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DISTRICT IV

July 23, 2013

To:

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

2012AP2177

Jevon Jackson v. Gary Hamblin (L.C. # 2012CV696)

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

Jevon Jackson appeals an order denying his motion for reconsideration in which Jackson sought permission to amend his complaint. Upon our review of the parties' briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12). We summarily affirm.

Jackson's complaint sought a declaratory judgment and an injunction challenging WIS. ADMIN. CODE § DOC 309.466 regarding prisoner release accounts. The complaint alleged that the rule constituted an improper regulatory taking and violated the common law rule against creation of an "impossible trust." The circuit court concluded that the complaint failed to state a

claim on which relief could be granted.¹ Jackson then filed a motion for reconsideration and a supplement to the motion requesting leave to amend the complaint to add a claim that the department exceeded its authority when it enacted § DOC 309.466. The circuit court denied the motion, and Jackson appeals.

Whether to grant a party leave to amend a pleading is a discretionary determination left to the circuit court and is reviewed only for an erroneous exercise of discretion. *Hess v. Fernandez*, 2005 WI 19, ¶12, 278 Wis. 2d 283, 692 N.W.2d 655. When leave to amend is sought after a case has been dismissed, there is no presumption in favor of allowing amendments. *Mach v. Allison*, 2003 WI App 11, ¶27, 259 Wis. 2d 686, 656 N.W.2d 766 (WI App 2002). Rather, the party seeking leave to amend must present a sufficient reason to overcome the value of the finality of the judgment. *Id.*

The circuit court properly exercised its discretion when it denied Jackson's motion to amend the complaint because the motion was untimely. The motion sought to present a completely new legal theory after the action had already been dismissed. Jackson argues that he attempted, in his brief opposing the motion to dismiss, to amend his complaint prior to dismissal. In the brief, Jackson said:

In the alternative, if the Court finds that both claims should be dismissed for failure to state a claim, plaintiff requests that he be allowed to submit an Amended Complaint (under Wis. Stats. § 802.09) to correct any deficiencies as to his Regulatory Taking claim.

¹ By previous order, this court concluded that the notice of appeal was not timely filed to challenge the order dismissing the complaint. Our jurisdiction is limited to review of the order denying reconsideration in which Jackson sought permission to amend the complaint.

This fleeting reference to amending the complaint cannot be construed as a motion for leave to amend the complaint for two reasons. First, it was contained in a brief and a brief is not a motion. Second, the brief only requested permission to correct deficiencies in the regulatory taking claim, not permission to raise an entirely new theory.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21 (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals