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DISTRICT IV

Amended August 30, 2019
July 26, 2019

To:

Hon. Jeffrey Kuglitsch
Circuit Court Judge
51 S. Main St.
Janesville, WI 53545

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Ronald McCray
2405 Sunshine Ln.
Beloit, WI 53511

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

2018AP1648

Ronald McCray v. City of Beloit (L.C. # 2018CV421)

Before Blanchard, 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).

Ronald McCray, pro se appellant, appeals an order of the circuit court dismissing his complaint. After reviewing 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 summarily affirm.

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

This case stems from a call received by the Beloit Police Department on February 23, 2017 from a dental office. The dental office complained that McCray had “got hold of some paper work” and was calling the office’s patients. To investigate the matter, police officer Kerry Daugherty made contact with McCray, who informed Daugherty that he had found a patient list in his front yard and had called the patients to alert them that their personal information should be handled with more care. Daugherty determined, as a result of the investigation, that no crime was committed and no ordinance was violated.

In August 2017, McCray filed a complaint against the City of Beloit, arguing that the police investigation was false and misdirected. The City moved to dismiss the complaint, based on McCray’s failure to comply with the notice requirements of WIS. STAT. § 893.80 for claims against governmental bodies.

WISCONSIN STAT. § 893.80 (1d) provides, in relevant part:

[N]o action may be brought or maintained against any ... political corporation, governmental subdivision or agency thereof nor against any officer, official, agent or employee of the corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless:

(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the ... political corporation, governmental subdivision or agency and on the officer, official, agent or employee under s. 801.11.²

² WISCONSIN STAT. § 893.80(1d)(a) further provides, “Failure to give the requisite notice shall not bar action on the claim if the ... corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial[.]” However, neither party makes a developed argument that the respondents had actual notice of McCray’s claims and, therefore, we do not discuss or decide the issue of whether the exception to the notice requirement of Sec. 893.80(1d)(a) applies.

On September 28, 2017, McCray filed a “Notice of Circumstances Giving Rise to Claim and Claim” with the City of Beloit. After a hearing, the circuit court dismissed McCray’s complaint without prejudice in an order issued November 1, 2017. The court ruled that claims arising more than 120 days before McCray served his notice of claim on the City, or before May 31, 2017, were “untimely pursuant to WIS. STAT. § 893.80,” and dismissed McCray’s complaint because his claims arose before May 31, 2017. The order states that it is a final order for purposes of appeal. McCray did not appeal the dismissal order.

In April 2018, McCray filed a new complaint alleging defamation and several other claims against the City and its police officers, all related to their actions with respect to the February 23, 2017 phone call from the dental office. McCray requested that the circuit court “delay hearing the case” so that he could serve all of the defendants who had not yet been served with the notice required under WIS. STAT. § 893.80. The defendants moved to dismiss the complaint. The court granted the motion after a hearing held on August 3, 2018. McCray now appeals.

We review a circuit court’s order granting a motion to dismiss de novo. *Mayo v. Boyd*, 2014 WI App 37, ¶8, 353 Wis. 2d 162, 844 N.W.2d 652. We will not reverse a circuit court’s factual findings unless they are clearly erroneous. *Noll v. Dimiceli’s, Inc.*, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983).

Here, the circuit court found that McCray’s defamation claims arose no later than March 3, 2017, and that all of McCray’s legal claims related back to February 23, 2017. Each of these findings is supported by the record. Documents generated by the Beloit Police Department, which were introduced as exhibits at the motion hearing, reference the February 23,

2017 phone call as the incident that prompted police interaction with McCray. The record also establishes that, on March 3, 2017, McCray received a copy of the department's call notes from February 23, 2017. Based on the record, we cannot conclude that the court's findings were clearly erroneous.

Independently applying the relevant legal standards to the circuit court's findings, we conclude that the claims in McCray's complaint are untimely. Under WIS. STAT. § 893.80(1d)(a), McCray was required to serve the defendants with written notice of the circumstances of his claims within 120 days of the event giving rise to the claims. As discussed above, the latest that any of McCray's claims arose was March 3, 2017, which means that McCray was required to file a notice of claim on or before July 2, 2017. McCray did not serve any notice of claim on the defendants until September 28, 2017, which was well after the 120-day deadline under Sec. 893.80(1d)(a) had passed. We conclude that the court properly dismissed all of McCray's claims for failure to timely comply with Sec. 893.80(1d)(a).

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals