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**DISTRICT IV**

November 2, 2017

*To:*

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Circuit Court Judge  
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Pastori M. Balele  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP2534

Pastori M. Balele v. Patience D. Roggensack (L.C. # 2016CV2626)

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).**

Pastori Balele, pro se, appeals the circuit court's decision to grant a motion to dismiss his petitions for supervisory writs directed at various Supreme Court justices, Court of Appeals judges, and the Labor and Industry Review Commission (LIRC) and its commissioners. 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 reject Balele’s arguments and affirm the order of dismissal.

Balele’s petitions seek several forms of relief, such as reopening previously concluded cases and prohibiting respondents from “denying Black people benefits available to White people.” The respondents filed a motion to dismiss Balele’s petitions, which the circuit court granted. We conclude that the circuit court properly dismissed the petition as to the judicial respondents, because the circuit court lacks authority to issue writs directed at appellate courts. *See Eau Claire Leader-Telegram v. Barrett*, 146 Wis. 2d 647, 650-51, 431 N.W.2d 741 (Ct. App. 1988) (supervisory writs may only be directed at lower courts).

We also conclude that the circuit court properly dismissed the petition as to LIRC and its commissioners, who we will refer to as “the agency respondents.” A writ of mandamus is an exceptional remedy. *Moore v. Stahowiak*, 212 Wis. 2d 744, 747, 569 N.W.2d 711 (Ct. App. 1997). In seeking this remedy, a petitioner must establish four factors: (1) a clear legal right; (2) that the duty to be enforced is “positive and plain”; (3) that the petitioner will be “substantially damaged” if the duty is not performed; and (4) there is no other adequate remedy for the threatened injury. *Id.* (quoted source omitted). We see no suggestion that Balele made the necessary showing in the circuit court on any factor, which means that Balele has not satisfied his burden on appeal. *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (the party raising a particular issue has the burden of showing where it was raised in the circuit court). Moreover, Balele’s briefs to this court fail to make any cogent legal argument that

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

would suggest that the circuit court erred in dismissing his petition. *See Libertarian Party of Wisconsin v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not discuss arguments that lack “sufficient merit to warrant individual attention”).

This matter does not end here, however, because the agency respondents have moved for sanctions against Balele. They argue that some type of sanction is necessary to protect the court system from continued waste of time and resources caused by the frivolous proceedings initiated by Balele. Specifically, they seek an award of costs and fees for filing an appeal in bad faith, and an order restricting Balele from further filings or, alternatively, a formal warning that such an order may issue in the future.

Under WIS. STAT. RULE 809.25(3)(c)2., we may order Balele to pay the agency respondents’ costs and fees, including reasonable attorneys fees, if we find his appeal to be without any reasonable basis in law or equity and not supported by a good faith argument for an extension, modification or reversal of existing law. We decline to make this finding in this instance.

However, we agree with the agency respondents that Balele has engaged in a pattern of frivolous and vexatious litigation at a significant cost to the court system and, ultimately, to taxpayers. *See, e.g., Balele v. Wisconsin Personnel Comm’n*, No. 02-2377, 2003 WL 21403686, ¶¶9-10 (Wis. Ct. App. June 19, 2003) (approving a sanction of \$1,000 for filing a frivolous suit); *Balele v. Barnett*, No. 96-1133 (7th Cir. April 29, 1997) (placing federal filing restrictions on Balele); *Balele v. Olmanson*, No. 13-cv-783 at 15 (W.D. Wis. Jan. 10, 2017) (noting Balele’s “history of vexatious filings”). Balele’s current appeal is not only frivolous, but

also abusive in terms of the language and accusations directed at the court system, attorneys, and parties.

One method of limiting the access of an abusive litigant to the court is to require the litigant to obtain prior approval for any future filings, on a case-by-case basis, so as to prevent additional frivolous suits. *See State v. Casteel*, 2001 WI App 188, ¶¶23-25, 247 Wis. 2d 451, 634 N.W.2d 338, *review denied* (WI Oct. 23, 2001) (No. 00AP2852). This method has the virtue of allowing a litigant access to the courts for any meritorious claims that may arise, while still comporting with the general disapproval of blanket orders. *Id.*, ¶¶26-27. We conclude that a *Casteel*-type order is warranted here.

Accordingly, because Balele is abusing the appellate process, no further filings will be accepted from him unless he submits by affidavit all of the following:

1. A copy of the circuit court's written decision and order he seeks to appeal;
2. A statement setting forth the specific grounds upon which this court can grant relief; and
3. A statement showing how the issues sought to be raised differ from issues raised and previously adjudicated.

Upon review of these documents, if this court determines that Balele states no claim, defense or appeal upon which we may grant relief, we will refuse to accept the filing. If we cannot determine from the submitted documents whether the appeal has merit, we may require additional documents.

This order is drafted narrowly to strike a balance between Balele's access to the courts, the taxpayers' right not to have frivolous litigation become an unwarranted drain on their resources, and the public interest in maintaining the integrity of the judicial system. *See*

*Minniecheske v. Griesbach*, 161 Wis. 2d 743, 749, 468 N.W.2d 760 (Ct. App. 1991) (orders limiting access to courts “should be narrowly tailored and rarely issued”). However, prefiling review is consistent with limits on access to courts under both Wisconsin law and federal law. *See* WIS. STAT. § 814.29(1)(c) (indigent parties may be denied a waiver of costs “if the court finds that the affidavit states no claim, defense or appeal upon which the court may grant relief”); *In re Davis*, 878 F.2d 211, 212-13 (7th Cir. 1989) (threshold review of the merits is a sensible and constitutional means of dealing with a litigant intent on pressing frivolous litigation).

Upon the foregoing reasons,

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

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

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