COURT OF APPEALS
DECISION
DATED AND FILED

March 8, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2014AP2075
2014AP2894

Cir. Ct. No. 2013CV668

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

WARREN SLOCUM,

PLAINTIFF-APPELLANT,

V.

STAR PRAIRIE TOWNSHIP BOARD AND
STAR PRAIRIE BOARD OF REVIEW,

DEFENDANTS-RESPONDENTS.

APPEALS from a judgment and orders of the circuit court for St. Croix County: HOWARD W. CAMERON, JR., Judge. *Affirmed and cause remanded with directions*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. These consolidated appeals involve another in a series of actions/writs/motions/appeals filed by Warren Slocum involving the Star

Prairie Township Board and the Star Prairie Board of Review. The issues involve the circuit court's denial of Slocum's request for waiver of transcript preparation fees, the denial of Slocum's motions to "correct the record," and whether the court properly dismissed Slocum's claims for failure to comply with the notice requirements under WIS. STAT. § 893.80.[1] We affirm on all issues, and remand for the circuit court to assess the cost of transcript preparation against Slocum.

¶2 Slocum's complaint alleged the Board of Review was improperly constituted and violated numerous statutory provisions under WIS. STAT. ch. 70. He sought declaratory relief, monetary damages and fines, and unspecified "additional liabilities." The Board moved to dismiss for failure to comply with the notice provisions of WIS. STAT. § 893.80. The Town Clerk filed an affidavit stating she had not been served with a notice of claim and claim. The Board also moved for frivolous fees and costs. A hearing was held on February 12, 2014.

¶3 At the February 12, 2014 hearing, the circuit court issued an oral ruling dismissing Slocum's lawsuit for failure to comply with the notice provisions of WIS. STAT. § 893.80. A written judgment followed. The court subsequently granted the motion for frivolous fees and costs. The court also denied numerous motions filed by Slocum to reconsider, correct the record, and waive transcript fees on appeal, among other things.

¶4 Slocum appealed the dismissal, and also filed two "additional appeals" concerning the denial of the waiver of transcript fees and motions to correct the record. We consolidated the latter issues for appeal, and held the issues

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

concerning the dismissal in abeyance until the waiver of transcript fees issue was decided. We ordered transcripts of any hearing regarding the waiver of transcript preparation fees to be prepared initially at County expense, but if the denial of transcript fee waiver was upheld, the cost of the transcript preparation would be assessed against Slocum.

¶5 We turn first to the issue of whether the circuit court erroneously denied Slocum's request for waiver of the transcript preparation fees concerning the February 12, 2014 hearing. Slocum would be entitled to fee waiver if, because of poverty, he was unable to pay the fees, and he had an arguably meritorious claim that would warrant waiver of the fees for the preparation of the transcript. *See* WIS. STAT. §§ 814.29(1)(a) and (c).

¶6 The circuit court considered the transcript fee waiver issue at a hearing held on June 4, 2014. There was no dispute regarding Slocum's indigence. However, in a subsequent written decision, the circuit court found Slocum "failed to set forth any basis that his appeal has merit besides complaining that the Judge is wrong."

¶7 The record supports the circuit court's determination. At the June 4 hearing, the circuit court repeatedly asked Slocum to explain why there was merit to his appeals, but Slocum failed to provide any insight into why his appeals should be deemed to have merit. For example, Slocum responded:

> Because, Your Honor, the—the decision that you made was flawed; and as I said, I don't think it's the purpose of this to point out the flaws of your decision. It's the purpose of this to forward the—to the superior court, the documented, and in this case the document necessary is the transcript of the case—of the hearing of February 12th of this year. And once I present the case to the Court of Appeals and the

> Supreme Court, if necessary, I believe it will become apparent that your decision was flawed.

¶8 The circuit court responded, "Well, you still haven't answered the question." Despite being repeatedly asked to state why he believed he was entitled to the redress he sought, Slocum could not demonstrate a claim upon which relief could be granted. Slocum stated:

> Now, the—there's case law precedent—and I have submitted this to you. I don't remember it right off the top of my head, and I didn't bring my computer today—but dealing with credibility of testimony; and since so many times this same ruse has been used, it's getting a little transparent. And it's obvious that these cases are sought to be dismissed on whatever grounds are possible.

¶9 Quite simply, the admittedly indigent Slocum failed to establish an arguably meritorious claim that would warrant waiver of the fee for preparation of transcripts. His statements to the circuit court were merely conclusory and the court properly denied the motion for waiver of transcript fees. Because we previously ordered the transcript of any hearing concerning the waiver of transcripts to be prepared at County expense subject to our ruling on the fee waiver issue, the circuit court shall on remand determine and award the cost of transcript preparation against Slocum payable directly to the County.

¶10 Slocum's several attempts to "correct the record" failed to ameliorate the inadequacies of his claims. The circuit court noted, in its order denying Slocum's motions to correct the record, "The Court was unable to decide the motions, as there was nothing contained in the motions as to how Slocum wanted to correct the record."

¶11 Again, the circuit court's conclusion is supported by the record. For example, in Slocum's "Motion To Correct Record" dated August 21, 2014, he stated:

> Missing from the current record are documents in the case that should be included in the official reports that's going to the Appellate Court.
>
> Some of these documents include those involving subsequent additional appeals. Since the record has not yet been submitted to the Superior Court, these documents should properly be included in the official case record before that submission is made of the case file to the Appellate Court.

