



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

January 3, 2014

To:

Hon. Andrew P. Bissonnette
Circuit Court Judge
Justice Facility
210 West Center St.
Juneau, WI 53039

Lynn M. Hron
Clerk of Circuit Court
Dodge Co. Justice Facility
210 West Center Street
Juneau, WI 53039

Abigail Potts
Assistant Attorney General
P. O. Box 7857
Madison, WI 53707

Nhia Lee 361845
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2012AP2657

Nhia Lee v. Belinda Schrubbe (L.C. # 2012CV428)

Before Blanchard, P.J., Lundsten and Higginbotham, JJ.

Nhia Lee appeals an order dismissing his complaint. 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 (2011-12).¹ We affirm.

Lee's complaint alleged that the prison staff member defendants intentionally released his medical records. The circuit court dismissed the complaint partly on the ground that Lee did not comply with the notice of claim statute, WIS. STAT. § 893.82(2m) and (3). Lee argues that the proper notice of claim provision for his case is § 893.82(4)(b), because he did not obtain actual

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

or constructive knowledge of the underlying cause of action only until after the records were released. For reasons that are not apparent, the respondent does not address this argument on appeal. However, the argument fails on its face.

The provision Lee relies on applies when the action against the state employee “is based on contribution or indemnification.” WIS. STAT. § 893.82(4)(a). Lee argues that this is such an action because the defendants are indemnified by the state under WIS. STAT. § 895.46 in the event they are ordered to pay damages in this action. This argument fails because the fact that the defendants might be indemnified by the state does not mean that Lee’s action is based on contribution or indemnification. Lee is not making a claim of contribution or indemnification against the defendants, because Lee is not seeking to have them pay damages that he has been ordered to pay to a third party. If contribution or indemnification under § 895.46 might be involved in this case, it would only be in a later action *by the defendants* against the state, asking for the State to pay any damages the defendants might be ordered to pay to Lee.

Therefore, because Lee’s action is not based on contribution or indemnification, WIS. STAT. § 893.82(4)(b) is not the correct provision by which to determine the timeliness of Lee’s notice of claim. Accordingly, we conclude that the circuit court correctly determined that Lee’s notice of claim was untimely under § 893.82(2m) and (3).

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

Diane M. Fremgen
Clerk of Court of Appeals