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DISTRICT III

November 21, 2023

To:

Hon. Suzanne C. O'Neill
Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Brian C. Williams
Electronic Notice

Brian Maus 108205
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

Shawn Maus
2605 N. 5th Street
Wausau, WI 54403

You are hereby notified that the Court has entered the following opinion and order:

2022AP1862

Brian Maus v. Shawn Maus (L. C. No. 2021CV397)

Before Stark, P.J., Hruz and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Brian Maus appeals from an order that dismissed his lawsuit against Shawn Maus for failure to state a claim upon which relief could be granted. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

While a prisoner in the custody of the Wisconsin Department of Corrections, Brian filed a pro se complaint alleging that Shawn Maus had conspired with others to draft a fraudulent will in the name of Margaret Maus and had unlawfully obtained possession of Margaret's property. The complaint did not, however, explain what, if any, relation Brian had to Margaret or allege that Brian had any recognizable legal interest in Margaret's property or estate.

After Shawn filed a pro se answer to the complaint in letter format, Brian moved for default judgment, claiming that he had not received a copy of the answer. Following a hearing,² the circuit court found that Shawn had timely mailed his answer to Brian's last known address, and it denied the motion.

Brian proceeded to send Shawn several discovery requests. After Shawn allegedly failed to respond to the requests, Brian moved for summary judgment. At a hearing scheduled on Brian's summary judgment motion, the circuit court announced that it had sua sponte reviewed the sufficiency of Brian's complaint pursuant to the Prison Litigation Reform Act.³

A provision in the Prison Litigation Reform Act requires a circuit court to review pleadings filed by a prisoner "as soon as practicable" after an action has been commenced and to dismiss the action if, among other things, the complaint "fails to state a claim upon which relief may be granted." WIS. STAT. § 802.05(4). Here, the court determined that Brian had failed to

² We note that Brian failed to arrange to have any transcripts included in the record for this appeal. This court will assume that any missing transcripts would support the circuit court's decision. See *Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381.

³ Although the record does not contain any transcripts, Shawn has included a copy of the transcript of the summary judgment hearing in the appendix to his brief. Because the transcript is an official court document, we will take judicial notice of it. See WIS. STAT. § 902.01(2).

state a claim because the allegations in his complaint were insufficient to establish that he had standing. The court then dismissed Brian's action without addressing his summary judgment motion.

In this appeal, Brian contends that the circuit court should have granted his motions for default judgment and summary judgment. He specifically challenges the court's decision that Shawn filed a timely response and renews his allegations of discovery violations. In his reply brief, Brian also asserts that the court erroneously exercised its discretion under WIS. STAT. § 802.05(4) by waiting 216 days to screen his complaint, after several motions had already been filed and hearings had been held.

There is no specific deadline in WIS. STAT. § 802.05(4), however, for the circuit court to complete its review of the pleadings. Given the demands on a court's calendar, it may frequently be the case that the court does not have time to review a prisoner's pleadings when they are first filed. That circumstance does not mean that the court loses the authority to do so.

Furthermore, we note that the first step in summary judgment methodology is to determine the sufficiency of the complaint to state a claim. *State v. Dunn*, 213 Wis. 2d 363, 368, 570 N.W.2d 614 (Ct. App. 1997). Therefore, even if the circuit court had not examined the sufficiency of the complaint pursuant to WIS. STAT. § 802.05(4), it could have considered the same issue under WIS. STAT. § 802.08(6), in the context of reviewing Brian's own summary judgment motion.

Whether a party has standing and whether a complaint states a claim upon which relief can be granted are both questions of law subject to de novo review. See *Polan v. DOR*, 147 Wis. 2d 648, 658, 433 N.W.2d 640 (Ct. App. 1988) (regarding standing); *Data Key Partners v.*

Permira Advisers LLC, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693 (regarding the sufficiency of a complaint). The doctrine of standing restricts access to a judicial remedy to those who have suffered an injury or the threat of an injury to a legally protected interest. *See Chenequa Land Conservancy, Inc. v. Village of Hartland*, 2004 WI App 144, ¶¶13-16, 275 Wis. 2d 533, 685 N.W.2d 573.

Here, the record confirms that Brian’s complaint failed to allege a recognizable property interest in any of Margaret’s property or estate. We therefore conclude that the circuit court properly determined that Brian lacked standing. Consequently, the court also properly determined that the complaint failed to state a claim upon which relief could be granted and dismissed Brian’s action.

Our decision that the circuit court properly dismissed Brian’s action for failure to state a claim is dispositive of the appeal. Any other errors the court may have made are harmless under WIS. STAT. § 805.18(2). *See, e.g., Davis v. City of Elkhorn*, 132 Wis. 2d 394, 398-99, 393 N.W.2d 95 (Ct. App. 1986) (noting that a complainant is not entitled to a default judgment unless the complaint “contain[s] allegations sufficient in law to state a claim for relief against a defendant”). It is therefore unnecessary for this court to address Brian’s claims regarding whether Shawn timely answered the complaint or responded to discovery requests. *See Maryland Arms Ltd. P’ship v. Connell*, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15 (only dispositive issues need be addressed).

Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals