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

November 11, 2014

To:

Hon. John C. Albert
Circuit Court Judge
Dane County Courthouse
215 South Hamilton St., Br 3, Rm 4105
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton St.
Madison, WI 53703

Jody J. Schmelzer
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

James Stokes
Sand Ridge Secure Treatment Center
P.O. Box 800
Mauston, WI 53948

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

2013AP23 James Stokes v. Deborah McCulloch (L. C. #2011CV673)

Before Lundsten, Sherman and Kloppenburg, JJ.

James Stokes, pro se, appeals an order granting summary judgment dismissing claims arising out of Stokes' placement in a more secure unit after Stokes refused to submit to a random drug test at Sand Ridge Secure Treatment Center. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2011-12).[1]

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

Stokes was committed as a sexually violent person under WIS. STAT. ch. 980. He is confined at Sand Ridge. On August 2, 2010, Stokes was advised that his mother had passed away. Stokes was approved to attend the funeral, but on the morning of August 6, Stokes refused to come out of his room to submit to a random urinalysis. Stokes was reassigned to seventy-two-hour status in Unit AD, and subsequently placed on the Step Program for gradual return to general population. He completed the Step Program on September 9, 2010, and was transferred back to Unit AA, a general population unit.

Stokes commenced a lawsuit claiming his rights were violated. The defendants moved for summary judgment, which the circuit court granted. The court also denied Stokes' motion to compel the defendants to provide an address where a former Sand Ridge employee could be served process. Stokes now appeals.

Stokes' arguments are difficult to discern. Substantive and procedural due process principles are referenced throughout his briefs. So far as we can tell, Stokes appears to allege that his due process rights were violated because: (1) he was punished without consideration of his treatment by the Sand Ridge psychiatrist for depression; (2) he had passed a urinalysis several weeks prior to the August 6, 2010 "'random' selection for a [urinalysis]"; (3) he was handcuffed, without the staff first checking with a Sand Ridge psychiatrist concerning Stokes' "mental health issues"; and (4) he had not been notified whether or not he could attend the funeral of his mother who had passed away several days earlier.

The circuit court properly rejected Stokes' suggestion that he was unlawfully "punished" in violation of his substantive due process rights. As the court correctly observed, "transferring a patient who has ... refused a drug test to the more secure AD Unit (for 72-hour reassignment

and/or the Step Program) bears a reasonable relationship to the institution's security and treatment interests." *See, e.g.*, ***Allison v. Snyder***, 332 F.3d 1076, 1079 (7th Cir. 2003). Quite simply, maintaining a safe and orderly environment needed for treating sexually violent persons would be impossible if patients could not be sanctioned after breaking institutional rules.

Moreover, a Behavior Disposition Record was completed for Stokes concerning the August 6, 2010 incident. On August 11, the Record was reviewed by a committee, which conducted a hearing with Stokes present. At the hearing, Stokes admitted that he refused the random urinalysis.[2] Any patient who refuses to provide a specimen for urinalysis is considered as having used an intoxicant. The committee decided to detain Stokes in Unit AD and to place him on the Step Program. The committee believed placement on the Step Program was the least restrictive placement available that allowed Stokes the maximum amount of physical and personal freedom while furthering the institution's security and treatment goals.

Stokes failed to introduce evidence in opposition to summary judgment that a less restrictive environment would be adequate to achieve Sand Ridge's security and treatment goals, or that the defendants had a punitive motive with regard to his restrictions. As the circuit court properly found, Stokes failed to overcome the prima facie case for summary judgment on

[2] Stokes was found guilty of failure to take direction and of possession, delivery or use of illegal substances or intoxicants. Stokes appealed the latter portion of the decision and Sand Ridge's Director determined that Stokes' record should be corrected regarding that offense. Stokes now appears to argue that he is entitled to a new hearing because of the dismissal of the possession, delivery or use of illegal substances or intoxicants charge. Stokes also insists that "at the very least, 'time served' was called for" regarding the failure to take direction charge that was upheld. These arguments are undeveloped and we shall not address them further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

substantive due process grounds. A reasonable factfinder could not conclude that the restrictions amounted to unconstitutional punishment.

Random urinalysis tests are also necessary in an environment such as Sand Ridge. Although Stokes may not have anticipated that his name would be selected for urinalysis only two weeks after he last submitted to a urinalysis, his name was randomly generated by a computer, and policy required that a patient be tested regardless of how often the patient's name is selected. The record supports the security and treatment goals advanced by this type of drug screening.

It took less than five minutes to escort Stokes to the more secure unit, and the restraints were removed upon his arrival. Policy required that when a patient was being reassigned to the secure treatment wing, the patient must be escorted in mechanical restraints. It was reasonable for Sand Ridge to presume that since Stokes refused a drug test, he could be under the influence of illegal drugs. A physician did not need to authorize the use of restraints for this transfer. *See* WIS. STAT. § 51.61(1)(i)1.

Prior to his refusal to submit to the urinalysis, Stokes had been approved to attend his mother's funeral. However, for security reasons Stokes was not provided with details about the trip. This practice ensures that a patient cannot coordinate an escape or an escape plan while off institution grounds. That Stokes was grieving his mother's death at the time of his refusal is unfortunate, but it is irrefutable that Sand Ridge's actions were taken in furtherance of maintaining institutional security and preserving internal order and discipline. *See* ***Bell v. Wolfish***, 441 U.S. 520, 546 (1979).

Stokes also appears to raise a procedural due process argument. As mentioned, however, a Behavior Disposition Record was completed concerning the August 6, 2010 incident, and the Record was reviewed by a committee at a hearing at which Stokes was present. Stokes admitted at the hearing that he refused the random urinalysis. The consequences imposed were not an "atypical and significant hardship in relation to the ordinary incidents of [WIS. STAT. ch. 980] confinement." *See* ***Thielman v. Leean***, 282 F.3d 478, 484 (7th Cir. 2002). Therefore, Stokes' claims did not implicate cognizable procedural due process interests.

The circuit court also properly denied Stokes' motion to compel discovery. In his amended complaint, Stokes named a former Sand Ridge employee as a defendant but did not serve him with process. Almost nine months after the action was commenced, the defendants moved for dismissal of this defendant under WIS. STAT. § 801.02(1). In response to the motion to dismiss, Stokes filed a motion to compel the disclosure of the defendant's address so the defendant could be served.

On appeal, Stokes argues only that he was not provided the defendant's address through discovery, and that the former employee was a proper defendant. However, nothing prevented Stokes from making this argument in a motion to compel prior to the statutory cut-off for service, or prior to the summary judgment proceedings. After the circuit court's grant of summary judgment, the argument cannot have any practical legal effect upon an existing controversy and is therefore moot. *See, e.g.,* ***State ex rel. Unnamed Person No. 1 v. State***, 2003 WI 30, ¶18, 260 Wis. 2d 653, 660 N.W.2d 260. Stokes' claim fails regardless of service upon the former defendant, and therefore service of the complaint on him would have no practical effect. No exception to mootness applies in this case. *See* ***id.***, ¶19.

We have not addressed every argument, or sub-argument, that Stokes has raised, nor will we. Stokes' remaining arguments, which appear to relate to equal protection, various state law claims and other challenges to the circuit court's decision, are undeveloped and fall below even the liberal thresholds of acceptability for a pro se appellant. This court need not address poorly developed, confusing or patently meritless arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). In addition, we will not address arguments that Stokes raises for the first time in his reply brief. *See* ***Northwest Wholesale Lumber, Inc. v. Anderson***, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995).

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals