

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 24, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-2962

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STEVEN A. CONWAY,

PLAINTIFF-APPELLANT,

V.

WATERLOO POLICE AND KEN FUETZ,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Jefferson County:
WILLIAM M. HUE, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

PER CURIAM. Steven Conway appeals from an order dismissing his action against the Waterloo Police Department, and Ken Fuetz. Conway alleged that the defendants violated his constitutional rights, and sued under 42 U.S.C. § 1983. The trial court dismissed the complaint for failure to state a claim, resulting in this appeal. We affirm.

Conway's complaint alleged that while he was incarcerated on a criminal charge, officers from the Waterloo Police Department unlawfully seized his car from the driveway of his home, and later disposed of it as an abandoned and unregistered vehicle. He further alleged that Fuetz, his landlord at the time, instituted the seizure by asking police to deal with the car while Conway was incarcerated. He demanded compensatory damages for the loss of the car, and alleged that police officers Jacobs and Thomas were individually liable. However, he identified neither officer in his caption, which named Fuetz and the Department as the only defendants.

The trial court dismissed the action against Fuetz, because his alleged request to the police was not actionable. The court dismissed the action against the Department because the complaint did not set forth the necessary allegations to maintain a § 1983 claim against a municipal entity. The court also noted that Conway could not pursue any state claims against the Department because he failed to file a timely notice of claim under § 893.80, STATS. On appeal, Conway contends that he can maintain the action against Fuetz, and the court should have construed his complaint as one against Jacobs and Thomas, notwithstanding his caption identifying the Department as a defendant.¹

The trial court properly dismissed the action against Fuetz. 42 U.S.C. § 1983 provides a remedy against those who carry a badge of authority of the State and represent it in some capacity. *Scheuer v. Rhodes*, 416 U.S. 232, 243 (1974). It does not support actions against private citizens, such as Fuetz.

¹ Conway does not contest the court's determination that he cannot pursue state claims. He made it clear in his complaint and in his brief to this court that he is seeking a remedy solely under 42 U.S.C. § 1983. He also does not contest the determination that he failed to state a claim against the Department, as opposed to the individual officers named in the complaint.

The trial court properly dismissed the action against the Department. Section 802.04(1), STATS., requires that complaints contain a caption identifying all of the parties. There is no document in the record, including the complaint, that identifies either Jacobs or Thomas as a party to the action. We acknowledge that courts must liberally construe a *pro se* litigant's pleading to state the correct basis for relief. See *bin-Rilla v. Israel*, 113 Wis.2d 514, 520, 335 N.W.2d 384, 388 (1983). We do not construe that obligation to require the court to substitute parties where the *pro se* plaintiff has failed to identify the proper defendants. This is especially true here because Conway realized and acknowledged during the trial court proceeding that he had misidentified the defendants, yet made no effort to amend his complaint. The court cannot act as an advocate. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992). Litigants, even when acting *pro se*, must take responsibility for correcting their own errors, especially when they have been plainly identified as such.

By the Court.—Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.

