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DISTRICT IV

July 18, 2016

To:

Hon. Peter Anderson
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2015AP1450 Matthew Tyler v. Edward F. Wall, William Pollard, William Holm, James Steinert, Paul G. Wiersma, Department of Corrections, and Jessie Schneider (L.C. # 2014CV1077)

Before Lundsten, Higginbotham and Blanchard, JJ.

Matthew Tyler 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 (2013-14).[1] We affirm.

Tyler's complaint named as defendants various prison officials and staff, and alleged that he was injured in a fall at a prison caused by a slick floor. The circuit court dismissed the action.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Tyler first argues that the circuit court erred by denying his motion seeking to strike the substituted defendants' answer because the answer failed to comply with an applicable procedural statute. The motion argued that the answer was "evasive and incomplete" because the substantive content of the answer was not changed to show the positions of the new defendants, and failed to include them in the prayer for relief. The court concluded that the motion failed to show that the defendants failed to comply with any statute governing procedure.

On appeal, Tyler argues that the circuit court should have ordered the defendants to provide complete and accurate answers. The defendants concede that the answer was flawed in the ways that Tyler describes. However, Tyler fails to explain why any error on this topic should result in reversal of the order granting judgment to the defendants based on immunity, as discussed further below. Tyler does not, for example, assert that a more complete answer would have helped him litigate the case further. Therefore, we conclude that this argument is not a basis for reversal.

Tyler next argues that the circuit court erred by failing to provide for discovery in its scheduling order. However, Tyler does not cite any law that *requires* a court to provide for discovery in a scheduling order. We see no indication from his argument that Tyler ever asked the court for discovery, or submitted discovery requests to the defendants. Again, there is no basis for reversal.

Tyler next argues that the circuit court erred by holding that the defendants were entitled to public officer immunity. He argues that two exceptions to such immunity apply. The first is the exception for ministerial duties. Tyler argues that the safe-place statute gave the defendants a ministerial duty to keep the floor safe. This argument fails because we have previously held that

the safe-place statute creates only a discretionary duty. *See* ***Spencer v. County of Brown***, 215 Wis. 2d 641, 651, 573 N.W.2d 222 (Ct. App. 1997). Questions of when and how to clean or maintain floors require the application of discretion.

Tyler also argues that the slick floor qualified as a "known danger," meaning that there was a "known present danger of such force that the time, mode and occasion for performance is evident with such certainty that nothing remains for the exercise of judgment and discretion." ***C.L. v. Olson***, 143 Wis. 2d 701, 717, 422 N.W.2d 614 (1988). This argument fails because a slippery floor is not a sufficiently hazardous situation to activate this exception. We will not identify and review applicable case law here, but will simply note that other examples of the application of this exception in published cases have involved hazards much more extreme than a slippery floor.

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

Diane M. Fremgen
Clerk of Court of Appeals