

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 22, 1998

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. 96-3128

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL. STEPHEN J.
WEISSENBERGER,**

PETITIONER-APPELLANT,

V.

STEVE WATTERS AND WENDY HEGGE,

RESPONDENTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J. and Deininger, J.

PER CURIAM. Stephen Weissenberger appeals from a summary judgment dismissing his mandamus action under § 19.37, STATS., for access to certain records at the Mendota Mental Health Institute. The issue is whether Weissenberger is entitled to damages and costs he incurred because he prosecuted

an open records mandamus action. We affirm the judgment because Weissenberger has failed to show a causal nexus between his mandamus action and respondent's release of the requested records, and thus no genuine issue of material fact exists.

Weissenberger alleges that he submitted an open records request to Steve Watters, the director of Mendota, on January 31, 1996, inquiring about any records relating to policies or procedures on patients' personal computers. Receiving no response, Weissenberger wrote to Wendy Hegge, the patient rights facilitator at Mendota, on February 20, 1996, enclosing his prior request.¹ On March 18, 1996, Weissenberger commenced a mandamus action under the Wisconsin open records law to obtain the records. *See* § 19.37, STATS. On April 15, 1996, Hegge responded to Weissenberger's request and offered to release the records. On May 10, 1996, respondents were served with an alternative writ of mandamus.

Both parties sought summary judgment. The trial court concluded that Hegge's response was timely, the delay was not unreasonable, and the release of the records was not prompted by the mandamus action. The trial court granted respondents' motion for summary judgment and dismissed the action. Weissenberger appeals.

A party seeking damages and costs under the open records law must show that the mandamus action could reasonably be regarded as necessary to obtain the records and that there was a causal nexus between prosecution of the

¹ Watters and Hegge characterize Weissenberger's February 20, 1996, correspondence to Hegge as an open records request. Weissenberger characterizes the correspondence as "a mere reminder." These different characterizations are immaterial to our decision.

mandamus action and release of the records. *See State ex rel. Vaughan v. Faust*, 143 Wis.2d 868, 871, 422 N.W.2d 898, 899 (Ct. App. 1988) (construing § 19.37, STATS.).

The application of § 19.37, STATS., to undisputed facts is a question of law and appropriate for summary judgment. *Fore Way Express, Inc. v. Bast*, 178 Wis.2d 693, 701, 505 N.W.2d 408, 412 (Ct. App. 1993). When we review a summary judgment, we independently apply the same methodology as the trial court. *See, e.g., Johnson v. Minnesota Mut. Life Ins. Co.*, 151 Wis.2d 741, 744, 445 N.W.2d 736, 736 (Ct. App. 1989); *In re Cherokee Park Plat*, 113 Wis.2d 112, 116, 334 N.W.2d 580, 582-83 (Ct. App. 1983). Standard summary judgment methodology is described in *Cherokee Park Plat. Id.*

We first examine Weissenberger's petition to determine whether he has stated a claim under the open records law. *See* §§ 19.35 and 19.37, STATS. In their return, Watters and Hegge deny receiving the January 31, 1996, request, and acknowledge receiving the February 20, 1996, request. Weissenberger does not dispute that denial. Consequently, Weissenberger has alleged a prima facie open records claim as to the February 20, 1996, request. *See* § 19.37, STATS.

Hegge responded to Weissenberger's February 20, 1996, request on April 15, 1996. Although Weissenberger's mandamus action was filed on March 18, 1996, nothing indicates that respondents were aware of that action until they were served with the alternative writ of mandamus on May 10, 1996.

We conclude that Weissenberger has not raised an issue of material fact to demonstrate that respondents were aware of his mandamus action until after they responded to his request. Because nothing in the record demonstrates that release of the records was prompted by the mandamus action, we conclude that

Weissenberger is not entitled to damages or costs under § 19.37(2), STATS. *See Vaughan*, 143 Wis.2d at 871-73, 422 N.W.2d at 899-900.

By the Court.—Judgment affirmed.

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

