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DISTRICT IV

January 22, 2015

To:

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

2014AP684

Frank Furrillo v. State of Wisconsin Employee Trust Funds Board
(L.C. # 2013CV1212)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Frank Furrillo, Chris Gauthier, David Gersbach, Ralph Johnston, and Joseph McWilliams (the city employees) appeal an order that dismissed their claims seeking review of an adverse determination by the State of Wisconsin Employee Trust Funds Board (ETF) for failure to comply with the statutory requirements for commencing a certiorari action. After reviewing 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.

The city employees contend that the circuit court should have treated a submission they had labeled as a petition for writ of certiorari as a “complaint,” and should have treated a writ issued by the circuit court in response to their petition as an “order” setting a time for filing an answer or responsive pleading, within the meaning of WIS. STAT. § 801.02(5). The city employees point out that pleadings are generally to be judged by their content, not by their labels. *See State ex rel. DNR v. Walworth Cnty. Bd. of Adjustment*, 170 Wis. 2d 406, 418, 489 N.W.2d 631 (Ct. App. 1992).

We agree that labels are generally not determinative of the sufficiency of pleadings, and we will assume, without deciding, that the substance of the city employees’ writ petition satisfied the criteria for a certiorari complaint. However, we disagree with the city employees that the writ issued by the circuit court in response to the petition contained, in the words of the city employees, “the same kind of information that would be supplied in an ‘order’ and served the same purpose—notice to the other parties of the requirement and time for a response.”

The writ issued by the circuit court directed ETF to “certify and to return to [the] Court, the Final Decision and Order of the said Employee Trust Funds Board relating to this matter ... together with the documents and exhibits and a transcript of the record and proceedings upon which the same were based, and to file [the] Return with the Court within thirty (30) days.” The return of a certiorari record is not the same thing as an answer or other pleading filed in response

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

to a complaint. A return consists of documents, not responses to factual allegations or assertions of legal defenses to claims. Because the writ issued by the circuit court contained no mention of ETF's right to file an answer or responsive pleading, much less a deadline for ETF to do so, the writ was not an "order" within the meaning of WIS. STAT. § 801.02(5). Therefore, the city employees failed to comply with the requirement that they serve an "order" within the meaning of that statute. Accordingly, the circuit court properly determined that the city employees had failed to satisfy the statutory requirements to commence a certiorari action.

IT IS ORDERED that the circuit court's order dismissing the appellants' certiorari action is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals