

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 12, 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. 97-0242

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

BRUCE A. RUMAGE,

PLAINTIFF-APPELLANT,

V.

**DONALD W. GUDMANSON, JUDY P. SMITH,
CYNTHIA THORPE, AND MICHAEL J. SULLIVAN,**

DEFENDANTS-RESPONDENTS.

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

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Bruce Rumage appeals an order dismissing his complaint against the warden, deputy warden and health services manager at Oshkosh Correctional Institution, and against the secretary of the Department of

Corrections. The issue is whether the complaint stated a cause of action for which the court could grant relief. We conclude that it did not, and therefore affirm.

Rumage, an inmate at Oshkosh, alleged deliberate indifference to a variety of medical needs, deliberate interference with his access to courts, confiscation of his mail, and withholding of a number of necessities such as soap, toothpaste, etc. He further claimed that these alleged deprivations violated a number of his rights under the United States and Wisconsin Constitutions. He demanded remedies under federal civil rights law, but did not seek relief under any state law theory.

The defendants moved to dismiss the complaint on the grounds that Rumage had not exhausted his administrative remedies as is required under 42 U.S.C. 1997e before commencing a federal civil rights action, and under § 801.02(7), STATS., before commencing any state action against a DOC employee or officer. Both parties then submitted evidentiary material indicating that Rumage pursued his administrative remedies on only two of the alleged deprivations identified in his complaint, those being (1) the alleged refusal to assign him a lower tier cell and the delay in assigning him a lower bunk when he first transferred to Oshkosh, and (2) the alleged interference with his access to courts. The trial court granted the motion and dismissed all claims in the complaint, resulting in this appeal.

The trial court properly dismissed all claims where Rumage failed to pursue administrative remedies. The law could not be more plain for both state actions and federal civil rights actions: an inmate must first exhaust administrative remedies before suing a prison officer or employee. *See* 42 U.S.C. 1997e;

§ 801.02(7), STATS. Ramage did not allege doing so for the majority of his claims, and did not dispute the defendants' evidence that he did not do so.

The trial court also properly dismissed the two claims where Ramage did pursue administrative remedies. Ramage did not allege that any of the defendants were personally involved in the alleged violations, and their personal involvement cannot be reasonably inferred from either the complaint or the record of the administrative proceedings on those claims. It appears, instead, that Ramage sued them in their supervisory capacity. The mere fact that one holds supervisory status over alleged wrongdoers is not enough to support federal civil rights liability. *Monell v. New York City Dep't of Soc. Serv.*, 436 U.S. 658, 694 n.58 (1978), *cited with approval in Saenz v. Murphy*, 153 Wis.2d 660, 673-74, 451 N.W.2d 780, 785 (Ct. App. 1989), *rev'd on other grounds*, 162 Wis.2d 54, 469 N.W.2d 611 (1991).

As noted, Ramage did not specifically seek relief under state law. The complaint is also insufficient, however, even if Ramage had expressly pursued a state law claim for damages. The complaint on a state law claim for damages is subject to dismissal if it does not allege compliance with § 893.82(3), STATS., the notice of claim statute. *Yotvat v. Roth*, 95 Wis.2d 357, 360-61, 290 N.W.2d 524, 527 (1980). Ramage's complaint does not allege that he served the State with a timely notice of claim. Nor did he move to amend his complaint or otherwise assert compliance when the defendants raised the issue.¹

By the Court.—Order affirmed.

¹ A copy of a timely notice of claim appears in the appendix to Ramage's brief on appeal. However, Ramage did not present that notice to the trial court, nor mention its existence during the trial court proceedings. We therefore do not consider it.

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

