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DISTRICT IV

May 31, 2013

To:

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Pastori M. Balele

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

2012AP849

Wisconsin Department of Corrections v. Pastori M. Balele
(L.C. # 2011CV3365)

Before Higginbotham, Blanchard and Kloppenburg, JJ.

Pastori Balele appeals an order dismissing his attempted counterclaim in a harassment injunction action under WIS. STAT. § 813.125 (2011-12).¹ 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. We affirm.

Balele filed a purported counterclaim after the circuit court dismissed the Department of Corrections' harassment injunction filed against him. The circuit court dismissed the

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

counterclaim for several reasons. We conclude that counterclaims are not permitted in harassment injunction actions brought under WIS. STAT. § 813.125.

Provisions for counterclaims are found in WIS. STAT. ch. 802, along with provisions for answers, cross-claims, replies and other pleadings. That chapter is part of chs. 801 to 847 that “govern procedure and practice in circuit courts ... in all civil actions ... except where different procedure is prescribed by statute or rule.” WIS. STAT. § 801.01(2).

Harassment injunction actions do not follow the regular pleading procedures provided in WIS. STAT. ch. 802. Instead, the action is commenced by filing a petition, and may not be commenced by summons. WIS. STAT. § 813.125(2)(a). The court may immediately issue a temporary restraining order and, if it does, the hearing on the injunction itself must be held within fourteen days, unless otherwise extended. § 813.125(3)(c). It is clear that answers or other types of responsive pleadings by the respondent to the petition are not contemplated in this process. If they were, it would be necessary for the statute to set times for those pleadings that are shorter than those provided in WIS. STAT. § 802.06(1). Under the harassment injunction procedure, the entire action may well be completed before the normal time to file an answer has expired. Therefore, we conclude that answers and counterclaims are not a permitted part of the procedure in harassment injunction actions brought under § 813.125, and the circuit court properly dismissed Balele’s counterclaim on that ground.

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

