COURT OF APPEALS DECISION DATED AND FILED

July 31, 2003

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. 02-0449

Cir. Ct. No. 01-CV-2106

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN EX REL. JAY THOMAS WIDMER-BAUM,

PETITIONER-APPELLANT,

V.

JON LITSCHER AND THOMAS BORGEN,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: ANGELA B. BARTELL, Judge. *Affirmed.*

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

¶1 LUNDSTEN, J. Jay Thomas Widmer-Baum appeals an order of the circuit court dismissing Widmer-Baum's petition because he failed to properly

commence a declaratory judgment action pursuant to WIS. STAT. § 227.40(1) (2001-02),[1] and dismissing Widmer-Baum's request for review of his disciplinary action because of mootness. Respondents Jon Litscher and Thomas Borgen are, respectively, the former secretary of the department of corrections, and the warden at the correctional institution where Widmer-Baum was incarcerated.

¶2 Widmer-Baum contends that his petition was erroneously dismissed by the circuit court. Widmer-Baum argues that (1) he was not required to initiate a declaratory judgment action pursuant to WIS. STAT. § 227.40(1); (2) even if he was required to initiate a declaratory judgment action, he properly initiated one by serving the necessary parties within ninety days of filing his summons with the circuit court; and (3) his request for review of DOC's disciplinary action is not moot because the disciplinary action had a practical effect both on his parole and on his sentencing on federal charges. We disagree with all of Widmer-Baum's arguments and affirm the circuit court.

Background

¶3 On or about December 11, 2000, while incarcerated in the Wisconsin prison system, Widmer-Baum filed a petition for declaratory judgment with DOC, contending that certain proposed changes to WIS. ADMIN. CODE § DOC ch. 303, scheduled to go into effect on January 1, 2001, were unconstitutional. DOC denied Widmer-Baum's petition without ruling on the merits. DOC explained that Widmer-Baum's request related to a *proposed* rule change, rather than to an existing rule or statute. On December 27, 2000, Widmer-

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Baum moved for reconsideration of DOC's decision, and DOC denied this motion on January 8, 2001.

¶4 On February 7, 2001, in an unrelated action, Widmer-Baum received a prison conduct report accusing him of lying about a DOC staff member contrary to WIS. ADMIN. CODE § DOC 303.271. After a full due process hearing, Widmer-Baum was found guilty.

¶5 On August 7, 2001, Widmer-Baum initiated this action by filing a petition for writ of certiorari and declaratory ruling. Widmer-Baum challenges DOC's administration of WIS. ADMIN. CODE § DOC ch. 303, challenges the constitutionality of the rule changes to § DOC ch. 303, and requests review of his disciplinary action.

¶6 The case proceeded until October 23, 2001, when DOC moved to dismiss on the grounds that the circuit court lacked subject matter jurisdiction and that Widmer-Baum's request for review of his disciplinary action was moot due to his pending parole from Wisconsin's prison system. DOC, in its reply brief in support of its motion to dismiss, argued that Widmer-Baum's action was moot because Widmer-Baum had been paroled and was no longer incarcerated in the Wisconsin prison system. DOC attached a document attesting that Widmer-Baum had been paroled on November 20, 2001, and provided an affidavit from Widmer-Baum's parole agent. In her affidavit, the parole agent stated that:

> Based on the policies and practices of the Wisconsin Department of Corrections, the fact that Mr. Widmer-Baum was found guilty of lying about staff based on Conduct Report #1093979 will not, absent any future violations while on parole, affect his parole with respect to the conditions of parole, the level of supervision, or in any other way.

¶7 On November 1, 2001, Widmer-Baum filed a copy of a summons with the circuit court, but did not personally serve the summons and his petition on the necessary parties until the end of November 2001. The circuit court dismissed Widmer-Baum's petition for certiorari and declaratory judgment, concluding that Widmer-Baum had not timely served the necessary parties. The circuit court also dismissed Widmer-Baum's request for review of his disciplinary action.

Discussion

I. Whether the Circuit Court was Competent to Hear Widmer-Baum's Challenge to WIS. ADMIN. CODE § DOC Ch. 303

¶8 Widmer-Baum and DOC disagree as to whether the circuit court was competent to hear Widmer-Baum's appeal of DOC's denial of his challenge to WIS. ADMIN. CODE § DOC ch. 303. We review this question *de novo* because a "court's competency to proceed is a question of law." ***State v. Pharm***, 2000 WI App 167, ¶11, 238 Wis. 2d 97, 617 N.W.2d 163.[2]

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[2] The parties discuss this issue in terms of whether the circuit court had *subject matter* jurisdiction. We conclude that it is more accurate, and less confusing, to discuss the dispute in terms of the circuit court's *competence to proceed* because the controversy concerns the circuit court's ability to exercise its jurisdiction based on whether Widmer-Baum's petition met certain statutory criteria.

We acknowledge that some courts have characterized the failure to follow statutory procedures as a matter of subject matter jurisdiction. *See*, *e.g.*, ***State Public Defender v. Circuit Court***, 198 Wis. 2d 1, 6, 542 N.W.2d 458 (Ct. App. 1995) (holding that circuit court was without subject matter jurisdiction when procedures outlined in WIS. STAT. § 227.40(1) were not followed). We also note that "the critical focus is not … on the terminology used to describe the court's power to proceed in a particular case [but rather] on the effect of non-compliance with a statutory requirement on the circuit court's power to proceed." ***Miller Brewing Co. v. LIRC***, 173 Wis. 2d 700, 705-06 n.1, 495 N.W.2d 660 (1993). However, "'[s]ubject matter jurisdiction is defined as the power of the court to entertain a certain type of action.'" ***Cepukenas v. Cepukenas***, 221 Wis. 2d 166, 169, 584 N.W.2d 227 (Ct. App. 1998) (quoting ***Kohler Co. v. Wixen***, 204 Wis. 2d 327, 336, 555 N.W.2d 640 (Ct. App. 1996)). Conversely, "'[a]lthough a court is vested with subject matter jurisdiction by the constitution, the legislature may enact

(continued)

¶9 Widmer-Baum initially petitioned DOC under WIS. STAT. § 227.41 to declare proposed changes to WIS. ADMIN. CODE § DOC ch. 303 invalid because they "are either unconstitutional on their face or render the subsection to which they apply unconstitutionally vague." Section 227.41(1) provides that an "agency may, on petition by any interested person, issue a declaratory ruling … of any rule or statute enforced by it."[3] DOC denied Widmer-Baum's request for a declaratory ruling.

A. Whether Widmer-Baum was Required to Comply with WIS. STAT. § 227.40(1)

¶10 The parties disagree over which statutes should be applied to resolve their dispute, including a dispute as to whether Widmer-Baum was required to file

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statutes which limit a court's power to exercise subject matter jurisdiction. Such legislative measures affect a court's competency rather than its jurisdiction.'" ***Fabyan v. Achtenhagen***, 2002 WI App 214, ¶7, 257 Wis. 2d 310, 652 N.W.2d 649 (quoting ***State v. Bollig***, 222 Wis. 2d 558, 566, 587 N.W.2d 908 (Ct. App. 1998)).

[3] WISCONSIN STAT. § 227.41 provides, in relevant part:

> **Declaratory rulings. (1)** Any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the agency and all parties to the proceedings on the statement of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions.
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> ….
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> **(4)** Within a reasonable time after receipt of a petition pursuant to this section, an agency shall either deny the petition in writing or schedule the matter for hearing. If the agency denies the petition, it shall promptly notify the person who filed the petition of its decision, including a brief statement of the reasons therefor.

a declaratory judgment action pursuant to WIS. STAT. § 227.40(1). The pertinent facts here are not in dispute. The application of statutes to undisputed facts is a question of law that we review *de novo*. ***State v. Wilke***, 152 Wis. 2d 243, 247, 448 N.W.2d 13 (Ct. App. 1989). When we construe a statute, we first look to the language of the statute itself and attempt to interpret it based on "the plain meaning of its terms." ***State v. Williquette***, 129 Wis. 2d 239, 248, 385 N.W.2d 145 (1986); *see also* ***State v. Waalen***, 130 Wis. 2d 18, 24, 386 N.W.2d 47 (1986). Only when statutory language is ambiguous may we examine other construction aids, such as legislative history, context, and subject matter. ***Waalen***, 130 Wis. 2d at 24. A statute is ambiguous if reasonable persons could disagree as to its meaning. ***Williquette***, 129 Wis. 2d at 248.

