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DISTRICT IV

October 12, 2017

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

2016AP1911-CR State of Wisconsin and Department of Corrections v. Jessica M.
Fuller-Graham (L.C. # 2005CF45)

Before Lundsten, P.J., Kloppenburg and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

The Department of Corrections appeals the circuit court's order denying the Department's motion to vacate a previous order that released Jessica Fuller-Graham from sex offender reporting requirements. Specifically, the Department contends that the circuit court was

required to vacate its order after the Department, a non-party, filed a motion with the court arguing that there was no legal basis to exempt Fuller-Graham from the statutory sex offender reporting requirements. 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).¹ Because the Department was not a party to this action and never moved to intervene, we affirm the circuit court's order denying the Department's motion to vacate the court's prior order releasing Fuller-Graham from the sex offender reporting requirements.

The basic facts are as follows. In 2005, Jessica Fuller-Graham was charged with sexual contact with a child. She was found not guilty by reason of mental disease or defect, and received a ten-year commitment. At the end of her commitment period, Fuller-Graham filed a motion seeking to be released from statutory sex offender reporting requirements. On behalf of the State, the Vernon County District Attorney stipulated that Fuller-Graham's motion be granted. The circuit court granted the motion, and ordered that Fuller-Graham be released from reporting. The Department subsequently sent a letter to the circuit court asserting that the court's order did not comply with the applicable statutes and, without moving to intervene, requested that the circuit court vacate its order. About seven weeks later, the Department filed a motion to vacate the order and also filed a supporting brief. The Department did not request leave to intervene. Rather, the Department argued that it had standing to request this relief because it is the state agency charged with administering sex offender registration. The Department contended that "[a] party with standing is entitled to be heard, even if the party is not formally permitted to intervene."

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

After a hearing at which the Department appeared, the circuit court concluded that the Department, as a non-party, lacked standing to move to vacate the order. On that basis, the court denied the Department's motion. The Department filed this appeal.²

Whether the Department, as a non-party, had standing is a question of law that we review independently. *Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n*, 2011 WI 36, ¶29, 333 Wis. 2d 402, 797 N.W.2d 789.

The Department's main argument, both to the circuit court and to this court, is that the Department has standing under Wisconsin's "liberal approach to standing." However, the cases cited by the Department are patently inapplicable. Each of the cited cases addresses whether the existing parties to a particular action had standing to pursue their specific claims or requests for relief. See *McConkey v. Van Hollen*, 2010 WI 57, ¶2, 326 Wis. 2d 1, 783 N.W.2d 855 (addressing whether a taxpayer and voter who filed suit to challenge a constitutional amendment had standing in that action); *Foley-Ciccantelli*, 333 Wis. 2d 402, ¶4 (addressing whether a party had standing to move for the disqualification of the opposing party's attorney in that action). Here, the Department has conceded that it is not a party to this action. The Department has not cited any authority for the proposition that a non-party to a circuit court action has standing to pursue any sort of claim or request for relief in that action.

² The Department has inexplicably labelled itself "Intervenor-Appellant" despite never filing a motion to intervene in the circuit court or this court.

In the alternative, the Department contends that it has satisfied all requirements for intervention of right under WIS. STAT. § 803.09(1).³ This argument fails on the first requirement, which includes filing a motion to intervene. *See id.* Here, there was no such motion.

The Department concedes that it did not file “a formal motion to intervene.” However, the Department argues that we should dispense with the need for an actual motion or request to intervene because the Department’s submissions to the circuit court clearly indicate that the Department intended to participate as an intervening party. Thus, the Department contends, its submissions should be construed as a motion to intervene. However, nothing filed by the Department could have reasonably been construed as a motion to intervene. In fact, the Department expressly disavowed intervenor status in its circuit court brief in support of its motion to vacate. Understandably, then, the circuit court in this case did not treat the Department’s letter as a motion to intervene.

In short, as a non-party that never filed a motion to intervene, the Department has not demonstrated that it had standing to move the circuit court to vacate its order. On that basis, we affirm the circuit court’s order denying the Department’s motion to vacate the prior order releasing Fuller-Graham from statutory sex offender reporting requirements.

³ According to WIS. STAT. § 803.09(1), a movant is entitled to intervention of right if: (1) the motion is timely; (2) the movant claims an interest relating to the property or transaction that is the subject of the action; (3) the movant is so situated that a disposition in the action may as a practical matter impair or impede the movant’s ability to protect its interest; and (4) the movant’s interest is not adequately represented by existing parties. Fuller-Graham argues that the Department’s interest is adequately represented in this case by the Vernon County District Attorney and that any attempt to intervene would circumvent district attorneys’ statutory authority. Because we conclude that the Department never moved to intervene, we need not address how this argument affects the factors for intervention of right.

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals