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DISTRICT IV

April 18, 2024

To:

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

2022AP1781

State of Wisconsin ex rel. DeLorean Bryson v. Kevin Carr
(L.C. # 2018CV2493)

Before Blanchard, Graham, and Taylor, 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).

DeLorean Bryson, pro se, appeals a circuit court order entered following remand by this court in *State ex rel. Bryson v. Carr*, 2022 WI App 34, 404 Wis. 2d 307, 978 N.W.2d 595.

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 conclude that the disposition of this appeal is controlled by the law of the case doctrine, and we affirm on that basis.

Bryson, an inmate at Green Bay Correctional Institution, raises a single issue on appeal. Bryson argues that the Department of Corrections acted in violation of the Administrative Procedure Act² when it adopted a policy change that resulted in the deduction of funds from his inmate trust account at a rate of fifty percent for the recoupment of certain court-ordered obligations, including a DNA surcharge, restitution, and court fees. Bryson asserts that, when the Department increased the maximum recoupment rate to fifty percent from the previous rate of twenty-five percent, the Department should have followed the rulemaking procedures in WIS. STAT. ch. 227, rather than promulgating the change through an informal policy.

Bryson raised the same issue in his prior appeal. In our opinion resolving that appeal we stated, “Although Bryson now advances an argument on appeal that the Department’s new policy was adopted in violation of the Administrative Procedure Act, we do not address this argument because Bryson did not raise the issue during the circuit court proceedings in the manner required under WIS. STAT. § 227.40(3).” *Bryson*, 404 Wis. 2d 307, ¶9 n.7. Section 227.40(3) provides, in relevant part, that, in a judicial proceeding “in which the invalidity of a rule or guidance document is material to the cause of action or any defense thereto, the assertion of that

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

² The Department adopted this policy in response to 2015 Wis. Act 355, which was enacted on April 11, 2016. The Administrative Procedure Act is codified in WIS. STAT. ch. 227.

invalidity shall be set forth in the pleading of the party maintaining the invalidity of the rule or guidance document in that proceeding.” Sec. 227.40(3)(ag).

After this court remanded the case, Bryson filed a new brief in this same certiorari action, requesting that the court consider the issue of whether the Department violated the Administrative Procedure Act. In its order entered on September 13, 2022, the circuit court denied the relief sought because Bryson had forfeited the argument in this action by failing to raise it in his original petition for certiorari or supporting brief. The circuit court stated, “Petitioner has not properly raised this new argument under the declaratory judgment procedures set forth at WIS. STAT. § 227.40, as the Court of Appeals noted.” The circuit court also cited § 227.40(1), which provides that “the exclusive means of judicial review of the validity of a rule or guidance document” is through an action for declaratory judgment “brought in the circuit court for the county where the party asserting the invalidity of the rule or guidance document resides.” The court went on to state that, although § 227.40(2) gives courts discretion to consider declaratory judgment challenges within the context of several specific proceedings, “a writ of certiorari petition is not one of those proceedings.” The circuit court then stated that, if Bryson wished to continue to pursue his claim, he would have to file a new action in the circuit court of the county of his residence. Nothing in the record before us establishes that Bryson has done so, and in any case our review is limited to proceedings in this action.

The problem with Bryson’s current appeal is that the sole issue he raises—that the Department violated the Administrative Procedure Act when it adopted its policy change regarding recoupment rates—was already decided for purposes of this action by this court in *Bryson*, 404 Wis. 2d 307, ¶9 n.7, and then again by the circuit court in its September 13, 2022 order. Thus, the disposition of this appeal is controlled by the law of the case doctrine. “The law

of the case doctrine is a ‘longstanding rule that a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal.’” *State v. Moeck*, 2005 WI 57, ¶18, 280 Wis. 2d 277, 695 N.W.2d 783 (citation omitted). Applying that doctrine here, we affirm the decision of the circuit court.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to 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