¶11 Widmer-Baum sought judicial review of DOC's *denial* of his request for a declaratory judgment ruling under WIS. STAT. § 227.41. DOC argues that Widmer-Baum cannot seek review of DOC's *refusal* to issue a declaratory judgment ruling under § 227.41. Rather, DOC contends that, if Widmer-Baum wishes to have a circuit court resolve his challenges to WIS. ADMIN. CODE § DOC ch. 303, he must bring an action for declaratory judgment as required by WIS. STAT. § 227.40(1), which reads:

> Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of such rule brought in the circuit court for Dane County. The officer, board, commission or other agency whose rule is involved shall be the party defendant. The summons in such action shall be served as provided in s. 801.11(3) and by delivering a copy to such officer or to the secretary or clerk of the agency where composed of more than one person or to any member of such agency. The court shall render a declaratory judgment in such action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and

> privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.

As the text of this statute makes clear, it provides a mechanism for judicial review of an agency rule regardless whether the pertinent agency has been asked to issue a declaratory judgment ruling. Thus, DOC's denial of Widmer-Baum's request for a declaratory judgment ruling did not prevent him from seeking a declaratory ruling in the circuit court with respect to the agency rule.

¶12 Furthermore, since WIS. STAT. § 227.40(1) is the proper mechanism to seek judicial review when an agency has declined to issue a declaratory judgment ruling under WIS. STAT. § 227.41, it follows that one seeking circuit court review of a rule under that statute must comply with § 227.40(1). Section 227.40(1) states that "the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment." Declaratory judgments are governed by WIS. STAT. § 806.04, the Uniform Declaratory Judgments Act. DOC contends that actions for declaratory judgment under § 806.04 are initiated by filing a summons and complaint with the circuit court.

¶13 Widmer-Baum does not dispute that actions for declaratory judgment under WIS. STAT. § 806.04 must be initiated by filing a summons and complaint; rather, he responds that he is not required to file an action for declaratory judgment because his challenge to the administrative rules falls under an exception to WIS. STAT. § 227.40(1) contained in § 227.40(2)(e), which provides:

> **(2)** The validity of a rule may be determined in any of the following judicial proceedings when material therein:
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> ….

> (e) *Proceedings under … 227.52* to 227.58 … for review of decisions and orders of administrative agencies if the validity of the rule involved was duly challenged in the proceeding before the agency in which the order or decision sought to be reviewed was made or entered.

(Emphasis added.) Widmer-Baum argues that he is exempt from § 227.40(1)'s requirement that he file an action for declaratory judgment because DOC's refusal to issue a declaratory ruling is "specifically reviewable pursuant to Wis. Stats. § 227.52."

¶14 WISCONSIN STAT. § 227.52 reads, in pertinent part: "Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter …." Widmer-Baum asserts that DOC's denial of his petition under WIS. STAT. § 227.41(4) is an administrative decision that adversely affected his substantial interests and, thus, he may proceed based on his petition for writ of certiorari as provided in § 227.52. We disagree with Widmer-Baum.

¶15 First, we note that WIS. STAT. § 227.52 does not provide for review by writ of certiorari, but provides for judicial review according to the procedures specified in §§ 227.52 and 227.53.[4]

¶16 Second, under the plain language of WIS. STAT. § 227.41(1), DOC was not obligated to issue a declaratory judgment ruling regarding the validity of a rule. Section 227.41(1) provides that an "agency *may* … issue a declaratory ruling

[4] We also observe that proceedings involving prison discipline are expressly excluded from the provisions in WIS. STAT. ch. 227 governing contested cases. *See* WIS. STAT. § 227.03(4).

with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it" (emphasis added). Widmer-Baum was not seeking a "ruling with respect to the applicability to any person, property or state of facts of [a] rule." He sought a declaratory ruling that a rule was unconstitutional.

