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**DISTRICT II**

June 15, 2016

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Steven J. Lelinski

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

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2015AP1923

Steven J. Lelinski v. Albert Duran (L.C. #2015CV496)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Stephen J. Lelinski appeals from an order denying his petition for a harassment injunction against Albert Duran. 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 (2013-14).<sup>1</sup> We determine that the circuit court properly permitted the Wisconsin Department of Corrections (DOC) and Warden Judy Smith to intervene and that the appeal is moot. We dismiss the appeal.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Lelinski and Duran were both inmates at the Oshkosh Correctional Institution (OSCI). Lelinski filed a complaint through the Inmate Complaint Review System (ICRS) asserting that he had been verbally harassed by Duran and that though he reported the harassment to staff, no action was taken. While Lelinski pursued his administrative remedies, he also filed a petition in the circuit court seeking to enjoin Duran from harassing or having contact with him.<sup>2</sup> The DOC and Warden Smith filed a motion to intervene along with a position statement asserting that Lelinski's petition should be dismissed for failure to exhaust available administrative remedies. The circuit court determined that intervention by the DOC and Warden Smith was proper and that because Lelinski was required but failed to exhaust his administrative remedies before pursuing judicial review, dismissal was required. Lelinski appeals.

We first conclude that the circuit court properly permitted the DOC and Warden Smith to intervene as a matter of right under WIS. STAT. § 803.09(1). The statutes vest the DOC with substantial authority over inmate safety, discipline and custody, and the intervenors convincingly established the criteria set forth in *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1.<sup>3</sup>

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<sup>2</sup> Observing that Duran has no choice in which living unit he resides, Lelinski's petition asserted that Lelinski "would not object if the [circuit court] were to order or otherwise persuade the staff at OSCI to assign Duran to a different living center, especially one on a different recreation yard."

<sup>3</sup> To establish intervention as a matter of right under WIS. STAT. § 803.09(1), a movant must show (1) the motion is timely, (2) the movant claims an interest sufficiently related to the subject of the action, (3) the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, and (4) the existing parties do not adequately represent the movant's interest. *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1. We need not address the State's argument that intervention was also authorized by WIS. STAT. § 813.02(1)(c).

Next, the parties' briefs address at length whether Lelinski's suit was subject to the Wisconsin Prisoner Litigation Reform Act's (PLRA) requirement that an inmate exhaust available administrative remedies before filing suit in circuit court. Though these arguments informed the circuit court's decision dismissing the injunction, we do not engage in this analysis because we conclude that the appeal should be dismissed as moot. *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 (an issue is moot when the resolution of the issues "will have no practical effect on the underlying controversy."). It is undisputed that Duran is no longer placed in OSCI. Generally, this court will not consider issues where their resolution will not affect real parties to an existing controversy. *G.S. v. State*, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984).<sup>4</sup> An opinion on a moot issue amounts to an advisory opinion and is an "inefficient use of judicial resources." *Walt v. City of Brookfield*, 2015 WI App 3, ¶35, 359 Wis. 2d 541, 859 N.W.2d 115. We therefore dismiss the appeal as moot.

Upon the foregoing reasons,

IT IS ORDERED that the appeal is dismissed as moot pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>4</sup> In the prison context, an inmate's claim based on the conditions of confinement will be deemed moot once the inmate is released. See *State ex rel. Ellenburg v. Gagnon*, 76 Wis. 2d 532, 535, 251 N.W.2d 773 (1977). Similarly, federal courts have recognized that an inmate's request for injunctive relief is moot once the prisoner is transferred to another institution, unless he is able to show that he is likely to be retransferred. See *Bigbee v. Nalley*, 482 F. Supp. 2d 1092, 1099 (W.D. Wis. 2007), citing *Higgason v. Farley*, 83 F.3d 807, 811 (7th Cir. 1996).