

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 18, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-1619**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**PAUL J. MAY, LUCILLE C. MAY,  
HUBERT BYRNE,  
DENNIS G. CRIST and SHERRY L. CRIST,  
JAMES J. MCDONALD and JANET L. MCDONALD,  
WALTER PAUL LEU and SHIRLEY M. LEU,  
DONALD P. WEDIG and CYRILLA J. WEDIG,  
GORDON A. SMITH and KATHLEEN C. SMITH,  
RONALD L. BADER,  
ROBERT J. CRIST and PATRICIA A. CRIST  
and OTHERS SIMILARLY SITUATED,**

**Plaintiffs-Appellants,**

**v.**

**PECATONICA RAIL TRANSIT COMMISSION  
TRI-COUNTY TRAILS COMMISSION,**

**Defendants-Respondents.**

APPEAL from a judgment of the circuit court for Iowa County:  
JAMES P. FIEDLER, Judge. *Modified and, as modified, affirmed.*

Before Eich, C.J., Gartzke, P.J., and Sundby, J.

PER CURIAM. The appellants, all property owners along a recreational trail, appeal from a judgment dismissing their claims against the Pecatonica Rail Transit Commission and the Tri-County Trails Commission. The trial court dismissed with prejudice, because the appellants admittedly failed to comply with § 893.80, STATS. We conclude that the trial court properly dismissed the complaint. However, the trial court erred by dismissing with prejudice. We therefore modify the judgment, and affirm as modified.

Claimants against governmental units must serve the prospective defendants with a written notice of the circumstances of the claim, § 893.80(1)(a), STATS., and an itemized statement of the relief sought. Section 893.80(1)(b). Compliance is a condition precedent to bringing the action, although noncompliance with § 893.80(1)(a) is excused if, as the trial court found here, the governmental units have actual notice of the circumstances and are not prejudiced by absence of the notice. *Fritsch v. St. Croix Cent. Sch. Dist.*, 183 Wis.2d 336, 343, 515 N.W.2d 328, 331 (Ct. App. 1994). However, § 893.80(1)(b) is subject to a strict compliance standard. *Id.* Both sections apply whether the relief sought is equitable or monetary. *DNR v. City of Waukesha*, 184 Wis.2d 178, 191, 515 N.W.2d 888, 893 (1994).

Because strict compliance with § 893.80(1)(b), STATS., is required, the trial court properly dismissed the action. However, § 893.80, STATS., is not a statute of limitations but imposes a condition precedent to the right to commence an action. *Fritsch*, 183 Wis.2d at 344, 515 N.W.2d at 331. Unlike § 893.80(1)(a), STATS., § 893.80(1)(b), STATS., does not impose any time limit on satisfying that condition precedent by serving the itemized statement of relief. So long as the appellant's claims are not otherwise barred, they still have the opportunity to serve the statement of itemized relief and to recommence the action if the claim is subsequently disallowed.

*By the Court.*—Judgment modified and, as modified, affirmed. No costs to either party.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.