

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 2001

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.

No. 00-3265

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
ROBERT C. BEESE,**

PLAINTIFF-APPELLANT,

v.

LANCE WEIRSMAN AND ELMER P. KARL,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
DAVID T. FLANAGAN, Judge. *Reversed and cause remanded with directions.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Robert Beese appeals from an order dismissing his attempted civil rights action against both the author of his presentence investigation report (PSI) and that individual's supervisor in the Probation and Parole Division of the Department of Corrections (DOC). Beese challenges the trial court's determinations that he failed to exhaust administrative remedies and

that the DOC officials were entitled to absolute judicial immunity. He also claims the trial court erred in refusing his request for a substitution of judge. Because we agree with the later claim, we reverse with directions that the matter be assigned to a different judge on remand.

¶2 Beese filed the summons and complaint on July 25, 2000. The case was assigned to Judge David Flanagan that same day. Beese filed a motion for substitution of the judge on August 22, 2000, noting that he perceived a potential for bias because Judge Flanagan's wife was employed as an assistant attorney general. Judge Flanagan denied the motion on August 23, 2000, stating that he did not believe that his wife's employment would impede a fair resolution of the case.

¶3 WISCONSIN STAT. § 801.58(1) (1999-2000)¹ provides that the plaintiff in a civil action may request a substitution of judge within sixty days after the filing of the summons and complaint. "If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge." WIS. STAT. § 801.58(2). The statute does not require there to be any finding of potential bias or partiality prior to granting a properly made request.

¶4 The State does not deny that Beese filed his substitution request within sixty days and does not argue that it was not in proper form. Instead, the State argues that Beese's substitution claim is "moot" since "substituting another judge would not have made a difference to the appellant's claim for relief or to the result obtained." It appears counsel has confused the mootness doctrine with the

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

harmless error doctrine. In any event, the State cites no authority to support its assertion that the denial of a substitution request as of right under WIS. STAT. § 801.58 cannot be remedied unless the party can show actual prejudice. We need not consider arguments which are undeveloped or unsupported by references to relevant legal authority. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992).

By the Court.—Order reversed and cause remanded with directions.

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

