

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 30, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2005AP237

Cir. Ct. No. 2004CV147

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GEORGE S. WOOD,

PLAINTIFF-APPELLANT,

V.

**GARTH T. ANACKER AND STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS,**

DEFENDANTS-RESPONDENTS,

**ALLSTATE INSURANCE COMPANY AND BLUE CROSS
BLUE SHIELD OF ILLINOIS,**

SUBROGATED DEFENDANTS.

APPEAL from an order of the circuit court for Columbia County:
RICHARD L. REHM, Judge. *Affirmed.*

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

¶1 PER CURIAM. George Wood appeals from an order dismissing his personal injury action against the Department of Corrections (DOC) and its employee, Garth Anacker. Wood was injured in a collision with a state-owned vehicle that Anacker was driving in the course of his DOC employment. The issue is whether Wood complied with WIS. STAT. § 893.82(3),¹ the notice of claim statute, before commencing his lawsuit. The trial court held that he did not, and we agree. We therefore affirm.

¶2 WISCONSIN STAT. § 893.82(3) provides in relevant part that a person may not sue a state employee for acts committed in the course of employment unless the person serves a timely notice of claim “stating the time, date, location and the circumstances of the event giving rise to the claim for the injury, damage or death and the names of persons involved, including the name of the state officer, employee or agent involved.” Under § 893.82(2m), the person filing the notice of claim must strictly comply with these requirements. They “must be adhered to with exact care.” *Newkirk v. Wisconsin Dept. of Transportation*, 228 Wis. 2d 830, 833, 598 N.W.2d 610 (Ct. App. 1999). Strict compliance requires that the claimant identify the state employee involved by name. *See Protic v. Castle Co.*, 132 Wis. 2d 364, 369, 392 N.W.2d 119 (Ct. App. 1986).

¶3 In this case, Wood served a timely notice of claim that provided a detailed description of the accident. However, Wood mistakenly identified the state-employed driver as Randall Flury, who was in fact a passenger in the car Anacker drove. Under WIS. STAT. § 893.82(2m) and (3), and the cases that

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

interpret those sections, Wood's notice was therefore inadequate and this action is therefore barred.

¶4 It is true that Wood attached a police report of the accident to his notice of claim, and that report correctly identifies Anacker as the driver involved in the accident. However, Wood did not reference the report in his notice. Attached but unreferenced reports do not cure a defect in the notice itself. *See Protic*, 132 Wis. 2d at 369.

¶5 Wood contends that his lawsuit should proceed notwithstanding a defect in his notice, because it did not mislead the Attorney General's office, which knew from other sources that Anacker was the driver involved. He contends that the purpose of the notice statute was therefore satisfied. However, while the law in Wisconsin once allowed substantial compliance with WIS. STAT. § 893.82(3), it now requires strict compliance. *See Modica v. Verhulst*, 195 Wis. 2d 633, 640, 536 N.W.2d 466 (Ct. App. 1995). The Attorney General's actual notice of the circumstances of a claim has no bearing on whether the claimant strictly complies with the statute.

By the Court.—Order affirmed.

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

