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DISTRICT IV

April 16, 2020

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

2019AP909 Wade A Hallett v. Department of Children and Families (L.C. # 2019CV108)

Before Blanchard, Kloppenburg and Graham, 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).

Wade Hallett, pro se, appeals the circuit court order that dismissed his petition for judicial review of an agency decision substantiating allegations of child sexual abuse. Hallett argues that the circuit court erred in dismissing his petition for lack of proper service. 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(1) (2017-18).[1] We affirm.

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

It is undisputed that Hallett was required to serve the agency, the Wisconsin Department of Children and Families, by January 28, 2019. At issue is whether, under the prison mailbox rule, Hallett timely served the Department by certified mail.[2] The prison mailbox rule "tolls the statutory filing deadline only after a prisoner deposits for mailing [with prison authorities] a petition that is complete, in proper form and accompanied by the required filing fee or fee-waiver documents." ***State ex rel. Tyler v. Bett,*** 2002 WI App 234, ¶2, 257 Wis. 2d 606, 652 N.W.2d 800. The Department concedes that the rule is applicable to the deadline for service of a petition like Hallett's, meaning that Hallett needed to deposit the necessary materials for service by certified mail with prison authorities no later than January 28, 2019.

Hallett argues that he timely deposited the necessary materials, as evidenced by a disbursement request form for a certified mailing. Hallett claims that he submitted the form to prison staff on January 28, 2019. The circuit court rejected this claim and made several findings of fact. Most notably, the circuit court found that the disbursement request form did not show that Hallett submitted the form on January 28, 2019, and that it appeared instead that Hallett backdated the form with that date.

An appellate court will "uphold a circuit court's findings of fact unless they are clearly erroneous." ***Phelps v. Physicians Ins. Co.***, 2009 WI 74, ¶34, 319 Wis. 2d 1, 768 N.W.2d 615. "[A] finding of fact is clearly erroneous when 'it is against the great weight and clear preponderance of the evidence.'" ***Id.***, ¶39 (quoted sources omitted). Applying this standard, we

[2] One of Hallett's arguments on appeal is that mail service of his petition need not have been by certified mail. However, in the circuit court, Hallett agreed that certified mail was required. Therefore, we do not address Hallett's argument to the contrary. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (issues not preserved in the circuit court will generally not be considered on appeal).

sustain the circuit court's findings even though the "evidence may have presented competing factual inferences." *See* ***id.***

Here, we agree with the Department that the circuit court's factual findings are not clearly erroneous and, therefore, we also agree with the Department that Hallett has not shown timely service under the prison mailbox rule.

First, as the Department points out, a sequence of undisputed events supports the circuit court's findings. Hallett initially served the Department by non-certified, first class mail prior to the January 28, 2019 deadline; the Department then filed its motion to dismiss on January 31, 2019; and it was not until after the Department filed its motion that Hallett claimed to have also served the Department by certified mail. Hallett attempted to explain this sequence of events by asserting that, after he served the Department by first class mail, he conducted further research and discovered the certified mailing requirement. However, the circuit court discredited Hallett's explanation. "[T]he [circuit] court is the ultimate and final arbiter of the credibility of witnesses, and we must accept [its] credibility determination." ***Nicholas C.L. v. Julie R.***, 2006 WI App 119, ¶23, 293 Wis. 2d 819, 719 N.W.2d 508.

Second, Hallett's disbursement request form on its face supports the circuit court's findings. The form contains what appears to be a prison employee's signature approving the request next to a hand-written date of February 5, 2019, while Hallett's signature is next to a hand-written date of January 28, 2019, in what appears to be a different type of ink. Although one inference from the form is that prison staff delayed eight days after receiving the form on January 28, 2019, another reasonable inference—and the inference that the circuit court drew—is that Hallett backdated the form to January 28, 2019.

Hallett appears to argue that the January 28, 2019 date was written by the *prison employee*, showing that Hallett submitted his disbursement request form on that date. However, nothing on the form supports such an inference. Hallett points to a Wisconsin Department of Corrections policy stating that, when approving a disbursement request form, prison staff "shall ensure it is signed and dated, and shall legibly sign to indicate the inmate's identify was verified." Hallett seems to contend that this policy requires prison staff to verify the date they received the form, but the policy does not state such a requirement.

Even if there were such a requirement, another document in the record appears to verify that the date prison staff received Hallett's disbursement request form was February 4, 2019, not January 28, 2019. That document shows a stamp of "FEB 4 REC'D." This document provides further support for the circuit court's finding that Hallett backdated his form.

Hallett next argues that, because the Department moved to dismiss, the circuit court was required to construe all reasonable inferences in favor of Hallett as the nonmoving party. This motion to dismiss standard does not apply to the particular question here: whether Hallett timely served the Department under the prison mailbox rule. As the party seeking to benefit from the rule, Hallett had the burden of proof. *See* ***State ex rel. Shimkus v. Sondalle***, 2000 WI App 262, ¶14, 240 Wis. 2d 310, 622 N.W.2d 763 (The prisoner is required to "present proof of the date on which he or she placed the petition in the institution mailbox."). The circuit court's duty, in turn, was to resolve factual disputes based on the evidence submitted, and the court was free to draw reasonable inferences against Hallett. *See* ***Tyler***, 257 Wis. 2d 606, ¶20 ("The efficacy of the [prison mailbox] rule depends on the ability of courts to easily resolve factual questions regarding who did what and when in relation to the mailing, receipt and processing of documents."); ***Shimkus***, 240 Wis. 2d 310, ¶12 (A prisoner was not entitled to the benefit of the

rule when the evidence supported more than one reasonable inference as to the date he deposited materials for mailing.).[3]

Finally, Hallett argues that the circuit court erred by requiring him to obtain an "oath" or "certified statement" from a prison employee regarding the date that prison staff received Hallett's disbursement request for a certified mailing. In making this argument, Hallett misconstrues the circuit court's decision. The circuit court was not requiring an oath or certified statement from a prison employee. Rather, the court was observing that an oath or certified statement was one way that Hallett might have met his burden of proof.

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals

[3] When the circuit court decided the Department's motion to dismiss, the court at one point stated that it would review the Department's motion "in the light most favorable to the nonmoving party." However, the circuit court's decision as a whole shows that the court and parties understood that Hallett had the burden of proof under the prison mailbox rule.