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**DISTRICT I**

July 26, 2016

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

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2015AP2083

Eva Bakken v. The City of Eau Claire  
(L.C. #2015CV209)

Before Curley, P.J., Kessler and Brennan, JJ.

Eva Bakken appeals the order dismissing her complaint for its failure to state a claim upon which relief can be granted. *See* WIS. STAT. § 802.06(2)(a)6. (2013-14).<sup>1</sup> Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21(1)

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

### ***Background***

In June 2013, the Eau Claire Police Department received information that Bakken had turned on the burners of a gas stove inside her residence. As a result, the police evacuated neighboring houses.

Bakken was subsequently detained by the police pursuant to the emergency detention provision of WIS. STAT. § 51.15. A police officer completed a statement of emergency detention, as required by § 51.15(5). Shortly thereafter, Eau Claire Police Sergeant Travis Quella issued a news release on Bakken's actions, the events preceding them, and the evacuation effort. The news release specifically provided, as relevant to Bakken<sup>2</sup>:

At about 4:10 PM, officers on the scene of the damaged suspect vehicle (3600 block of Golf Road) received information that a female, who resides with [Keith] Napolitano, had entered their residence and turned on the burners of a gas stove.

The ECPD coordinated an evacuation of neighboring houses and a perimeter was set up to secure the area. The Eau Claire Police attempted to make phone contact with the female inside the residence. A short time later, the female exited her residence and she was transported to a local hospital for a medical and a mental health evaluation. No arrest was made with the female at this time but the investigation is ongoing.

The gas to the residence was shut off and officers cleared the residence for safety purposes.

In April 2015, Bakken filed the lawsuit underlying this appeal. In her complaint, she alleged that the news release violated the confidentiality requirements set forth in WIS. STAT. § 51.30, and she sought damages under § 51.30(9). Although she was not identified by name in

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<sup>2</sup> The news release contained other information related to various offenses that led to the arrest of Keith Napolitano.

the news release, Bakken asserted that she is the only person who fits the description contained therein. And, as such, Bakken claimed the news release revealed her identity to friends, neighbors, family members, and the general public. Bakken alleged that she has endured severe humiliation and distress as a result of the dissemination of the news release.

The City of Eau Claire, Quella, and Wisconsin Municipal Mutual Insurance Company (collectively “the City”) filed a motion to dismiss the complaint arguing that it failed to state a claim upon which relief can be granted. The circuit court granted the City’s motion, and this appeal follows.

### *Discussion*

A motion to dismiss a complaint for failure to state a claim upon which relief may be granted tests the legal sufficiency of the pleading. *Evans v. Cameron*, 121 Wis. 2d 421, 426, 360 N.W.2d 25 (1985). We independently review the complaint to determine whether, liberally construing the facts alleged and the inferences reasonably drawn therefrom, “it is quite clear that under no conditions can the plaintiff recover.” *Bartley v. Thompson*, 198 Wis. 2d 323, 332, 542 N.W.2d 227 (Ct. App. 1995) (citation omitted).

WISCONSIN STAT. § 51.30(4)(a) provides in relevant part: “[A]ll treatment records shall remain confidential and are privileged to the subject individual.” Section 51.30(12) grants the Department of Health Services (“DHS”) rulemaking authority under the statute. *See also* WIS. ADMIN. CODE §§ DHS 92.01(2) & 92.02(3) (Nov. 2008) (DHS promulgates the rules to

implement § 51.30).<sup>3</sup> DHS regulations provide: “All treatment records or spoken information which in any way identifies a patient are considered confidential and privileged to the subject individual.” WIS. ADMIN. CODE § DHS 92.03(1)(a).

The City acknowledges that statements of emergency detention, such as the one created in this case, are “treatment records” under WIS. STAT. § 51.30(4)(a). *See Watton v. Hegerty*, 2008 WI 74, ¶20, 311 Wis. 2d 52, 751 N.W.2d 369 (holding that statements of emergency detention are “treatment records”) (citation omitted). The City additionally concedes that Bakken is correct in noting that there is a body of law that “makes clear that publicly indentifying somebody as the recipient of emergency mental-health services is forbidden,” subject to exceptions that are not applicable. *See, e.g., id.*, ¶25 (“The confidentiality provisions of [WIS. STAT.] ch. 51 are not designed to protect pieces of paper; they are designed to protect information about individuals who receive mental health care services.”).

Here, however, the news release did not identify Bakken as a recipient of mental-health services. The relevant portion of the news release states: “the female ... was transported to a local hospital for a medical and a mental health evaluation. No arrest was made with the female at this time but the investigation is ongoing.” The news release does not say Bakken was detained or transported under WIS. STAT. ch. 51, nor does it say she was a patient.

Moreover, even if being detained or transported under WIS. STAT. ch. 51 was an inference a reasonable reader of the news release would make, as the City points out, this would be so even

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<sup>3</sup> All references to the Administrative Code are to the November 2008 register date unless otherwise noted.

without the language Bakken takes issue with. For instance, the same inference could be made by a reasonable reader upon learning from a redacted version of the news release that “the female ... was transported to a local hospital.... No arrest was made with the female at this time but the investigation is ongoing.” We agree with the City’s summation that if the news release had ended with Bakken exiting the house following the evacuation of her neighbors, the fact that she precipitated a neighborhood evacuation, by itself, permits a reasonable inference that she was in need of a mental health evaluation, voluntary or otherwise.

Bakken’s complaint fails to state a claim that the confidentiality provisions of WIS. STAT. ch. 51 were breached. The complaint was properly dismissed.

Upon the foregoing reasons,

IT IS ORDERED that the circuit court’s order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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