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DISTRICT IV

October 30, 2018

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

2017AP1769 Edlando Watson v. Rural Masonry, Inc., Brian Elliott, Dave Doe and Tina Doe (L.C. # 2017CV631)

Before Lundsten, P.J., Blanchard 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).

Edlando Watson, pro se, appeals an order that dismissed Watson's claims against Rural Masonry, Inc., Brian Elliott, Dave Doe, and Tina Doe arising from Watson's termination from employment with Rural Masonry. 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] We summarily affirm.

In March 2017, Watson filed this action against Rural Masonry, its president, and two of its employees after Watson's employment was terminated. Watson's complaint sought damages for civil rights violations under 42 U.S.C. §§ 1983 and 1985, wrongful discharge under WIS. STAT. §§ 111.31 and 109.07 and the Madison Equal Opportunities Ordinance,[2] and criminal conduct under state and federal statutes. The complaint also sought a declaratory judgment that Watson's termination was unconstitutional and an injunction requiring Rural Masonry to apply its policies equally to all employees. The defendants moved to dismiss Watson's complaint for failure to state a claim. The circuit court found that Watson's complaint failed to state a claim and dismissed all of Watson's claims.

Watson contends that the defendants conspired to wrongfully terminate Watson's employment and failed to apply Rural Masonry's policies equally to all employees, violating Watson's constitutional rights. He contends that the circuit court erred by refusing to consider the unemployment compensation hearing records that Watson offered as an exhibit with his brief opposing the motion to dismiss his complaint. Watson also contends that a complaint may not be dismissed unless it is shown beyond doubt that a plaintiff can prove no set of facts to support the claims in a complaint, and that that standard was not met here. Finally, Watson asserts that

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

[2] Watson also cited WIS. STAT. § 111.80, but that statute was previously repealed. *See* 2011 Wis. Act 10, § 261.

dismissal of his complaint violated his constitutional rights to access the courts and to a jury trial.[3] We are not persuaded.

"A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint." ***Data Key Partners v. Permira Advisers LLC***, 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693 (quoted source omitted). A court must consider the facts set forth in the complaint and the reasonable inferences from those facts, but the "court cannot add facts in the process of construing a complaint." ***Id.*** "[A] complaint must plead facts, which if true, would entitle the plaintiff to relief." ***Id.***, ¶21. "[L]egal conclusions stated in the complaint are not accepted as true, and they are insufficient to enable a complaint to withstand a motion to dismiss." ***Id.***, ¶19. Moreover, our supreme court has rejected the proposition that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ***Id.***, ¶¶28-31.

We turn, then, to the facts set forth in Watson's complaint to determine whether, if true, those would entitle Watson to relief. Those facts are as follows. Watson was employed by Rural Masonry in October 2016. Watson's co-worker, Dave Doe, miscalculated Watson's work hours for the week ending October 22, 2016, entered the incorrect hours on Watson's timecard, and then forged Watson's signature and submitted the timecard without Watson's consent. Watson sent Dave Doe a text message requesting that Dave Doe notify Rural Masonry's accountant, Tina

[3] To the extent that Watson attempts to raise arguments in his brief that are not specifically addressed in this opinion, we deem those arguments insufficiently developed to warrant a response. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Doe, of Dave Doe's actions, and Dave Doe refused. Watson notified Tina Doe of Dave Doe's actions, and Tina Doe refused to correct the errors on Watson's timecard. Rural Masonry's president, Brian Elliott, terminated Watson's employment based on the text message Watson sent to Dave Doe. Neither Dave Doe nor Tina Doe received any discipline despite the fact that their actions violated Rural Masonry's policies and criminal statutes.

The facts in Watson's complaint, if true, would not entitle Watson to relief for claims of constitutional violations under 42 U.S.C. § 1983. There are no facts in the complaint alleging that any of the defendants were acting on behalf of the State. *See* ***Filarsky v. Delia***, 566 U.S. 377, 383 (2012) (providing that § "1983 provides a cause of action against any person who deprives an individual of federally guaranteed rights 'under color' of state law," meaning the person's actions were "fairly attributable to the [S]tate." (quoted source omitted)). The facts would not entitle Watson to relief under 42 U.S.C. § 1985 because there are no facts alleging that the defendants conspired to interfere with a right recognized as constitutionally protected against private action. *See* ***Bray v. Alexandria Women's Health Clinic***, 506 U.S. 263, 278 (1993) (explaining that "§ 1985(3) ... does not apply … to private conspiracies that are aimed at a right that is by definition a right only against state interference, but applies only to such conspiracies as are aimed at interfering with rights protected against private, as well as official, encroachment," which the Supreme Court had "hitherto recognized only [as] the Thirteenth Amendment right to be free from involuntary servitude … and, in the same Thirteenth Amendment context, the right of interstate travel." (quoted source omitted)). The complaint does not entitle him to relief for wrongful discharge under WIS. STAT. § 111.31 or the Madison Equal Opportunities Ordinance because those claims must be pursued with administrative bodies, not in the circuit court. *See* ***Aldrich v. LIRC***, 2008 WI App 63, ¶9, 310 Wis. 2d 796, 751 N.W.2d

866 ("The exclusive means of asserting a [WIS. STAT. § 111.31] claim is through the Department of Workforce Development's Equal Rights Division"); MADISON, WI., CODE § 39.03(10)(c) (2010) (setting forth administrative procedures for deciding complaints of violations of the Madison Equal Opportunities Ordinance). The complaint does not entitle him to relief under WIS. STAT. § 109.07 because that statute applies to mass layoffs, a fact not alleged in the complaint.

The facts in Watson's complaint would also not entitle him to relief for claims that the defendants engaged in criminal conduct under WIS. STAT. §§ 943.38(1) (forgery) and 946.12 (misconduct in public office) and 18 U.S.C. §§ 241 and 242. None of the criminal statutes cited by Watson provide a basis for a civil action for damages. The complaint also would not entitle him to declaratory or injunctive relief because the complaint does not seek to prevent future harm to Watson. *See* ***PRN Assocs. LLC v. State***, 2009 WI 53, ¶53, 317 Wis. 2d 656, 766 N.W.2d 559 ("Declaratory judgment provides prospective rather than remedial relief."); ***Bostco LLC v. Milwaukee Metro. Sewerage Dist.***, 2013 WI 78, ¶60, 350 Wis. 2d 554, 835 N.W.2d 160 ("The purpose of an injunction is to prevent [future] violations." (alteration in original) (quoted source omitted)).

Our conclusion that Watson's complaint does not state a claim would not change even if we considered the unemployment hearing documents Watson attached to his brief opposing the motion to dismiss. Nothing in those documents provides any facts that would entitle Watson to relief, for the reasons discussed above. We therefore need not address whether the circuit court erred by failing to consider those documents.

Finally, we reject Watson's contention that his constitutional rights to access to the courts or to a jury trial were violated. The right to access the courts provides access to obtain justice as the law exists, ***Aicher ex rel. LaBarge v. Wisconsin Patients Compensation Fund***, 2000 WI 98, ¶43, 237 Wis. 2d 99, 613 N.W.2d 849, and the right to a jury trial is implicated when there are issues of fact to be decided, ***Parklane Hosiery Co. v. Shore***, 439 U.S. 322, 336 (1979). Because Watson's complaint did not state a claim, his rights of access to the courts and to a jury trial were not violated.

Therefore,

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

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

Sheila T. Reiff
Clerk of Court of Appeals