¶17 Moreover, even if Widmer-Baum could utilize WIS. STAT. § 227.41(1) to seek a declaratory ruling on the constitutionality of a rule, he does not argue that DOC was under any obligation or duty to issue such a ruling on the challenged proposed rules or, more importantly, that the circuit court had the power to order DOC to issue such a ruling. Regardless whether the challenged rules were proposed or currently in effect, it was impossible for Widmer-Baum to be harmed by the agency's refusal to issue a declaratory judgment ruling with respect to the administrative rule when the agency was under no obligation to do so and a circuit court action was available to him. While § 227.41 provides the agency with an *opportunity* to interpret its own rule, the primary mechanism for obtaining a declaratory judgment ruling on an administrative rule is an action for declaratory judgment filed in accordance with WIS. STAT. § 227.40(1). We conclude that Widmer-Baum's "substantial interests" were not "adversely affect[ed]" by DOC's action and, therefore, Widmer-Baum must comply with § 227.40(1) in order to receive judicial review of DOC's proposed rules.

B. Whether Widmer-Baum Complied with the Filing Requirements of WIS. STAT. § 801.02

¶18 We have concluded that Widmer-Baum must comply with WIS. STAT. § 227.40(1) in order to seek judicial review of the proposed changes to WIS. ADMIN. CODE § DOC ch. 303. As stated above, § 227.40(1) requires that review of administrative rules be initiated by an action for declaratory judgment under WIS. STAT. § 806.04. The State contends that Widmer-Baum is barred from

seeking declaratory judgment under § 806.04 because he did not serve his pleadings on the necessary parties within ninety days. For support, DOC points to WIS. STAT. § 893.02, which reads:

> An action is commenced, within the meaning of any provision of law which limits the time for the commencement of an action, as to each defendant, when the summons naming the defendant and the complaint are filed with the court, but no action shall be deemed commenced as to any defendant upon whom service of authenticated copies of the summons and complaint has not been made within 90 days after filing.

DOC contends that § 893.02 is applicable here, relying on and quoting ***Richards v. Young***, 150 Wis. 2d 549, 557, 441 N.W.2d 742 (1989): "[A] proceeding under sec. 227.40 or sec. 806.04 is an action within the meaning of sec. 893.02." However, § 893.02 applies to "any provision of law which limits the time for the commencement of an action." The statute's readily apparent application is to statute of limitations disputes. We question why the supreme court looked to § 893.02, rather than WIS. STAT. § 801.02, the general civil procedure statute.[5] Our puzzlement is reflected in Justice Abrahamson's dissent in ***Richards***: "The majority does not refer to sec. 801.02, the general statute in the Rules of Civil

[5] WISCONSIN STAT. § 801.02 reads, in relevant part:

> **(1)** A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.
>
> ….
>
> **(3)** The original summons and complaint shall be filed together.

Procedure relating to commencement of actions, but refers instead to sec. 893.02, which appears in the chapter on statute of limitations. The reference to sec. 893.02 suffices because sec. 893.02 is the same as 801.02(1).” ***Richards***, 150 Wis. 2d at 559 n.2.

¶19 In any event, WIS. STAT. § 801.02 clearly does apply to an action for declaratory judgment brought under WIS. STAT. § 806.04. *See* ***Town of Walworth v. Village of Fontana-on-Geneva Lake***, 85 Wis. 2d 432, 435-36, 270 N.W.2d 442 (Ct. App. 1978) (applying § 801.02 to declaratory judgment action); *see also* WIS. STAT. § 801.01(2) (“Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where different procedure is prescribed by statute or rule.”). Section 801.02(3) requires that the “summons and complaint shall be filed together.” It is undisputed that Widmer-Baum did not file a summons and complaint with the circuit court contemporaneously—they were filed almost three months apart.[6]

¶20 Widmer-Baum argues that he should not be held to these procedural requirements because WIS. STAT. § 806.04 does not mention the word “summons” in the language of the statute. However, the fact that the summons and complaint filing requirement is contained in a separate statute does not absolve Widmer-Baum from complying with the statutes.

