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DISTRICT IV

May 19, 2022

To:

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Circuit Court Judge
Electronic Notice

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

2021AP1204

John Dahlk v. Kevin A. Carr (L.C. # 2021CV1102)

Before Kloppenburg, 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).

John Dahlk, pro se, appeals a circuit court order dismissing his petition for a writ of mandamus. 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 For the reasons that follow, we affirm.

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

Dahlk is a prison inmate under custody of the Department of Corrections. The respondent, Kevin Carr, is Secretary of the Department. This appeal arises from a petition for a writ of mandamus filed by Dahlk in the circuit court. Dahlk petitioned the circuit court to order Carr to take twelve specific actions related to the investigation of Dahlk's alleged sexual assault by a female officer in 2001, when Dahlk was housed in a Tennessee prison under a contract with the Department. Carr moved to quash the requested writ of mandamus and dismiss the case. The circuit court held a hearing on July 1, 2021, after which it issued an order granting Carr's motion to quash and dismissing the action. Dahlk appealed.

“We will uphold a circuit court's grant or denial of a writ of mandamus unless the circuit court erroneously exercised its discretion.” *State ex rel. Zignego v. Wisconsin Elections Comm'n*, 2020 WI App 17, ¶32, 391 Wis. 2d 441, 941 N.W.2d 284, *aff'd as modified*, 2021 WI 32, 396 Wis. 2d 391, 957 N.W.2d 208. In reviewing the circuit court's exercise of discretion, we decide independently, or de novo, any questions of law that may arise. *See id.*

The circuit court order that Dahlk is challenging states, “For the reasons stated on the record the Respondent's motion to quash the writ of mandamus is GRANTED. This action is DISMISSED in its entirety.” However, this court cannot review the circuit court's reasoning that was placed on the record because Dahlk has failed to provide a transcript of the July 1, 2021 hearing. *See Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006) (it is appellant's responsibility to provide this court with a record sufficient to allow review of issues raised, including any necessary transcript). The scope of our review on appeal is necessarily confined to the record before us, and we assume that any missing transcript would support the circuit court's findings of fact and discretionary decisions. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). Based on the language used in the order, we

conclude that the circuit court considered proper factors when it granted Carr’s motion to quash and dismissed the action, and we assume that the missing transcript further supports the court’s discretionary decision. We affirm the order on that basis.

Moreover, even if we were to address each of the twelve actions that Dahlk argues the circuit court should have compelled Carr to take, we would conclude that it was within the court’s discretion to dismiss the writ petition. A party seeking mandamus “must show that the duty sought to be enforced is positive and plain.” *State ex rel. Collins v. American Fam. Mut. Ins. Co.*, 153 Wis. 2d 477, 483-84, 451 N.W.2d 429 (1990). Dahlk has not established that Carr has a positive and plain duty to take any of the twelve actions that Dahlk seeks to compel by writ.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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