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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:

2021AP568

Dawn Bradley v. Officer Riley E. Peterson (L.C. # 2020CV2151)

Before Blanchard, P.J., 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).

Dawn Bradley, pro se, appeals orders dismissing Bradley's complaint against Green Bay and Madison police officers.¹ Based upon our review of the briefs and record, we conclude at

¹ By prior orders, we addressed the caption for this appeal, which initially included Dustin Peterson as a defendant-respondent. In those orders, we included Dustin Peterson in our caption to be consistent with the circuit court caption; however, we removed his designation as a respondent. Upon our review of the parties' briefs and the record, as well as the circuit court's current docket that no longer includes Dustin Peterson as a defendant, we understand that Dustin Peterson has never appeared in this litigation. Accordingly, on our own motion, we now remove Dustin Peterson from the caption for this appeal. This order will be sent to Dustin Peterson, and he will be removed from the service list for any

(continued)

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).² We summarily affirm.

Bradley sued Officers Riley Peterson, Tyler Haack, and Brian Ackeret for damages arising from Bradley’s arrest in Green Bay and the events that followed in Green Bay and Madison. The defendants moved to dismiss the claims on grounds that Bradley had failed to comply with statutory notice requirements under WIS. STAT. § 893.80(1d) and that she failed to state a claim on which relief could be granted under WIS. STAT. § 802.06(2)(a)6. Bradley opposed the motions to dismiss. The circuit court found that Bradley had not shown that she provided the required statutory notice to any of the defendants. The court dismissed Bradley’s claims on that basis.

We independently review the circuit court’s decision on a motion to dismiss, *see State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶9, 278 Wis. 2d 388, 692 N.W.2d 304 (2004), including “[t]he application of a statute to a given set of facts,” *see DNR v. City of Waukesha*, 184 Wis. 2d 178, 189, 515 N.W.2d 888 (1994).

WISCONSIN STAT. § 893.80(1d) requires notice prior to a lawsuit against a government officer. The statute requires two forms of notice: a notice of injury and a notice of claim. *Vanstone v. Town of Delafield*, 191 Wis. 2d 586, 593, 530 N.W.2d 16 (Ct. App. 1995). The first requirement, notice of injury, may be met by service of written notice or actual knowledge by the governmental entity. *Id.* at 592. However, the second requirement, notice of claim, can

subsequent filings in this appeal. The caption is amended as follows: Dawn Bradley v. Officer Riley E. Peterson, Officer Tyler Haack, and Officer Brian Ackeret.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

only be met by service of notice of the claim, which must include an itemized statement of the relief sought. *Id.* at 592-93. Our supreme court has also specified that a notice of claim ““must state a specific dollar amount.”” *See id.* at 596 (quoted source omitted); *see also Thorp v. Town of Lebanon*, 2000 WI 60, ¶30, 235 Wis. 2d 610, 612 N.W.2d 59. “[B]oth [forms of notice] must be satisfied before the claimant may commence an action against the governmental entity.” *Vanstone*, 191 Wis. 2d at 593. The plaintiff has the burden to prove that the notice requirements have been met. *Moran v. Milwaukee Cnty.*, 2005 WI App 30, ¶3, 278 Wis. 2d 747, 693 N.W.2d 121.

Bradley contends, in conclusory fashion, that she provided sufficient notice. As best we can understand Bradley’s argument, Bradley is asserting that materials in the appendix to her brief—a “Notice of Injury and Claim” and two letters to the attorney general—establish that she provided proper notice. However, it appears undisputed that those materials are not included in the record on appeal, and we therefore do not consider them.³ *See Roy v. St. Lukes Med. Ctr.*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256 (our review is limited to material that is contained in the record and we “will not consider any materials in an appendix that are not in the record”). Bradley does not cite anything *in the record* to support an argument that she provided proper notice under WIS. STAT. § 893.80(1d). *See Keplin v. Hardware Mut. Cas. Co.*, 24 Wis. 2d 319, 324, 129 N.W.2d 321 (1964) (this court will not sift through the record for

³ Bradley does not assert in her brief-in-chief that the materials she cites from her appendix are in the record, and she does not refute the assertions by the respondents that the materials were not submitted to the circuit court and are therefore not part of the record on appeal. We therefore take that point as conceded. *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant’s failure to respond in reply brief to an argument made in response brief may be taken as a concession).

facts to support an appellant's argument; it is the appellant's responsibility to provide proper citations to the record).

We also note that, even were we to consider the appendix materials (which we do not), those materials would be insufficient as a notice of claim because, among other things, they fail to include an itemized statement of the relief sought, including a specific dollar amount. *See Vanstone*, 191 Wis. 2d at 596. Bradley does not provide any other discernable argument that she complied with WIS. STAT. § 893.80(1d), and we decline to develop any such argument on her behalf. *See Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (we will not abandon our neutrality to develop arguments for a party).

We conclude that the circuit court properly dismissed Bradley's claims for failure to comply with the notice requirements under WIS. STAT. § 893.80(1d). Because that conclusion is dispositive, we need not reach the parties' dispute over whether the complaint stated a claim on which relief could be granted.

Therefore,

IT IS ORDERED that the orders are 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