[6] Although Widmer-Baum’s petition for certiorari review and declaratory judgment was not titled a complaint, we do not rely on that label to sustain dismissal by the circuit court. Rather, we will liberally construe Widmer-Baum’s petition as a complaint, and refer to it as such in the remainder of this decision. *See* ***bin-Rilla v. Israel***, 113 Wis. 2d 514, 520-21, 335 N.W.2d 384 (1983) (courts are to read *pro se* prisoner pleadings liberally, and to relabel them as necessary to put them in the correct procedural posture). Nonetheless, even under this liberal construction of Widmer-Baum’s petition, Widmer-Baum’s action is fatally defective as explained in the text.

¶21 Accordingly, because Widmer-Baum's summons and complaint were not filed "together," we conclude Widmer-Baum failed to initiate a civil action for declaratory judgment with the circuit court and, therefore, the circuit court lacked competency to hear his complaint.

C. Whether Widmer-Baum May Receive Declaratory Judgment Without Complying with the Requisite Civil Procedure Statutes

¶22 Widmer-Baum contends that even if his action is barred because he failed to comply with WIS. STAT. § 801.02, he should not be held to the procedural requirements because: (1) "the Trial Court and [DOC] both acknowledged that this matter was a certiorari case when it was filed and served"; and (2) "all parties were aware that a proceeding had been initiated against them" and "[n]o prejudice was plead or suffered in this matter." We disagree with Widmer-Baum's arguments. The fact that DOC and the circuit court acknowledged receipt of Widmer-Baum's complaint does not prevent DOC from complaining about procedural deficiencies.

¶23 In regard to Widmer-Baum's argument that no prejudice resulted, we acknowledge that in general "mere technical defects in proceedings do not deprive a circuit court of competence to hear a matter because 'the entire tenor of modern law is to prevent the avoidance of adjudication on the merits by resort to dependency on non-prejudicial and non-jurisdictional technicalities.'" ***Selaiden v. Columbia Hosp***., 2002 WI App 99, ¶7, 253 Wis. 2d 553, 644 N.W.2d 690 (quoting ***Cruz v. DILHR***, 81 Wis. 2d 442, 449, 260 N.W.2d 692 (1978)). "Whether the defect is technical or fundamental is resolved by analyzing the purposes of the statute and the type of action involved." ***Novak v. Phillips***, 2001 WI App 156, ¶17, 246 Wis. 2d 673, 631 N.W.2d 635, *overruled on other grounds by* ***Schaefer v. Riegelman***, 2002 WI 18, ¶¶32-33, 250 Wis. 2d 494, 639 N.W.2d

715. "[W]e look to the reasons underlying a rule to determine whether an alleged miscue is a mere technical defect that does not prejudice either the parties or the system of justice, or is a fundamental defect that deprives the circuit court of competency." ***Selaiden***, 253 Wis. 2d 553, ¶7. Whether a defect is fundamental or technical is a question of law. ***Town of Dunkirk v. City of Stoughton***, 2002 WI App 280, ¶7, 258 Wis. 2d 805, 654 N.W.2d 488. The burden is on the complainant to show that a defect is merely technical and did not prejudice the defendant. ***American Family Mut. Ins. Co. v. Royal Ins. Co. of America***, 167 Wis. 2d 524, 533, 481 N.W.2d 629 (1992). We have stated that

> two lines of analysis have been applied in determining whether defects in a summons and complaint defeat personal jurisdiction; one requiring strict statutory compliance and the other allowing nonprejudicial technical errors…. Those cases requiring strict statutory compliance involved application of the procedural requirements of sec. 801.02, Stats.; procedural errors are consistently held to be fundamental defects depriving the court of jurisdiction.

