COURT OF APPEALS
DECISION
DATED AND FILED

March 23, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP468 **Cir. Ct. No. 2004CV512**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. MICHAEL S. ELKINS,

PETITIONER-APPELLANT,

V.

GRACE BROWN AND JAN JOHNSTON,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dodge County: DANIEL W. KLOSSNER, Judge. *Affirmed*.

Before Dykman, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Michael Elkins appeals from an order dismissing his mandamus action under the open records law. We affirm.

¶2 Elkins made several requests covering several items. One of those items appears to have been discovery material that was to be provided to Elkins in a pending federal case. The discovery material had been shipped to Elkins' institution, but not yet made available to him personally for review. Elkins sought access by making a request under the open records law, WIS. STAT. § 19.35 (2003-04).[1] The defendants argue that Elkins could have sought relief through the federal court overseeing the discovery, and therefore he had an adequate remedy at law. One of the requirements to obtain a writ of mandamus is lack of an adequate remedy at law. ***State ex rel. Griffin v. Litscher***, 2003 WI App 60, ¶5, 261 Wis. 2d 694, 659 N.W.2d 455. We agree. Elkins has not given any reason why he could not have sought relief in the federal court. Therefore, we conclude that, regardless of whether the records custodian was obligated to release these records under the open records law, mandamus was properly denied because Elkins had an alternate remedy.

¶3 Elkins' other requests were for the policy and procedures manual for health services, the department's fraternization policy and arrest policy, and internal management procedures. The defendants argue that they properly denied access to these items because these records do not contain specific references to the requester or his or her minor children, as required when the requester is an incarcerated person. *See* WIS. STAT. § 19.35(3). The circuit court appears to have accepted this argument, but did not expressly make a finding that the records did not contain specific references to Elkins or his children. Nor could it have, since the defendants do not appear to have provided copies of those records for the court

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

to review. The defendants merely asserted, in an unsworn motion by counsel, that the custodian determined there were no specific references.

¶4 Failure to provide the documents puts a court in the position of simply accepting the custodian's factual assertion at face value, without the requester having any meaningful opportunity to contest that assertion. In this case, however, we are satisfied that no potential for a factual dispute is present. It is apparent from the most basic description of the records that these are materials meant for general distribution to staff and application to all inmates. It would not be plausible to assert that they contain specific references to Elkins. Elkins also argues that various prior court decisions allow inmates to have open records access to this material, but none of the cases he cited relate to the material requested in this case. Accordingly, we conclude that release of these materials to Elkins was properly denied because of lack of specific references to Elkins.

By the Court.—Order affirmed.

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