



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT II

October 22, 2025

To:

Hon. Carey J. Reed
Circuit Court Judge
Electronic Notice

David D. Ebben
421 Sherry Street
Neenah, WI 54956

Kayla Bembenek
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

Keri L. Leitzke
332 S Birch St.
Kimberly, WI 54136

Kimberly A. Tenerelli
Electronic Notice

New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2024AP2084

Keri L. Leitzke v. David D. Ebben (L.C. #2011PA4PJ)

Before Neubauer, P.J., Gundrum, and Grogan, 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).

David D. Ebben appeals from a circuit court order denying his request to waive transcript fees. 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 (2023-24).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

In August 2023, a family court commissioner conducted a hearing on Ebben’s motion to freeze his child support obligations while he is incarcerated. The commissioner later issued a written decision denying Ebben’s motion, explaining that it “would impose an undue hardship upon” the children’s mother to freeze child support throughout Ebben’s incarceration, and that Ebben “is incarcerated due to intentional criminal misconduct.”

Ebben sought de novo review in the circuit court. After the de novo hearing, the court affirmed the commissioner’s decision. Ebben subsequently filed a handwritten motion seeking a waiver of transcript fees so that he could proceed with his appeal from the court order in the child support matter. The court denied his waiver request because Ebben failed to use the forms required for prisoner litigation in Wisconsin. Ebben subsequently filed another motion in the court seeking a fee waiver, but again did not use the forms. The court again denied the request. Ebben appeals from the most recent order denying his waiver request.

A litigant seeking a fee waiver must provide an affidavit of indigency “in the form prescribed by the judicial conference[.]” WIS. STAT. § 814.29(1)(b) and (1m)(b)1. If the litigant is a “prisoner” for purposes of Wisconsin’s Prisoner Litigation Reform Act, the litigant must also satisfy additional requirements. *See generally* WIS. STAT. §§ 814.29(1) and (1m) and 801.02(7); *State ex rel. Stinson v. Morgan*, 226 Wis. 2d 100, 593 N.W.2d 924 (Ct. App. 1999). The term “prisoner” in this context has a technical meaning that excludes an incarcerated person who is “bringing an action seeking relief from a judgment of conviction or a sentence[.]” *See* §§ 814.29(1m) and 801.02(7)(a)2.c.

Under *State ex rel. Girouard v. Circuit Court for Jackson County*, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990), the circuit court decides if an appellant is indigent and entitled to

waiver of transcript costs. Importantly, not every appellant is entitled to the preparation of transcripts at no cost. Here, the court denied Ebben’s request for a fee waiver because it determined that Ebben is a prisoner for purposes of his fee waiver request, and Ebben did not follow the requirements imposed by Wisconsin law on prisoners seeking fee waivers. The court’s order plainly states that it denied Ebben’s request because Ebben “is a prisoner and is required to use form CV-438 or CV-440.”

Ebben argues on appeal that he “meets the criteria for indigency” pursuant to WIS. STAT. § 977.07 and is therefore entitled to a fee waiver. He also argues that the circuit court’s denial of his fee waiver request violates his rights to due process. Ebben’s arguments are flawed.

First, Ebben fails to demonstrate that he filed the proper paperwork with the circuit court to entitle him to a hearing to determine indigency. Though he asserts in his briefing that he meets the criteria for a fee waiver, Ebben fails to support his bald conclusion. Ebben bears the burden of convincing us the court erred in its decision. *See Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. Relatedly, “[w]e have no duty to scour the record to review arguments unaccompanied by adequate record citation.” *See Roy v. Saint Lukes Med. Ctr.*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256. Failure to comply with the statutes results in dismissal of a prisoner’s petition for a fee waiver. *See id.* Because Ebben fails to direct us to anywhere in the record to demonstrate that he filed the petition at issue using the forms required by WIS. STAT. § 814.29(1m)(g), we cannot conclude that the court erred in dismissing his petition.

Moreover, contrary to Ebben’s blanket statement that he meets the definition of “indigent” according to Wisconsin law, he relies on the incorrect statute—Ebben argues that he

is indigent under WIS. STAT. § 977.07, which provides the criteria for the state public defender's office to determine whether an individual qualifies for legal representation in a criminal or related proceeding. The requirements for determining indigency to qualify for legal representation under § 977.07 differ from the requirements for determining indigency for a prisoner filing an action under WIS. STAT. § 814.29(1m), as we have established. A prisoner seeking a fee waiver for any legal proceeding unrelated to challenging his or her conviction or sentence must fully comply with all of the statutory requirements under § 814.29(1m), which Ebben has failed to do.²

Relatedly, Ebben's briefing to this court also discusses at length fee waivers for indigent persons pursuant to WIS. STAT. § 814.29(1), but fails to acknowledge that in addition to the affidavit of indigency required under § 814.29(1), a "prisoner" as defined by the statutes must meet additional requirements beyond the affidavit to establish eligibility for free transcripts. *See* § 814.29(1m). Thus, even if he was not a prisoner subject to the requirements under subsection (1m), Ebben has failed to demonstrate that he would be entitled to a fee waiver under subsection (1).

Finally, it is unclear precisely what Ebben intends to argue with his assertion that the circuit court violated his due process rights. He does not provide any explanation as to why this court should conclude that the denial of a transcript-fee waiver violates any of his constitutional rights, nor can we so conclude on this record.

² We acknowledge that record item no. 68 includes an Affidavit of Indigency and other forms required under WIS. STAT. § 814.29, but that packet was filed in association with Ebben's request for de novo review of the Commissioner's decision. Ebben failed to timely file the required statutory paperwork with respect to the circuit court order that he challenges on appeal.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals