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DISTRICT IV

February 6, 2019

To:

Hon. Stephen E. Ehlke
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2017AP2495

Daniel Landis v. Ernest J. Usher, Jr. (L.C. # 2017CV2796)

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).

Daniel Landis appeals an order dismissing his complaint. 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 (2017-18).¹ We reverse and remand with directions

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

for the circuit court to either explain the finding that the complaint is frivolous or allow the action to proceed.

Landis's complaint, in short, alleges that his prison roommate, defendant Ernest Usher, stole several postage prepaid envelopes from him. Landis sought compensatory and punitive damages. The circuit court dismissed the complaint with a check-box form. The court checked the box to say the complaint is frivolous, but did not otherwise explain why it reached that conclusion.

On appeal, Landis argues that the complaint is not frivolous. Usher did not file a brief as respondent to argue that the complaint was properly dismissed. And, it is not apparent to us why the complaint is frivolous, as that term is used in WIS. STAT. § 802.05(4)(b)1. At least as to a claim for compensatory damages for the alleged theft of the envelopes, the complaint appears to plead sufficient facts to state a legal claim. Accordingly, at this point, we are unable to affirm the dismissal on the ground of frivolousness. Therefore, we reverse and remand with directions for the circuit court to either further explain the finding of frivolousness in a new dismissal order, or allow the action to proceed.

IT IS ORDERED that the order appealed is summarily reversed under WIS. STAT. RULE 809.21 and the cause is remanded with directions.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals