



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

December 9, 2021

To:

Hon. Frank D. Remington
Circuit Court Judge
Electronic Notice

John Doe 1
600 Highland Avenue
Madison, WI 53792

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

John Doe 2
600 Highland Avenue
Madison, WI 53792

Karen M. Gallagher
Electronic Notice

Special Litigation & Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Frederick Booker 565545
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

Business Office
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2020AP163

Frederick Booker v. Kerry J. Breit (L.C. # 2019CV3425)

Before Blanchard, P.J., Fitzpatrick, 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).

Frederick Booker 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 (2019-20).¹ We affirm.

Booker filed a complaint alleging that the defendants negligently performed plastic surgery on his ear on October 7, 2016. The circuit court dismissed the complaint under WIS. STAT. § 802.05(4) before any responsive pleadings were filed. The order stated that the complaint failed to state a claim because, among other things, it was not filed within the applicable three-year statute of limitations.

On appeal, Booker acknowledges that the applicable statute of limitations is three years from discovery of his injury, and he does not dispute the circuit court's authority to dismiss an untimely complaint pursuant to WIS. STAT. § 802.05(4). However, he contends that his complaint was not untimely, and that the court therefore erred by dismissing it.

In his opening brief, Booker asserts that the date of his injury was October 17, 2016, and that he placed the complaint in the institution mailbox on October 17, 2019, within the required three years. We reject this argument because it is not consistent with the complaint itself, which asserted that the injury occurred on October 7, 2016.

In reply, Booker argues that October 17, 2016, was the date he discovered the injury. However, this is also not consistent with the complaint. The complaint describes a discussion he

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

had with one of the defendants on October 7, 2016, the date of the surgery, during which Booker became aware of the surgical outcome that forms the basis for his claim.

Accordingly, none of Booker's arguments persuade us that the circuit court improperly dismissed the complaint as untimely.

IT IS ORDERED that the order appealed is summarily affirmed 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