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**DISTRICT II**

April 22, 2020

To:

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

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2018AP1189

Sandra J. Weidner v. City of Racine (L.C. #2017CV1644)

Before Reilly, P.J., Gundrum and Brash, 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).**

Sandra J. Weidner appeals from a judgment dismissing with prejudice her action against the City of Racine (“the City”). She contends that the circuit court erred in refusing to accept her

amended petition for mandamus.<sup>1</sup> 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).<sup>2</sup> We reverse the judgment and remand for further proceedings consistent with this opinion.

On August 22, 2017, the Racine City Attorney (“City Attorney”) convened the Racine Common Council Executive Committee (“Executive Committee”) in closed session to consider whether to request an advisory opinion from the Racine Board of Ethics (“Ethics Board”) regarding whether certain officials had violated ethics laws. The Executive Committee recommended requesting the advisory opinion. The Racine Common Council (“Common Council”) thereafter approved.

Weidner was a long-serving member of the Common Council. After the Executive Committee’s recommendation, she asked the City Attorney to provide her with copies of materials presented at the closed session. He declined to do so, citing attorney-client confidentiality. After the Common Council approved the Executive Committee’s recommendation, Weidner renewed her request and was again denied.

On November 29, 2017, Weidner commenced this action by filing a petition for mandamus. In it, she sought a writ requiring “that the City provide her with any and all documentation

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<sup>1</sup> Weidner presents alternative arguments as well. However, because we agree that the circuit court erred in refusing to accept her amended petition for mandamus, we do not address them.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

(information) it alleges or submits to the Ethics Board in support of its request of the Board for an advisory opinion.”

Five days later, the City Attorney submitted his advisory opinion request to the Ethics Board, along with a memorandum and copies of certain communications. These materials were provided to each Common Council member, including Weidner. Accordingly, the City moved to quash Weidner’s petition on the ground that it was moot.

On February 5, 2018, Weidner filed an amended petition for mandamus, clarifying that her claimed relief also extended to “any and all documentation (information)” the City Attorney presented at the Executive Committee’s closed session.<sup>3</sup> The circuit court refused to accept the amended petition. It granted the City’s motion to quash the original petition and reviewed the matter for compliance with public records law.

Eventually, the circuit court found that the majority of materials requested by Weidner were privileged and appropriately withheld. It further found that her petition did not provide the production of non-privileged materials. Thus, the court concluded that Weidner had not prevailed under public records law and dismissed with prejudice her action against the City. This appeal follows.

On appeal, Weidner contends that the circuit court erred in refusing to accept her amended petition for mandamus. She notes that she had the right to amend her petition once within six months pursuant to WIS. STAT. § 802.09(1).

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<sup>3</sup> Weidner maintains that the entirety of materials presented at the Executive Committee’s closed session was not submitted to the Ethics Board.

Mandamus is a civil action and, as such, the Wisconsin civil procedure rules apply. WIS. STAT. §§ 783.01, 801.01(2). Section 802.09(1) provides that “[a] party may amend the party’s pleading once as a matter of course at any time within 6 months after the summons and complaint are filed ....” The statute’s application to undisputed facts is a question of law, which we review de novo. See *Kox v. Center for Oral & Maxillofacial Surgery, S.C.*, 218 Wis. 2d 93, 99, 579 N.W.2d 285 (Ct. App. 1998).

We agree with Weidner that the circuit court erred in refusing to accept her amended petition for mandamus. Weidner filed her amended petition just over two months after commencing the action with her original petition. She had not previously amended her petition. Therefore, under WIS. STAT. § 802.09(1), Weidner had an absolute right to amend her petition, which she clearly tried to exercise.<sup>4</sup> Because the circuit court erred in refusing to accept the amended petition and treated the original petition as operative, we reverse its judgment and remand for further proceedings consistent with this opinion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily reversed and the cause is remanded with directions, pursuant to WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>4</sup> The fact that Weidner tried to exercise her right militates against any forfeiture argument advanced by the City.