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**DISTRICT IV**

March 30, 2017

To:

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

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2016AP1011

Robert Hammersley v. William Flanagan (L.C. # 2015CV149)

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

Robert Hammersley appeals, pro se, the dismissal of his complaint in which he sought to recover damages arising from allegedly negligent dental treatment given him while incarcerated in the Wisconsin prison system. 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 (2015-16).<sup>1</sup> We affirm.

The relevant facts are straightforward. In his pleadings, Hammersley alleged that he was incarcerated from October 17, 2008, until January 1, 2013. Hammersley wore a dental bridge that he alleges was healthy when he entered prison. He alleges that he told the dental personnel

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

who treated him while in prison that he was concerned about the health of the tooth abutting the bridge, but he was told that the tooth was healthy. On January 29, 2013, within one month of his release from prison, the bridge fell out and Hammersley discovered that the anchoring tooth—the tooth abutting the bridge—was “completely gone.” Hammersley sought compensation for the cost of a replacement bridge and dental work. The defendants are various persons employed by the Department of Corrections as dentists or dental assistants.

This action is not Hammersley’s first lawsuit alleging that his dental treatment while imprisoned was inadequate. In 2013, Hammersley filed a small claims action against the “Department of Corrections, Dental Unit” and “Head of Dental, Barbra DeLap.” As in this case, Hammersley alleged that he received inadequate dental care while incarcerated, that a bridge came off shortly after his release, and that the anchoring tooth “was completely gone.” Hammersley sought damages to replace the bridge and the anchoring tooth. The circuit court dismissed the action against DOC as barred by sovereign immunity and against DeLap because Hammersley had not filed a timely notice of claim under WIS. STAT. § 893.82.<sup>2</sup> Hammersley appealed, and this court affirmed. *Hammersley v. Department of Corrections Dental Unit*, No. 2013AP1696, unpublished slip op. (WI App Dec. 19, 2013).

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<sup>2</sup> Subject to certain exceptions, WIS. STAT. § 893.82(3) provides that “no civil action ... may be brought against any state officer, employee or agent ... unless within 120 days of the event causing the injury ... the claimant ... serves upon the attorney general written notice of a claim.” The statute also requires that the notice be served by certified mail and include the “names of persons involved.” WIS. STAT. § 893.82(3) and (5).

In this case, the circuit court dismissed Hammersley's complaint on several procedural grounds. We need only address a single issue: whether Hammersley's complaint is barred by claim preclusion.

Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings." *Lindas v. Cady*, 183 Wis. 2d 547, 558, 515 N.W.2d 458 (1994) (quoted source omitted). Claim preclusion requires identity between the parties or their privies, identity between the causes of action, and a final judgment on the merits by a court with competent jurisdiction. See *Kruckenbergh v. Harvey*, 2005 WI 43, ¶21, 279 Wis. 2d 520, 694 N.W.2d 879.

The three elements of claim preclusion are satisfied here. The primary defendant in the 2013 action was the "Department of Corrections, Dental Unit." The defendants in this action are various DOC employees who provided dental treatment to Hammersley. The "identity between the parties or their privies" element is satisfied.

In both actions, Hammersley alleged negligent dental care and sought to recover for the cost of a new bridge and restorative dental work. The causes of action are identical.

In the 2013 case, the circuit court held that Hammersley's claim against the DOC was barred by sovereign immunity and that his claim against DeLap was barred because he had not complied with WIS. STAT. § 893.82. The dismissal was affirmed by this court. See *Hammersley v. Department of Corrections Dental Unit*, No. 2013AP1696, unpublished slip op. (WI App Dec. 19, 2013). In this case, the State raised the same "notice-of-claim" argument on behalf of the individual defendants. The notice of claim did not satisfy the statutory requirements when DeLap was the named defendant. The same defects exist as to the current defendants. The 2013

litigation “resulted in a final judgment” that Hammersley had not complied with the notice-of-claim statute, and that ruling bars this latest action.<sup>3</sup>

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed.

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

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<sup>3</sup> In its brief, the State argues that claim preclusion also bars Hammersley’s claim under 42 U.S.C. § 1983. While Hammersley quotes the text of § 1983 in his pleadings, he does not allege any constitutional claim. Nor does he mention § 1983 in his appellate briefs. The State’s § 1983 argument is unnecessary.