

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 6, 1997

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. 95-3052

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

PATRICK C. WEBSTER,

Plaintiff-Appellant,

v.

DAVID J. KRATOCHWILL, DANE COUNTY,
JOHN G. BUEHLER, DANE COUNTY
SHERIFF'S DEPARTMENT, STEVE J. GILMORE,
RICHARD L. HODGES, HONER WAYNE,
JEROME D. LACKE, THOMAS R. LUTHER,
MARY MALONY, RICHARD RAEMISCH, and
KAREN THOM,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Dane County:
MORIA G. KRUEGER, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Patrick Webster appeals from a summary judgment dismissing his personal injury complaint against Dane County, the Dane County Sheriff's Department and several of its employees. The issue is whether the respondents are immune from suit on Webster's claim. We conclude that they are and therefore affirm.

Webster was injured while using the inmates' weight-lifting equipment in the Ferris Huber Center at the Dane County jail. The accident occurred when a handle he was grasping slipped off a weight-lifting bar, causing him to fall. He alleged that proper inspection of the equipment and proper training and supervision of the inmates' weight-lifting activities would have prevented the accident.

On summary judgment all the defendants submitted identical affidavits stating that: (1) none knew or had reason to believe that the weight-lifting equipment presented a risk of harm to users before Webster's accident; (2) none were aware of prior injuries caused by defective weight-lifting equipment at the jail; (3) none knew of any alterations to the equipment since it was manufactured; and (4) none were aware of any prior injuries caused by the absence of training or supervision for users. In opposition to the motion, Webster submitted his own affidavit describing the accident, and that of a Sheriff's Department officer whose duties included the care and maintenance of the weight-lifting equipment. That officer stated that the equipment was subject to routine visual inspection, staff relied on reports of users to maintain the equipment, no one was allowed to use equipment determined through inspection or reports to be unsafe, and no unsafe conditions were reported or revealed by inspection before Webster's accident.

The trial court awarded summary judgment on the basis of governmental immunity, concluding that maintaining and regulating the use of the weight-lifting equipment were discretionary duties. That ruling and the resulting dismissal of the complaint are the subjects of this appeal.

If the material facts are undisputed, as they are here, summary judgment is appropriate if only one reasonable inference is available from the facts and that inference requires dismissal as a matter of law. *Wagner v. Dissing*, 141 Wis.2d 931, 939-40, 416 N.W.2d 655, 658 (Ct. App. 1987). We

independently decide this issue without deference to the trial court. *Shaller v. Marine Nat'l Bank*, 131 Wis.2d 389, 394, 388 N.W.2d 645, 648 (Ct. App. 1986).

No suit may be brought against governmental entities or their officers or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions. Section 893.80(4), STATS. Such acts are labeled discretionary. "Ministerial" duties, on the other hand, can give rise to liability. *Kimps v. Hill*, 200 Wis.2d 1, 10, 546 N.W.2d 151, 156 (1996). They are defined as duties that are "absolute, certain and imperative, involving merely the performance of a specific task when the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion." *Id.* at 10-11, 546 N.W.2d at 156. Here, Webster asserts that the respondents' duty to maintain, inspect and supervise the use of the weight-lifting equipment was ministerial in nature. The respondents contend that it was discretionary.

Respondents are immune from liability for their acts or omissions regarding the weight-lifting equipment. In *Kimps*, 200 Wis.2d at 11-14, 546 N.W.2d at 156-57, the supreme court concluded that while a state employee may owe a duty of care to others to provide safe recreational equipment, the performance of that duty is discretionary. We are unable to distinguish *Kimps* on the facts. Nor does *Kimps* appear to offer a different rule for state agencies and employees as opposed to municipal entities and employees. That ends that matter. All of the respondents are immune, whether they breached a duty of care to Webster or not.

By the Court. — Judgment affirmed.

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