¶12 As in the circuit court, Slocum fails on appeal to indicate how the record was incorrect or what documents were necessary to be included for purposes of appeal. The Board argued in its brief to this court, "There is nothing to substantively respond to with respect to this argument on appeal. Slocum failed to identify how the record was defective. All that he did was make bald-faced assertions that it was and rested." Slocum fails to refute this argument in his reply brief and we deem the issue admitted. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶13 We previously held in abeyance the appeal involving the circuit court's judgment dismissing Slocum's complaint for failure to provide the notice provisions under WIS. STAT. § 893.80, pending resolution of the waiver of transcript fees.[2] We have resolved the transcript fees issue, as discussed above.

[2] The circuit court issued a "Judgment of Dismissal." Matters outside the pleadings were considered, however, and the motion was thus properly considered as one for summary judgment. *See* ***Schopper v. Gehring***, 210 Wis. 2d 208, 556 N.W.2d 187 (Ct. App. 1997).

Because the appeals share the same record, and the parties briefed the issue concerning whether Slocum provided notice of claim, we now reach that issue.

¶14 WISCONSIN STAT. § 893.80 requires conditions precedent to bringing claims against governmental bodies, officers and employees. First, it requires the claimant to serve written notice of the circumstances of a claim within 120 days after the happening of the event giving rise to the claim. *See* WIS. STAT. § 893.80(1d)(a). Second, the statute requires the claimant to provide the claimant's address and an itemized statement for relief to the clerk or the person who performs those duties. *See* WIS. STAT. § 893.80(1d)(b).

¶15 Attached to the Board's motion to dismiss was an affidavit of the Town Clerk, who averred no notice of claim or claim under WIS. STAT. § 893.80 had been filed pertaining to the subject matter of Slocum's lawsuit. Slocum filed no affidavits or other proof in the circuit court that raised a genuine issue of material fact as to whether he complied with the notice provisions of § 893.80. Accordingly, the circuit court properly granted judgment dismissing Slocum's complaint.

¶16 Slocum insists on appeal that notice of claim is not required for a "property tax claim," relying on ***Little Sissabagama Lake Shore Owners Association v. Town of Edgewater***, 208 Wis. 2d 259, 559 N.W.2d 914 (Ct. App. 1997). However, Slocum did not "bring a property tax claim" or seek review of a tax determination in the present case. In fact, Slocum represents in his reply brief to this court that his case involves "an invalid Board of Review." Moreover, his complaint specifically alleged:

> This is not an action under s. 70.47(13), s. 70.85, or s. 74.37. Each of those three (3) [statutory provisions] (and others) involves objections to the monetary values of the

> property taxes/assessments themselves, while this action instead regards only the manner in which those assessments were produced, defended, and reviewed.

¶17 In addition, the relief sought by Slocum was not correction of a tax assessment. Slocum's complaint specifically requested correction of the Board's membership, declaratory relief, money damages, fines, and "additional liabilities." The mere fact that Slocum may be aggrieved by his property tax assessment did not put the Board on notice of Slocum's intent to sue for the relief sought in his complaint. As a result, ***Little Sissabagama*** is inapplicable. Slocum failed to raise an issue of material fact concerning compliance with the notice requirements under WIS. STAT. § 893.80.

¶18 On February 13, 2014, Slocum filed a motion to reconsider the February 12, 2014 oral ruling. Attached to this motion was correspondence dated October 23, 2013, from Slocum to the Town Clerk. Slocum insists this correspondence shows "that the Defendant's claims of non-compliance with procedural regulations are groundless." On February 19, 2014, Slocum also filed a "Motion to re-open case," which asserted "new evidence has appeared … that was not previously available," including a DVD purporting to show "the defendant's clerk admitting that he had previously been served with documentation of problems with the board of review of Oct. 22, 2013."

¶19 However, the circuit court found this alleged evidence was not newly discovered. The court observed Slocum "fails to explain why this newly submitted evidence was unknown at the time this Court issued its decision on February 12, 2014."

¶20 Similarly, Slocum fails to explain on appeal why this purported evidence was not available prior to the February 12, 2014 hearing. In his principal

brief to this court, Slocum merely argues, "Notification under s. 893.80 to the municipality of a property tax claim is not required, but it was performed nonetheless, as shown by documentary evidence and a video recording of the municipal clerk acknowledging that the notification had already been submitted."

¶21 In its response brief to this court, the Board argues Slocum was put on notice "of its grounds for seeking judgment in the affidavit of Town Clerk Burke, filed with the Circuit Court on December 2, 2013." The Board further argues, "All of the evidence that [Slocum] sought to submit after the motion hearing of February 12, 2014, consisted of information which was or should have been within his knowledge prior to the hearing."

¶22 Slocum once again fails to refute this argument in his reply brief to this court. Indeed, his reply brief does not even attempt to explain why this purportedly new evidence was not available prior to the February 12, 2014 hearing. We therefore consider the argument conceded. *See* ***Charolais Breeding Ranches***, 90 Wis. 2d at 109. Costs on appeal to respondents.

By the Court.—Judgment and orders affirmed and cause remanded with directions.

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