

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 11, 2002

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. 01-1825
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-2

**IN COURT OF APPEALS
DISTRICT III**

TRACY L. SMITH,

PLAINTIFF-APPELLANT,

v.

PATRICIA ANDERSON AND BONNIE J. KINATE,

DEFENDANTS-RESPONDENTS,

DENNIS M. HOLZEM AND MICHAEL A. WILLIAMS,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Marathon County:
GLENN H. HARTLEY, Judge. *Affirmed.*

Before Cane, C.J, Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Tracy Smith appeals a summary judgment dismissing her intentional infliction of emotional distress action against two

Marathon County social workers, Patricia Anderson and Bonnie Kinate. Smith's complaint alleged that the social workers intentionally inflicted distress on her by their activities in a juvenile court proceeding involving placement of Smith's minor children. The trial court concluded that Smith failed to comply with the notice of claims provisions set out in WIS. STAT. § 893.80 (1999-2000). Smith concedes that she did not provide notice of the event giving rise to the claim within 120 days of the event, but argues that she falls within the exception stated in § 893.80(1)(a) because the Marathon County Department of Social Services had actual notice of the claim and was not prejudiced by her failure to give written notice. We reject that argument and affirm the judgment.

¶2 Smith failed to meet her burden of showing that the department had actual notice of her claim. *See Weiss v. City of Milwaukee*, 79 Wis. 2d 213, 227-28, 255 N.W.2d 496 (1977). Knowledge that an event has occurred does not constitute knowledge that a claim is made. To constitute actual notice of a claim, the government entity must not only have knowledge of the event, but also the identity and type of damage alleged to have been suffered by a potential claimant. *See Markweise v. Peck Foods Corp.*, 205 Wis. 2d 208, 220, 556 N.W.2d 326 (Ct. App. 1996). The social workers' knowledge of their own acts in the juvenile court proceedings, even the knowledge that Smith was "panic stricken" over the prospect of going to jail for probation violations and/or losing her children, does not constitute actual knowledge that a claim for intentional infliction of emotional distress may be filed. Nothing in the record suggests the department's knowledge that Smith would file a claim or the nature of the damage she would allege.

¶3 Smith also failed to establish lack of prejudice. Her first notice of claim was filed approximately ten months after the last acts that she contends inflicted emotional distress on her. Smith's psychological condition involved not

only the stress of court proceedings, but also pregnancy, alcohol consumption and problems with her children that predated the social worker's involvement in this matter. In a claim for emotional distress, the county's ability to request contemporaneous psychological examination to determine the nature, source and severity of her harm is seriously compromised by the passage of time.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

