

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 8, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1460

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

RONALD A. KEITH, SR.,

PLAINTIFF-APPELLANT,

V.

**STATE OF WISCONSIN RESOURCE CENTER, PHIL MACHT,
KRISTINE TIMM, AND MARIO CANZIANNI,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

¶1 PER CURIAM. *Pro se* appellant, Ronald A. Keith, appeals from an order dismissing his claims for monetary, injunctive and declaratory relief against the State of Wisconsin Division of Care and Treatment Facilities, the Wisconsin

Resource Center (WRC) and its supervisory employees Phil Macht, Kristine Timm, and Mario Canzianni. Keith contends that the trial court erred when it: (1) dismissed his claim for monetary relief because he failed to comply with the notice of claim requirements pursuant to WIS. STAT. § 893.82 (1997-98);¹ (2) combined his eighteen causes of action into three claims; and (3) improperly considered confidential information submitted in violation of his confidentiality rights.

¶2 We conclude that Keith's claims for monetary relief against the individually named respondents are barred for failure to comply with [WIS. STAT. § 893.82](#) and therefore, the court lacked subject matter jurisdiction over these claims against these respondents. Because it does not appear that Keith challenges the trial court's rulings with regard to his claims for injunctive or declaratory relief, those claims are not before us. We also conclude that the court lacked personal jurisdiction over the State of Wisconsin Division of Care and Treatment Facilities and the WRC because Keith failed to serve the summons and complaint on the attorney general pursuant to WIS. STAT. § 801.11(3).

¶3 Because there are no disputed issues of material fact and the respondents are entitled to judgment as a matter of law, we affirm the trial court's summary judgment. Although Keith argues additional grounds for reversing the trial court's judgment, we decline to address those grounds because this court's resolution of the issues presented is dispositive of the appeal. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct.App.1983).

¹ All references to the Wisconsin Statutes are to the 1997-98 version .

BACKGROUND

¶4 Ronald Keith filed a complaint against the State of Wisconsin Division of Care and Treatment Facilities, the Wisconsin Resource Center, and its employees Phil Macht, WRC superintendent, Kristine Timm, WRC deputy director of the Division of Care and Treatment, and Mario Canzianni, WRC security director. Keith's complaint alleged numerous violations of his rights as a patient that appear to arise from three separate sets of facts. The trial court grouped the claims as follows: (1) the one-month suspension of Keith's telephone privileges by WRC psychiatric care supervisor, Matt Allen; (2) incident reports filed on Keith for providing legal advice to others in the prison library instead of the designated location identified in WRC rules; and (3) a photograph taken of Keith by unidentified staff allegedly in violation of WRC regulations and statute. Keith maintained that as a result of each of the incidents he suffered emotional and mental anguish manifested by painful, bleeding neurodermatitis on his scalp, hands and feet. Respondents filed a motion to dismiss in lieu of an answer. Since respondents' motion was supported by affidavits and other evidence, the trial court treated the motion as one for summary judgment pursuant to WIS. STAT. § 802.08(2).

¶5 The court granted summary judgment dismissing Keith's claims for monetary relief on the ground that he had failed to comply with WIS. STAT. § 893.82. The court dismissed Keith's claims for injunctive relief on the grounds that: (1) the claim regarding suspension of his telephone privileges was moot because the privileges had been restored; and (2) Keith had withdrawn his claim

regarding the photograph incident.² The court dismissed Keith's claims for declaratory relief on the grounds that: (1) he failed to demonstrate that the actions the staff took with regard to the telephone suspension injured him; (2) he had withdrawn his claim regarding the photograph incident; and (3) the WRC rules identifying where legal assistance may be provided were reasonable and provided Keith with a place to render legal assistance, Keith knew the rules and chose to ignore them. Keith appeals the order dismissing his claims.

STANDARD OF REVIEW

¶6 It is well-established that in reviewing a trial court's granting or denial of a summary judgment motion, we independently employ the same methodology as the trial court. *See State v. Dunn*, 213 Wis. 2d 363, 368, 570 N.W.2d 614 (Ct. App. 1997). First, we examine the complaint to determine whether it states a claim, and then we review the answer to determine whether it joins issue. *See id.* If so, we then examine the moving party's affidavits and other evidentiary submissions to determine whether the movant has established a prima facie case for summary judgment. *See id.* Finally, if the moving party meets its burden, we look to the opposing party's affidavits to determine whether any material facts are placed in dispute, thus requiring a trial. *See id.* If no material factual disputes exist, we determine which party is entitled to judgment as a matter of law. *See id.*

² Keith did not seek injunctive relief on his claim regarding the legal assistance he was allegedly providing other patients in an improper location.

