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**DISTRICT II**

April 24, 2024

To:

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James D. Kurtz  
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You are hereby notified that the Court has entered the following opinion and order:

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2022AP1111

James D. Kurtz v. State of Wisconsin (L.C. #2017CV22)

Before Gundrum, P.J., Neubauer and Lazar, 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).**

James D. Kurtz, pro se, appeals from a circuit court order discharging the second lis pendens Kurtz filed against real property owned by defendants in this action. 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).<sup>1</sup> We affirm.

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

Kurtz filed a complaint, in the action related to this appeal, alleging that Janet Lammers and various local and State government officials conspired to deny him access to his real and personal property located at N7401 and N7445 Racetrack Road in Plymouth, Wisconsin (the Racetrack Road properties). The allegations set forth in Kurtz's complaint relate to events that occurred in 2009. The circuit court dismissed Kurtz's complaint because Kurtz did not file the action until January 2017, well after the statute of limitations on his claims had expired. We affirmed the court's dismissal of the complaint. *Kurtz v. State*, No. 2020AP854, unpublished opinion and order (WI App June 9, 2021). Our supreme court denied Kurtz's petition for review of our unpublished opinion and order affirming the dismissal of Kurtz's complaint.

After the supreme court denied Kurtz's petition for review, the attorney for Lammers and other related defendants filed a motion in the circuit court to discharge a *lis pendens* filed by Kurtz in 2010.<sup>2</sup> Lammers argued that the *lis pendens* should be discharged because "all proceedings in this matter have come to a final conclusion with [Kurtz's] action being dismissed." The court agreed and ordered the *lis pendens* discharged on the grounds that all litigation as to the underlying complaint was complete and the time for any further appeals had passed. The court later held a hearing to review the *lis pendens* and affirmed the discharge order. Rather than appeal from the discharge order to this court, Kurtz filed a second *lis pendens* on the same real property (owned by Lammers but unrelated to the Racetrack Road properties).

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<sup>2</sup> WISCONSIN STAT. § 840.10 provides that in an action where relief is demanded affecting real property, which "might confirm or change interests in the real property," the plaintiff shall file in the county where the land is located a *lis pendens* containing the names of the parties, the object of the action, and a description of the land affected.

Pursuant to a defense motion, the court held another hearing and ordered discharge of the second lis pendens. This appeal follows.

The issues Kurtz raises in this appeal can be boiled down to whether the circuit court erred in discharging the second lis pendens Kurtz filed and in denying Kurtz’s motion that the court recuse itself from the case. We address each issue in turn below.

First, Kurtz argues that the circuit court ordered discharge of his second lis pendens in error. The resolution of this issue raises “questions of law that we resolve independently, with the benefit of the analysis undertaken by ... the circuit court.” *Gaugert v. Duve*, 2001 WI 83, ¶15, 244 Wis. 2d 691, 628 N.W.2d 861.

As a starting point, we note that “[t]he term ‘lis pendens’ means pending litigation.” *Id.*, ¶17. As the *Gaugert* court explained, “[t]he purpose of the doctrine ‘is not, primarily, notice, but to hold the subject of the suit—the res—within the power of the court, so as to enable it to pronounce judgment upon it.’” *Id.* (citation omitted). Consistent with this purpose, WIS. STAT. § 840.10(1)(a), provides as follows:

In an action where relief is demanded affecting described real property which relief might confirm or change interests in the real property, after the filing of the complaint the plaintiff shall present for filing or recording in the office of the register of deeds of each county where any part thereof is situated, a lis pendens containing the names of the parties, *the object of the action and a description of the land in that county affected thereby....*

*Id.* (emphasis added).

The statute clearly provides that a lis pendens may only be filed with regard to real property where relief is demanded in an action that might have an effect on the rights to or interest in that real property. *See id.* As noted above, Kurtz commenced the circuit court action

underlying this appeal in 2017, when he filed the complaint involving the Racetrack Road properties. Neither the complaint nor any subsequent filings mentioned any real property other than the Racetrack Road properties; however, the second lis pendens affected real estate located at 326 Dewey Lane, Plymouth, WI 53073. The real estate located at 326 Dewey Lane was not the object of the action, and therefore, the second lis pendens was invalid under WIS. STAT. § 840.10(1)(a). At the time Kurtz recorded the second lis pendens, no action was pending for which the real estate was the “object of the action.” We therefore affirm the court order discharging the second lis pendens as in direct contravention of Wisconsin law.<sup>3</sup>

Kurtz also argues that the circuit court erred in denying his motion that the court recuse itself. At a hearing, the court denied Kurtz’s recusal motion. The court found that the recusal motion was based on the court’s involvement in drafting a brief—in 1990—“in a matter that’s entirely unrelated to anything here.” 1990 was well before Kurtz filed the original lis pendens on this action, and well before the allegedly-biased judge took the bench. Finding no grounds to indicate bias, the court “found there’s no basis to recuse” itself. We agree.

WISCONSIN STAT. § 757.19(2)(c), which mandates disqualification when a judge previously acted as counsel to any party in the same action or proceeding, is not applicable in this situation. As the circuit court found, the Racetrack Road properties cases and lis pendens

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<sup>3</sup> We observe that in addition to relying on WIS. STAT. § 840.10(1)(a) as a basis for discharging the second lis pendens, the circuit court also found Kurtz’s filing of the second lis pendens directly violated the court’s order discharging the first lis pendens Kurtz filed in this action. Although this could serve as an initial ground for our affirmance of the discharge order, we decline to address this issue because our decision that the second lis pendens violated Wisconsin law is dispositive of this issue. *See Village of Slinger v. Polk Properties, LLC*, 2021 WI 29, ¶26 n.12, 396 Wis. 2d 342, 957 N.W.2d 229 (explaining that we decide cases “on the narrowest possible grounds” and do not reach issues we need not reach).

filings are unrelated to the 1990's matter in which the court, as an associate attorney, participated in drafting a brief. Furthermore, there is no showing that the judge determined that he could not, or it appeared that he could not, act in an impartial manner. *See* § 757.19(2)(g). The decision denying Kurtz's recusal motion is therefore affirmed.<sup>4</sup>

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*

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<sup>4</sup> To the extent that Kurtz may have raised other issues in his briefs that we have not addressed, we conclude that any such issues are insufficiently developed, such that we cannot identify them, much less address them.