



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](http://www.wicourts.gov)

**DISTRICT IV**

May 11, 2023

To:

Hon. Stacy A. Smith  
Circuit Court Judge  
Electronic Notice

Steven C. Kilpatrick  
Electronic Notice

Alicia Pellegrini-Kast  
Clerk of Circuit Court  
Juneau County Justice Center  
Electronic Notice

Gregory A. Allen 167930  
Oshkosh Correctional Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

---

2021AP1820

Gregory A. Allen v. Ms. Selje, Records Custodian  
(L.C. # 2020CV15)

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

Gregory Allen appeals an order that awarded him only some of the costs he requested in the circuit court after prevailing in this public records case. 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 (2021-22).<sup>1</sup> We affirm.

Allen's statement of costs included amounts for "copies," "postage," and "stamped envelopes." The circuit court granted his other requested costs, but not those items. On appeal,

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Allen argues that he is entitled to his “actual costs,” as provided in WIS. STAT. § 19.37(2)(a). The public records law does not define “actual costs.” However, the parties here appear to agree that we should understand this as referring to costs under WIS. STAT. § 814.04(2), which provides in relevant part that, when allowed, “costs shall be as follows”:

All the necessary disbursements and fees allowed by law; the compensation of referees; a reasonable disbursement for the service of process or other papers in an action when the same are served by a person authorized by law other than an officer, but the item may not exceed the authorized sheriff’s fee for the same service; amounts actually paid out for certified and other copies of papers and records in any public office; postage, photocopying, telephoning, electronic communications, facsimile transmissions, and express or overnight delivery; the electronic filing fee prescribed in [WIS. STAT. §] 801.18(7)(c); depositions including copies; plats and photographs, not exceeding \$100 for each item; an expert witness fee not exceeding \$300 for each expert who testifies, exclusive of the standard witness fee and mileage which shall also be taxed for each expert; and in actions relating to or affecting the title to lands, the cost of procuring an abstract of title to the lands.

Sec. 814.04(2).

Allen argues that this statute provides, in effect, that the court “shall award copies and postage.” However, case law appears to hold that the first clause of that statute, referring to “necessary disbursements and fees,” applies to all of the specific types of costs that are then named after that clause, thus giving the circuit court discretion to decide whether those specifically named items were actually necessary.

WISCONSIN STAT. § 814.04(2) authorizes imposition of costs for “all the necessary disbursements ... allowed by law.” This includes “amounts actually paid out for certified copies of papers and records in any public office; postage, telegraphing, telephoning and express; depositions including copies ....” [§ 814.04(2)].

A circuit court may, in its discretion, determine that the requested item of cost was not a “necessary” disbursement, and deny a party costs on that basis. *See Aspen Servs., Inc. v. IT*

*Corp.*, 220 Wis. 2d 491, 511, 583 N.W.2d 849 (Ct. App. 1998). We will uphold the circuit court’s exercise of discretion, so long as it examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, arrived at a conclusion that a reasonable judge could reach. *[Management] Computer [Servs., Inc. v. Hawkins, Ash, Baptie & Co.]*, 224 Wis. 2d [312,] 330, 592 N.W.2d 279 [(Ct. App. 1998)].

*DeWitt Ross & Stevens, S.C. v. Galaxy Gaming & Racing Ltd. P’ship*, 2004 WI 92, ¶¶53-54, 273 Wis. 2d 577, 682 N.W.2d 839.

Applying that interpretation of the statute here, Selje argues that the circuit court’s implicit decision to deny Allen’s request for copies, postage, and stamped envelopes was a discretionary decision. And, she argues, because Allen has not provided us with a transcript of the hearing at which the circuit court exercised that discretion, we should assume that the transcript would support that decision.

We agree that the absence of a transcript of the hearing requires us to affirm the circuit court’s discretionary decision. “For this court even to consider upsetting the trial court’s exercise of discretion, the defendant had the responsibility of furnishing the relevant portions of the transcript.” *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). “[T]he court will assume, in the absence of a transcript, that every fact essential to sustain the trial judge’s exercise of discretion is supported by the record.” *Id.*

Allen next argues that the circuit court should have awarded him punitive damages after he prevailed in litigating his public records request. Punitive damages are allowed under WIS. STAT. § 19.37(3), but only if there is first an award of actual damages. *Capital Times Co. v. Doyle*, 2011 WI App 137, ¶¶7-8, 337 Wis. 2d 544, 807 N.W.2d 666. Here, there was no award of actual damages to Allen, and therefore he may not receive punitive damages.

Finally, Allen argues that we should award him costs for his earlier appeal in this case, appeal No. 2020AP1309, in which we ruled in Allen's favor. Although Allen submitted a statement of costs in that appeal, our remittitur order did not include costs. Our jurisdiction ended with that remittitur, unless there was inadvertence, fraud, or a void judgment. *See State ex rel. Fuentes v. Wisconsin Ct. of Appeals, Dist. IV*, 225 Wis. 2d 446, 453, 593 N.W.2d 48. None of those are present here, and therefore we lack the authority to revisit the issue of costs in that appeal.

IT IS ORDERED that the order appealed from 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*