ANALYSIS

¶7 On appeal, Keith does not appear to challenge the trial court's rulings with regard to his claim for injunctive and declaratory relief. Therefore, those claims are not before us, and we are presented with Keith's challenges to the trial court's rulings on his claims for monetary relief. We turn first to Keith's claims against Macht, Timm, and Canzianni. The trial court dismissed those claims on the grounds that Keith had failed to comply with the notice of claim requirements pursuant to WIS. STAT. § 893.82.

¶8 Whether Keith complied with WIS. STAT. § 893.82, the notice of claim statute, is a question of law that may be resolved by summary judgment. *See Sambs v. Nowak*, 47 Wis. 2d 158, 164, 177 N.W.2d 144 (1970). Because it is undisputed that Macht, Timm, and Canzianni are State of Wisconsin employees, civil claims against them are subject to § 893.82. That section provides that a claimant may not bring an action against a state employee for acts committed in the discharge of the employee's duties "unless the claimant complies strictly with the requirements of [§ 893.82]." *See* § 893.82(2m). Failure to comply with the notice of claim statute is a defect of subject matter jurisdiction requiring dismissal of the action. *See Mannino v. Davenport*, 99 Wis. 2d 602, 614, 299 N.W.2d 823 (1981). Notice is deficient under § 893.82(3), if it fails to identify, by name, the state employee allegedly responsible for the plaintiff's injury. *See Modica v. Verhulst*, 195 Wis. 2d 633, 647, 536 N.W.2d 466 (Ct. App. 1995).

¶9 The notice of claim, in this instance, did not contain Macht's, Timm's, or Canzianni's names. Rather, the notice of claim states that the WRC "along with its administration and numerous employees" violated Keith's rights. The only specifically named employee in the notice of claim is WRC psychiatric

care supervisor, Matt Allen. Thus, *Modica* disposes of Keith's claims against the three WRC supervisory employees named in the complaint because Keith's notice of claim did not identify any of them. WISCONSIN STAT. § 893.82 imposes a condition precedent to the right to maintain an action against a state employee or agent. See *Ibrahim v. Samore*, 118 Wis. 2d 720, 726, 348 N.W.2d 554 (1984). The notice of claim deficiency requires dismissal of the monetary claims against these employees. We conclude that the trial court properly granted summary judgment in their favor.

¶10 We turn next to Keith's claims against the State of Wisconsin Division of Care and Treatment Facilities and the WRC. Respondents contend that Keith's claims against them are barred because he failed to serve the summons and complaint on the attorney general pursuant to WIS. STAT. § 801.11(3). Pursuant to § 801.11(3), a court may exercise personal jurisdiction over the State, and actions against the State are commenced by serving a copy of the summons and complaint upon the attorney general. See § 801.11(3). It is apparent from the record that Keith served the pleadings only on the individually named respondents. Although the record contains certificates of service of the summons and complaint on each individually named respondent, there is no certificate of service documenting service of the summons and complaint as to either the WRC or the State of Wisconsin Division of Care and Facilities on the attorney general. Keith does not dispute that he did not serve the attorney general. He contends, instead, that respondents failed to raise this argument before the trial court and, therefore, they cannot raise the issue for the first time on appeal. The record belies this assertion. Respondents raised this argument in their reply brief addressing their motion to dismiss. Respondents renew the argument in their response brief on appeal.

¶11 Keith's failure to serve the attorney general is a fundamental error that deprived the trial court of personal jurisdiction over these respondents. *See DNR v. Walworth County Bd. of Adjustment*, 170 Wis. 2d 406, 417-18, 489 N.W.2d 631 (Ct. App. 1992) (fundamental errors are those in which there is failure to meet the burden set out in WIS. STAT. § 801.02(1), where service of an authenticated copy of the summons and complaint is not made upon a defendant within the statutory deadline). Accordingly, these respondents were entitled to summary judgment as a matter of law.

¶12 Keith raises additional grounds for reversing the trial court's judgment. However, we decline to address those grounds because this court's resolution of the issues presented is dispositive of the appeal. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

By the Court.—Order affirmed.

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

