

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 15, 2007

A. John Voelker
Acting 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. 2005AP2525

Cir. Ct. No. 2002CV469

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

MICHAEL C. ANTONELLI,

PETITIONER-APPELLANT,

V.

**STEVE FITZGERALD, TOM POLSIN, RICK GEMPELER, MICHAEL
HARMSSEN AND BLAINE LAUERSDORF,**

RESPONDENTS-RESPONDENTS.

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

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Michael Antonelli, pro se, appeals the circuit court's order granting summary judgment dismissing his claim against the

respondents, several officers, and employees of the Dodge County Sheriff's Department. We affirm.

¶2 Summary judgment is appropriate where there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. *Lambrecht v. Kaczmarczyk*, 2001 WI 25, ¶24, 241 Wis. 2d 804, 623 N.W.2d 751. We review a decision granting summary judgment de novo, benefiting from the circuit court's analysis. *Id.*, ¶21.

¶3 Antonelli first argues that the circuit court erred in concluding that there were no disputed issues of material fact. However, Antonelli does not explain what disputed issues of fact *were* material and does not provide record cites in support of his argument. We will not address this issue because it is not adequately briefed. *Roehl v. American Family Mut. Ins. Co.*, 222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998).

¶4 Antonelli next argues that his constitutional rights were violated because he was denied access to some of his legal papers when he was housed at Dodge County Detention Facility from March 20 until April 5, 2002. Antonelli claims the respondents' actions caused him to put off his sentencing and otherwise harmed his defense in his federal criminal case. While prisoners have "a right to adequate, effective and meaningful access to the courts," a prisoner "claiming denial of access must prove that he suffered an actual injury by showing that unjustified acts or conditions hindered his ability to pursue a nonfrivolous legal claim." *Johnson v. Barczak*, 338 F.3d 771, 772 (7th Cir. 2003) (citations omitted). "[A] delay becomes an injury only if it results in 'actual substantial prejudice to specific litigation.'" *Id.* at 773. Even assuming Antonelli's claim that he was deprived of some of his legal materials during his stay at Dodge County

Detention Facility is true, he has not alleged with specificity how the deprivation adversely impacted his federal case. The fact that his sentencing was delayed, if accurate, does not by itself indicate that Antonelli was adversely impacted. Antonelli has failed to state a claim for relief.

¶5 Antonelli next contends that his First Amendment rights were violated when he was prevented from assisting fellow inmates with their legal matters. Because Antonelli has not adequately developed this argument, we will not consider it further. *Roehl*, 222 Wis. 2d at 149.

¶6 Antonelli next argues that his constitutional rights were violated because the Dodge County Detention Facility does not provide a procedure for challenging the facility's policies, rules, or regulations. He believes that this violates his rights because he will not be able to seek relief in the court system unless he first exhausts his administrative remedies. Antonelli is not required to exhaust administrative remedies that do not exist as a condition precedent to seeking relief in the court system. Therefore, we reject this claim.

¶7 Antonelli also contends that his right to be free from cruel and unusual punishment under the Eighth Amendment was violated because the temperature in his cell was below fifty-five degrees, causing him to sneeze, cough, and be unable to sleep. Antonelli did not submit an affidavit or other evidence to corroborate his claim. The respondents submitted deposition testimony from Antonelli in which he repeatedly states that he has no factual documentation or evidence to support his claim about the temperature in the cell.¹ Because

¹ The respondents have also submitted a copy of a grievance form in which a prison official states that the cells are kept at seventy-two degrees, but the statement by the prison official is not sworn.

Antonelli has admitted that he has no factual support for his claim that the temperature in his cell was fifty-five degrees, the circuit court properly granted summary judgment dismissing this claim.

¶8 Antonelli next argues that the circuit court violated his rights when it stayed this lawsuit pending a lawsuit that was proceeding in Illinois. Antonelli claims that the stay prohibited him from discovering additional defendants and filing an amended complaint. We will affirm a circuit court decision granting or denying a stay unless the court misuses its discretion. *State v. Gudenschwager*, 191 Wis. 2d 431, 439, 529 N.W.2d 225 (1995).

¶9 The court granted the stay to avoid conflict with the Illinois court, which was also considering Antonelli's claims against the respondents. The doctrine of comity provides that a court may defer jurisdiction where two courts of independent sovereignty have concurrent jurisdiction. *See Teague v. Bad River Band*, 2000 WI 79, ¶35, 236 Wis. 2d 384, 612 N.W.2d 709. The stay was a proper exercise of discretion under the doctrine of comity. Moreover, Antonelli has provided no explanation of why adding additional defendants to this action, who are also employees of the Dodge County Detention Facility, would change our legal analysis, transforming this into a successful action. We reject this argument.

¶10 Antonelli next argues that the circuit court misused its discretion in denying his motion to extend the time for filing a reply to the respondents' motion for summary judgment. The scheduling order did not provide for the filing of a reply. Twenty-five days elapsed between the date the respondents' motion for summary judgment was filed and the date Antonelli moved to extend the time for filing a reply. Because Antonelli filed his motion to extend the time after the

circuit court had already issued its decision, despite the fact that he could have done so sooner, we conclude that the circuit court did not misuse its discretion in denying Antonelli's request.

By the Court.—Order affirmed.

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

