



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

October 1, 2020

To:

Hon. Darcy Jo Rood
Circuit Court Judge
Vernon County Courthouse
400 Courthouse Square
Viroqua, WI 54665

Sheila Olson
Clerk of Circuit Court
Suite 115
400 Courthouse Square
Viroqua, WI 54665

Lonnie Muller
S4654 Aumock Rd.
La Farge, WI 54639

Jacob Sell
P.O. Box 282
La Farge, WI 54639

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

2019AP1135

Jacob Sell v. Lonnie Muller (L.C. # 2018CV108)

Before Kloppenburg, Graham, and Nashold, 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).

Jacob Sell 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.

Sell filed a complaint against defendant Lonnie Muller alleging defamation that occurred “on or about” August 18, 2015. Muller sent the circuit court a letter stating that the statute of

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

limitations for this claim is three years; that the starting date for that period was August 18, 2015; and that Sell filed his complaint on August 20, 2018, two days “past the deadline.” Muller cited WIS. STAT. §§ 893.04 and 893.57. He asked that the case be dismissed.

The circuit court dismissed the case with an order stating: “This case is before the court on the motion to dismiss of the defendant, Lonnie Muller. The court hereby grants the motion to dismiss.”

In Sell’s brief on appeal, he describes certain events that he asserts occurred at a hearing. We do not have a transcript of that hearing. The circuit court docket entries show that there was a “final pre-trial” held that day, and the minutes show that defendant Muller did not appear, that Sell objected to dismissal, and that the circuit court addressed the statute of limitations and granted the motion to dismiss. Beyond that, we do not consider Sell’s description of that hearing.

Although the circuit court’s dismissal order does not contain reasoning, we infer from the minutes and the order’s reference to the motion to dismiss that the basis for the dismissal is Sell’s failure to file the complaint within the statute of limitations. Sell argues on appeal that his filing of the complaint on August 20, 2018 was timely because the last day within the statute of limitations was Saturday, August 18, 2018, and he filed the complaint on the following Monday. Muller has not filed a brief in response.

We conclude that the current record does not show that Sell's filing of the complaint on the Monday was outside the statute of limitations. One of the statutes Sell cites on appeal is WIS. STAT. § 990.001(4), which describes how time should be computed in applying statutes. It applies to computation of statutes of limitation. *Pufahl v. Williams*, 179 Wis. 2d 104, 107,

506 N.W.2d 747 (1993) (§ 990.001(4)(a) and (d) applies to statutes of limitation time computations, absent a specific statutory directive to the contrary).

The subsection that applies here is WIS. STAT. § 990.001(4)(c). That subsection is long but, edited for purposes of these facts, it provides as follows:

When the last day within which a proceeding is to be had or taken or an act done, which consists of ... the filing with any officer ... of any county ... of any ... document, falls on a Saturday and the duly established official office hours of such officer ... with which such ... document is required to be filed, do not include any office hours thereof on such Saturday, said ... act may be done on the next succeeding day that is not a Sunday or a legal holiday.

The clerk of the circuit court is an officer of the county. WIS. STAT. § 59.40. Accordingly, we conclude that this statute applies to the filing of a summons and complaint with the clerk of the circuit court. When the last day for filing those documents falls on a Saturday, they may be filed on the next succeeding day that is not a Sunday or a legal holiday, unless the clerk's official office hours included hours on that Saturday.

Returning to this case, as far as the record shows, there is no information available about whether the clerk's office had official hours on Saturday, August 18, 2018. The complaint does not contain any such information. Muller's motion did not refer to Saturday hours, the record does not contain any documentary proofs such as affidavits or exhibits, there is no motion for summary judgment, the minutes do not show that the circuit court held an evidentiary hearing, and the dismissal order does not contain a finding relating to Saturday hours.

Therefore, we conclude that based on the information available in the complaint and the motion to dismiss, the record does not provide a basis to conclude that Sell's complaint was untimely filed.

IT IS ORDERED that the order appealed is summarily reversed, and the cause is remanded under 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