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**DISTRICT IV**

October 5, 2023

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

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2022AP1310

State of Wisconsin ex. rel. Tyrone T. Robinson v. Records  
Custodian (L.C. # 2021CV2638)

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

Tyrone T. Robinson, pro se, appeals a circuit court order that dismissed Robinson's mandamus action without awarding fees under the public records law. 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 summarily affirm.

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

In August 2021, Robinson made a public records request to the records custodian of the Dane County District Attorney's Office, seeking the following records in connection with Robinson's 2009 criminal conviction for child sexual assault and false imprisonment: (1) results of Robinson's tests for HIV and other sexually transmitted diseases; and (2) the Sexual Assault Nurse Examination (SANE) report concerning Robinson and the victim. In November 2021, Robinson initiated this mandamus action, alleging that the records custodian had failed to respond to his public records request.

On November 8, 2021, the circuit court issued an alternative writ of mandamus, compelling the records custodian to release to Robinson "all of the nonconfidential, unprivileged, and available information contained in the public records he has requested." The State moved to quash the subpoena, arguing that it did not have the requested records in its possession. It also attached the May 10, 2021 letter order in Robinson's criminal case, which noted that the State was "working on obtaining the SANE report" and would forward a redacted copy to Robinson.

On June 1, 2022, the circuit court held a hearing on the State's motion. The State explained that the State had obtained and provided Robinson with the SANE report on May 20, 2022, pursuant to the order in Robinson's criminal case. Robinson conceded that he had been provided all of the records that he requested. However, Robinson asked for his costs and fees for pursuing the mandamus action.

The circuit court denied Robinson's request for costs and fees. It explained that Robinson's request for the records was properly addressed in his criminal case, and that it was the order in the criminal case, not this mandamus action, that caused the records to be released to

Robinson. The court dismissed the mandamus action as moot because Robinson had obtained the requested records in his criminal case, and did not award any costs or fees.

WISCONSIN STAT. § 19.37(2)(a) authorizes the circuit court to award costs and fees in an public records mandamus action “if the requester prevails in whole or in substantial part in any action ... relating to access to a record.” The question of whether a requestor prevailed in an action requires us to interpret § 19.37(2)(a). Statutory interpretation presents a question of law, which we review independently. *T.L.E.-C. v. S.E.*, 2021 WI 56, ¶13, 397 Wis. 2d 462, 960 N.W.2d 391.

Robinson contends that the circuit court erred by failing to apply the “causation” standard to determine whether Robinson was entitled to costs and fees. See *Eau Claire Press Co. v. Gordon*, 176 Wis. 2d 154, 159-60, 499 N.W.2d 918 (Ct. App. 1993) (party “prevails” in mandamus action if there is a “causal nexus” between the action and the authority’s production of the records sought; the test for determining causation “is whether the actor’s action was a substantial factor in contributing to the result”). Robinson argues that the record establishes that this mandamus action caused the D.A.’s office to obtain and produce the SANE report. Robinson argues that, because the D.A.’s office did not obtain and produce the SANE report for more than a year after Robinson requested it in his criminal case in March 2021, but filed a subpoena to obtain the SANE report on December 16, 2021—seventeen days after being served with the alternative writ of mandamus in this case—this action must have caused the D.A.’s office to comply with Robinson’s public records request.

We agree with the State that the proper test for whether a requestor prevailed in a mandamus action is set forth in *Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57,

¶3, 403 Wis. 2d 1, 976 N.W.2d 263, as whether the party “obtain[ed] a judicially sanctioned change in the parties’ legal relationship.”<sup>2</sup> See also *Wisconsin State Journal v. Blazel*, 2023WI App 18, ¶37, 407 Wis. 2d 472, 991 N.W.2d 450 (stating that the majority in *Friends of Frame Park* “agree that, to prevail in a public records action so as to be entitled to attorney fees, ‘a party must obtain a judicially sanctioned change in the parties’ legal relationship.’” (quoting *Friends of Frame Park*, 403 Wis. 2d 1, ¶3).

We conclude that, under any formulation of the test, Robinson has failed to show that he prevailed in the mandamus action. The provision for costs and fees under WIS. STAT. § 19.37(2)(a) is triggered only once “an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made.” See *State ex rel. Zinngrabe v. School Dist. of Sevastopol*, 146 Wis. 2d 629, 632-33, 431 N.W.2d 734 (Ct. App. 1988). An authority cannot deny or withhold access to a record that is not in its possession. See *id.* at 633.

In *Friends of Frame Park*, the supreme court explained that the requestor “did not and could not prevail in whole or substantial part” in the mandamus action because the custodian “did not violate the public records law.” *Friends of Frame Park*, 403 Wis. 2d 1, ¶4. Here, Robinson does not dispute that the State did not have the SANE report in its possession when Robinson made his public records request in August 2021, and that the State provided the report

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<sup>2</sup> In his reply brief, Robinson argues that *Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57, 403 Wis. 2d 1, 976 N.W.2d 263, is inapposite because it addressed only attorney fees. However, while the dispute in *Friends of Frame Park* was over attorney fees, the supreme court addressed whether a party “prevail[ed] in whole or in substantial part” under WIS. STAT. § 19.37(2)(a). *Friends of Frame Park*, 403 Wis. 2d 1, ¶2. That is the test for attorney fees or other costs under § 19.37(2)(a).

to Robinson when it obtained the report in May 2022. On those facts, Robinson has not established a violation of the public records law, and he therefore did not and could not prevail in whole or in substantial part in the mandamus action.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*