Dungan v. County of Pierce, 170 Wis. 2d 89, 95, 486 N.W.2d 579 (Ct. App. 1992) (citations omitted). Widmer-Baum does not provide any reasons for why the failure to file the summons and complaint together is a technical rather than a fundamental defect. Requiring a summons and a complaint to be filed together furthers the orderly administration of lawsuits and judicial economy. *See* WIS. STAT. § 801.01(2) ("Chapters 801 to 847 shall be construed to secure the just, speedy and inexpensive determination of every action and proceeding."). Forcing a circuit court to track a summons and complaint separately for almost three months is contrary to the purpose of the statute. We see no reason why we should not apply the general rule that procedural violations of WIS. STAT. § 801.02 are fundamental defects and conclude that Widmer-Baum has not met his burden to demonstrate that his procedural error is technical.

II. Whether Widmer-Baum's Request for Review of His Disciplinary Action is Rendered Moot by Virtue of His Parole

¶24 The circuit court concluded that Widmer-Baum's challenge to his disciplinary action is moot. Widmer-Baum argues that his request for review of his disciplinary action is not moot because, although he is no longer incarcerated in Wisconsin's prison system, the challenged conduct report affected his sentencing on federal charges and could still have a negative effect on his parole. We disagree.

¶25 The supreme court has explained that "a case is moot when a determination is sought upon some matter which, when rendered, cannot have any practical legal effect upon a then existing controversy." ***Milwaukee Police Ass'n v. City of Milwaukee***, 92 Wis. 2d 175, 183, 285 N.W.2d 133 (1979).

¶26 Based on the record before us, Widmer-Baum's parole agent asserts that Widmer-Baum's conduct report will not adversely affect his parole from the Wisconsin prison system. Widmer-Baum presents no evidence to rebut the parole agent's assertion. Widmer-Baum argues that the conduct report has a practical legal effect on him because, he asserts, it was shared with the United States marshals and the federal presentence investigator before Widmer-Baum's sentencing on federal charges. However, Widmer-Baum provides no record support for the factual assertion that his conduct report was shared with the United States marshals and the presentence investigator, or was actually used in a subsequent federal sentencing hearing. Absent record support, we can merely speculate as to whether the conduct report was used against Widmer-Baum. "It is the appellant's burden to ensure that the record is sufficient to address the issues raised on appeal." ***Lee v. LIRC***, 202 Wis. 2d 558, 560 n.1, 550 N.W.2d 449 (Ct. App. 1996).

¶27 Widmer-Baum next argues that the conduct report could adversely affect him in the future based on the possibility that he might violate the terms of his parole. This court faced a similar issue in ***State v. Armstead***, 220 Wis. 2d 626, 583 N.W.2d 444 (Ct. App. 1998). In ***Armstead***, a juvenile filed an interlocutory appeal claiming that her transfer to adult criminal court violated her equal protection and due process rights because the adult court did not have authority to sentence her for certain lesser-included charges. We concluded that this issue was moot, stating: "[R]esolution of Armstead's equal protection claim would require us to decide an issue based entirely on the *possibility* that Armstead may be convicted of one of the lesser offenses …. This court will not decide issues which are based on hypothetical or future facts." ***Id***. at 635 (emphasis added). Likewise, Widmer-Baum asks us to rule on his conduct report based on the mere possibility that he will violate the terms of his parole and will be subject to adverse consequences stemming from his conduct report. We conclude Widmer-Baum's parole from prison renders his request for review of his disciplinary action moot.

¶28 While there are several circumstances in which we address moot issues if they involve a matter "of serious public concern" and are "likely to cause judicial disputes in the future," *see* ***State ex rel. La Crosse Tribune v. Circuit Court***, 115 Wis. 2d 220, 228-29, 340 N.W.2d 460 (1983) (setting forth criteria to consider when determining whether to address a moot issue), we see no reason to ignore mootness here.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.