COURT OF APPEALS
DECISION
DATED AND FILED

December 23, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1340 **Cir. Ct. No. 02-SC-006971**

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

ANTHONY PRATT,

PLAINTIFF-APPELLANT,

V.

GREEN BAY CORRECTIONAL INSTITUTION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Brown County: WILLIAM M. ATKINSON, Judge. *Affirmed.*

¶1 HOOVER, P.J.[1] Anthony Pratt, pro se, appeals a circuit court order denying his request for a trial de novo on a small claims action dismissed by the court commissioner. The circuit court concluded that the request was time barred.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Although Pratt argues that the court should have liberally construed one of the documents he filed as a request for a trial, this court ultimately agrees with the circuit court: Pratt's request for a trial de novo was time barred. The order is therefore affirmed.

Background

¶2 Pratt was an inmate at Green Bay Correctional Institution and was transferred to Red Granite Correctional Institution. Green Bay staff packed his personal effects for the transfer. One of the items shipped was a television.

¶3 When the television arrived at Red Granite, staff would not release it to Pratt because of a missing control button for changing channels. He filed an inmate complaint and, as a result, Red Granite sent the television out for repairs. The complaint examiner concluded that because the television had been allowed in Green Bay, it must not have been missing the button when it left there. Thus, it had to have been damaged while in transit and in the possession of prison officials.

¶4 Following repairs for the button, Pratt complained that the television still did not work properly, this time because the new button stuck and the screen's color was off. He again filed a complaint, which the examiner dismissed because there was no conclusive evidence that the new internal damage to the television had been caused while the television was in the possession of any prison staff.

¶5 Pratt filed a small claims action on December 12, 2002, seeking money for a replacement television, pain and suffering, and the costs of litigating the action. The court commissioner ultimately dismissed Pratt's case for failure to

comply with the notice of claim statute, WIS. STAT. § 893.82, because Pratt named only "Greenbay Corr. Inst. et. al." as a defendant and no individuals.[2] The decision was mailed March 4, 2003, giving Pratt until March 19 to request a trial de novo to the circuit court. *See* WIS. STAT. § 799.207(2)(b).[3] Otherwise, the commissioner's decision would become final on March 20.

¶6 This is where the procedural history becomes slightly muddled. On March 25, the circuit court clerk filed Pratt's "Objection to Court's Demand for Jury Trial." Simultaneously, the circuit court clerk filed Pratt's "Notice of Appeal" to this court. Details of these documents will be included in the discussion section. Pratt signed both documents on March 18 and claims on appeal that March 18 was also the date he mailed the documents.

¶7 This court denied his March appeal because appeal may not be taken from a court commissioner's decision. WIS. STAT. RULE § 809.01(1). On April 21, Pratt filed a request with the circuit court clerk asking the court commissioner's "recommendation" and Pratt's "objection" be forwarded to the

[2] For brevity's sake, Green Bay Correctional Institution is simply referred to as the State, because the attorney general has appeared on its behalf.

[3] WISCONSIN STAT. § 799.207(2)(b) states in relevant part: "The circuit court commissioner's decision shall become a judgment … 16 days after mailing … except that … [e]ither party may file a demand for trial within … 15 days from the date of mailing of a written decision to prevent the entry of the judgment."

circuit court for a decision. The court responded by construing the April 21 letter as a demand for trial and dismissing the demand as untimely.[4] Pratt appeals.

Discussion

¶8 Contrary to the State's assertion that timeliness of a party's demand for trial is reviewable de novo, timeliness is generally a question of fact and left to the sound discretion of the circuit court. *See* ***Neff v. Pierzina***, 2001 WI 95, ¶35, 245 Wis. 2d 285, 629 N.W.2d 177; ***State ex rel. Bilder v. Township of Delevan***, 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983); ***Mack Trucks, Inc. v. Sunde***, 19 Wis. 2d 129, 140, 119 N.W.2d 321 (1963).

¶9 The interpretation of a document, however, is a question of law. ***Cohn v. Town of Randall***, 2001 WI App 176, ¶5, 247 Wis. 2d 118, 633 N.W.2d 674. Thus, if the circuit court misconstrued a document and this led to the finding of untimeliness, then the circuit court has erroneously exercised its discretion. *See* ***King v. King***, 224 Wis. 2d 235, 248, 590 N.W.2d 480 (1999) (a circuit court erroneously exercises its discretion if it makes an error of law).

¶10 Pratt first argues that he should be entitled to application of "mailbox" rules, which toll the statutes of limitations for filing documents on the day the inmate delivers a properly addressed document to the correct prison

[4] The State argues that even on the merits the court commissioner's decision was correct and that the doctrine of sovereign immunity prevents suit. The timeliness question is dispositive, and this court usually need only address dispositive issues. ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983). Thus, the sovereign immunity issue will not be reached. However, this court is compelled to respond to Pratt's complaint regarding the applicability of WIS. STAT. § 893.82, and that discussion is in a subsequent footnote.

authorities for mailing.[5] *See* ***State ex rel. Nichols v. Litscher***, 2001 WI 119, ¶32, 247 Wis. 2d 1013, 635 N.W.2d 292.

¶11 However, this tolling argument need only be addressed if the March 25 objection might be construed as a demand for trial. Pratt argues that this objection was intended to be such a demand and that his pleadings should be liberally construed. *See* ***State ex rel. L'Minggio v. Gamble***, 2003 WI 82, ¶16, 263 Wis. 2d 55, 667 N.W.2d 1. However, under no reasonable interpretation does the March 25 objection represent a demand for trial.

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[5] Pratt also complains that the court commissioner's application of WIS. STAT. § 893.82 violates federal rules protecting prisoners' access to the courts, thus challenging the underlying merits of the case. Section 893.82(3) requires that a complainant identify state officials by name before a claim may proceed. As a jurisdictional statute, strict compliance is required. WIS. STAT. § 893.82(2m); ***Riccitelli v. Broekhuizen***, 227 Wis. 2d 100, 116, 595 N.W.2d 392 (1999). Thus, this court has held that the statutes require "the names of persons involved in the circumstances of the claim be stated in the notice of claim." ***Modica v. Verhulst***, 195 Wis. 2d 633, 636, 536 N.W.2d 466 (Ct. App. 1995).

Nonetheless, Pratt cites three federal cases to support his claim that his particular pro se inmate case cannot be dismissed simply for his failure to identify the necessary parties by name. *See* ***Davis v. Kelly***, 160 F.3d 971 (2nd Cir. 1998); ***Smith-Bey v. Hospital Admin.***, 841 F.2d 751 (7th Cir. 1988); ***Murphy v. Kellar***, 950 F.2d 290 (5th Cir. 1992).

First, it is necessary to dispel Pratt of the notion that federal case law in every circumstance trumps state law. Such is not the case. It is sufficient to note that while federal case law is helpful in interpreting and applying both federal law and the federal constitution within the state, it generally does not control state interpretation and application of state law.

Thus, we question the applicability of ***Murphy*** and ***Davis*** because both dealt with 42 U.S.C. § 1983 actions, not Wisconsin jurisdictional requirements in actions against governmental employees. Additionally, ***Smith-Bey*** actually required the complaint to contain sufficient allegations from which the involved actors could be identified with "reasonable certainty" and Pratt's complaint does not rise to that standard. *See* ***Smith-Bey***, 841 F.2d at 759.

In any event, our state law requires strict compliance with WIS. STAT. § 893.82(3). This court cannot modify its earlier decisions, nor can it override or disregard decisions of the supreme court. ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). If Pratt believes this court to be in error, he is free to file a petition for review with the Wisconsin Supreme Court.

¶12 When the court commissioner mailed his decision, he included a form stating at the top, "if no demand for trial is made by plaintiff/defendant, this notice shall become the notice of entry of judgment." Included on the form are the following instructions, in relevant part:

> The enclosed decision shall become a judgment 16 days after it is mailed by the Clerk of Courts. Either party may file a demand for trial within 15 days from the date of mailing to prevent entry of judgment. Said demand for trial must be filed with the Clerk of Courts and mailed to the other parties within the 15 days. …
>
> A demand for trial by jury … shall be made at the time a demand for trial is filed. There is a jury fee which must be paid at the time the jury trial demand is filed.

¶13 The bottom third of the form is separated from the main text by a double row of asterisks and appears to be designed as a convenient return form for a party to send to the court to demand a trial. There is a section that reads: "JURY TRIAL ___ YES ___ NO." This is where the party demanding a trial can elect to have a jury trial by checking yes, or a bench trial by checking no, and returning the form. While Pratt appears to have misunderstood this form, his misapprehension has no bearing on interpretation of the letter.

¶14 In his March 25 letter, Pratt objected to the "court's demand for jury trial" claiming among other things that he could not fully lodge his objection without access to the prison law library and that he could not afford a jury fee. Pratt argues that because he objected to the jury fee, the court should have construed his objection as a demand for a bench trial.[6] Pratt argues this is the

[6] Additionally, we note that the case law Pratt cites to support his claims for liberal construction deal with construing *pleadings*. A pleading is "A formal document in which a party to a legal proceeding … sets forth or responds to allegations, claims, denials, or defenses." BLACK'S LAW DICTIONARY 1173 (7th ed. 1999). Pratt's March letter is therefore not a pleading.

logical interpretation because if he was rejecting a jury trial based on his ability to pay, the only other possible interpretation was that he was demanding a bench trial. However, another possible interpretation is that Pratt could have been objecting to the jury fee because he did not plan to contest the commissioner's ruling and would therefore not need to pay for a jury trial.

¶15 Moreover, as the State points out, nothing in the title or the body of Pratt's objection was likely to put the circuit court on notice that Pratt was demanding a WIS. STAT. § 799.207(2) trial. Pratt's objection mentioned nothing about having a trial, only that he objected to the court "ordering" a jury trial.[7]

¶16 What this court believes to be most damaging to Pratt's argument, however, is that Pratt asked the court to "allow[] plaintiff the opportunity to appeal [the] decision …." This, coupled with the notice of appeal to this court filed simultaneously, would indicate to any reasonable court that Pratt was seeking a remedy here, not with the circuit court.

¶17 Pratt's April letter, by contrast, was construed as a request for a trial. First, Pratt recited this court's order that he could not appeal without a circuit court ruling. Second, Pratt asked the circuit court give him a decision on the court commissioner's ruling. This is reasonably read as a trial request because a trial would result in the threshold circuit court judgment that Pratt needed to pursue appellate relief. However, this April letter was filed too late after the court commissioner's ruling and Pratt's request for a trial de novo was properly denied.

[7] On appeal, he now complains that the form was ambiguous because it contained both the March 4 mailing date and the February 10 decision date. Pratt, however, acknowledges multiple times that he has fifteen days from the mailing date to file a trial demand.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.