

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 8, 2011**

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. 2010AP2310**

**Cir. Ct. No. 2009CV2017**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**KIRK DEWINDT,**

**PLAINTIFF-APPELLANT,**

**V.**

**BRUCE LUEDTKE,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Winnebago County: BARBARA H. KEY, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Anderson, J.

¶1 PER CURIAM. Kirk Dewindt appeals from the judgment of the circuit court that dismissed his action under 42 U.S.C.A. § 1983 (West 2011) against Bruce Luedtke. Dewindt argues that the circuit court erred when it dismissed his claim. The circuit court determined that Dewindt had not stated a

claim under § 1983 because he had not established that he had been deprived of a constitutional right, and because Luedtke was entitled to qualified immunity. We agree, and we affirm the judgment of the circuit court.

¶2 The facts are not complicated. Luedtke is a building inspector for the City of Oshkosh. Dewindt lived in an apartment building in Oshkosh. Before Dewindt moved in, Luedtke had inspected the building and issued notices to the building owner to correct various violations of Oshkosh Minimum Housing Code. Oshkosh did not have a policy requiring building inspectors to reinspect buildings, and Luedtke did not reinspect the building after the notices were issued.

¶3 Dewindt sued Luedtke alleging that one of the violations of the housing code led to a hazardous condition that caused him to have severe and permanent health issues. Specifically, Dewindt alleged that Luedtke's failure to reinspect the building left him "at the mercy of a hazardous toxic-mold condition that would eventually overrun his body and cause severe injury." Dewindt claimed that Luedtke deprived him of his constitutional right to the enjoyment of life because Luedtke did not inform Dewindt that the building had been cited for code violations that were hazardous to his health. Luedtke moved for judgment on the pleadings, and the circuit court granted the motion. The circuit court rejected Luedtke's argument that the City's failure to reinspect the building violated his constitutional rights. The court also concluded that, as a public official performing a discretionary act, Luedtke was entitled to qualified immunity.

¶4 Dewindt argues to this court that he has a constitutional right to "the enjoyment of life," and that Luedtke violated this right by his gross disregard of Dewindt's life and safety by failing to reinspect the building. Dewindt argues that he has an "absolute" constitutional right to be free from governmental indifference

to his health and safety. The essence of Dewindt's argument is that his health and safety have been affected by the conditions in which he lives, and the housing inspector is responsible for this. This assumes that he is entitled to live in safe and sanitary conditions. Dewindt, however, has not cited to a case that stands for the proposition that there is a constitutional right to the enjoyment of life that requires safe and healthy living conditions.

¶5 Further, Dewindt has not alleged that Luedtke caused the conditions in the building that affected his health. The conditions, presumably, were caused by the building owner's failure to remedy the violations. Nothing in either the language or history of the due process clause requires a state or municipality "to protect the life, liberty, and property of its citizens against invasion by private actors." *DeShaney v. Winnebago Dep't of Social Servs.*, 489 U.S. 189, 195 (1989). We agree with the circuit court that Dewindt did not state claim under 42 U.S.C.A. § 1983.

¶6 Although we conclude that the circuit court properly granted Luedtke's motion for judgment on the pleadings, we nonetheless take this opportunity to suggest that the City of Oshkosh provide some sort of notice to tenants that the building in which they live has been cited for housing code violations.

¶7 For the reasons stated, we affirm the judgment of the circuit court.

*By the Court.*—Judgment affirmed.

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

