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DISTRICT IV

April 25, 2019

To:

Hon. Vicki L. Clussman
Circuit Court Judge
811 Harding St.
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Clerk of Circuit Court
Waupaca County Courthouse
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Waupaca, WI 54981

Philip Nolan
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Waupaca, WI 54981

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

2018AP678

Philip Nolan v. Wisconsin Department of Natural Resources
(L.C. # 2016CV345)

Before Blanchard, Kloppenburg, and Fitzpatrick, 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).

Philip Nolan appeals an order denying his petition for judicial review of a decision of the Wisconsin Department of Natural Resources (DNR). 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 (2017-18).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Nolan filed a petition seeking judicial review of the DNR’s decision to issue a renewal of an air pollution control operation permit, Permit No. 469033840-P20, to Waupaca Foundry, Inc. After briefing by the parties, the circuit court denied the petition in an oral ruling followed by a written order. Nolan now appeals.

The sole relief sought in Nolan’s petition for judicial review is a remand of the case to the DNR, pursuant to WIS. STAT. § 227.57(4). Section 227.57(4) states, “The court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.” The circuit court determined that Nolan had failed to set forth any procedural error, and that he made only “vague” arguments and “conclusory statements.”

Nolan presents a single issue on appeal. He argues that the DNR erred by following WIS. ADMIN. CODE § NR 445.08 (March 2016), rather than applying certain federal regulations in its issuance of the permit. This argument is substantive, and not procedural, in nature. As stated above, Nolan’s petition for judicial review sought a remand under WIS. STAT. § 227.57(4). Nothing in the petition or in Nolan’s appellate briefs, suggests any material error in procedure or a failure to follow prescribed procedure on the part of the DNR, as required for remand under § 227.57(4). Therefore, the petition for judicial review was properly denied by the circuit court.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals