiver may be denied only if the entire proposed complaint fails to state a claim. *See* § 814.29(1)(c). Therefore, if any part of the complaint states a claim, the action must be accepted for filing. Those parts of the complaint that fail to state a claim should then be dealt with through the usual methods of narrowing a complaint. Accordingly, in this case we treat the matter as if Walker had been allowed to proceed on his entire complaint.

correct. The notice of hearing described in that rule is provided by the form DOC-71, which Walker received nine days before the hearing. Therefore, we reject the argument.

Walker's other argument is based on the fact that the adjustment committee imposed a punishment that included eight days adjustment segregation. Walker argues that this was solitary confinement under § 302.10, STATS., but he was not under the care and advice of the physician, as stated in that statute. As a remedy, Walker requests that we reverse the discipline decision and order its expungement from his record and the restoration of his "good time" sentence credit. Whatever may be the merits of Walker's argument about solitary confinement, there is no law providing for the remedy he seeks. A violation of the statute would not be a basis to overturn the disciplinary proceeding that came before the violation. Therefore, we reject the argument.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

