COURT OF APPEALS
DECISION
DATED AND FILED

May 31, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP220 **Cir. Ct. No. 2015CV3990**

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

MELVIN SHELTON,

PLAINTIFF-APPELLANT,

V.

WISCONSIN DEPARTMENT OF CORRECTIONS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed*.

Before Brennan, P.J., Kessler and Brash, JJ.

¶1 PER CURIAM. Melvin Shelton, *pro se*, appeals an order dismissing his lawsuit against the Wisconsin Department of Corrections. Because the record does not include a transcript of the circuit court proceedings, because

Shelton's appellate brief fails to comply with the rules of appellate procedure, and because his claims are barred, we affirm.

¶2 Shelton filed a lawsuit naming the Department of Corrections as the sole respondent. In his complaint, he alleged that after he completed a twenty-year prison sentence, the DOC acted negligently and deprived him of his civil rights by asking him to fill out forms from the Sex Offender Registry Program, knowing the sentencing court did not order him placed in the program. The DOC moved to dismiss Shelton's suit on the ground that his claims were barred. The record shows that the DOC served Shelton by mail with notice of the motion hearing, but he did not appear. As reflected in the docket entries, the circuit court held the hearing and dismissed the case "for failure to prosecute ... and [for] reasons stated in the brief submitted by [the DOC]." The circuit court subsequently entered a written order of dismissal, and Shelton appeals.

¶3 We affirm for multiple reasons, each of which independently warrants upholding the order of the circuit court. First, the decision to dismiss an action rests in the circuit court's discretion, and we sustain such decisions if the circuit court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *See* ***Schneller v. St. Mary's Hosp. Med. Ctr.***, 162 Wis. 2d 296, 305, 470 N.W.2d 873 (1991). In this case, the appellate record does not contain a transcript of the proceedings at which the circuit court ordered the case dismissed, so we are unable to review the circuit court's exercise of discretion. "'It is the appellant's responsibility to ensure completion of the appellate record.'" ***State v. Provo***, 2004 WI App 97, ¶19, 272 Wis. 2d 837, 681 N.W.2d 272 (citation omitted). When the record is incomplete in regard to an issue on appeal, we assume that the missing material supports the circuit court's ruling. *See*

Fiumefreddo v. McLean, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993). We rely on that assumption here and conclude that the circuit court properly exercised its discretion when it dismissed Shelton's suit for failure to prosecute.

¶4 Second, Shelton filed an appellate brief-in-chief that did not comply with the rules of appellate procedure. He failed to include any citations to the record, as required by WIS. STAT. RULE 809.19(1)(d) (2015-16),[1] and he failed to offer any discussion of why or how the circuit court erred by dismissing his suit for failure to prosecute, *see* RULE 809.19(1)(b) (providing that an appellant's brief must include a discussion of the issues presented for review and how the circuit court decided them). Indeed, the bulk of Shelton's brief-in-chief is an assertion of legal principles and a recitation of constitutional provisions that he fails to organize into a coherent and comprehensible argument for reversal. *See* ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999) (explaining that "[a] party must do more than simply toss a bunch of concepts into the air with the hope that either the ... court or the opposing party will arrange them into viable and fact-supported legal theories"). Shelton appears to have attempted in his reply brief to remedy some of the defects in his opening submission, but we do not consider arguments presented for the first time in a reply brief because the respondent has no opportunity to address them. *See* ***Techworks, LLC v. Wille***, 2009 WI App 101, ¶28, 318 Wis. 2d 488, 770 N.W.2d 727.

¶5 Third, sovereign immunity bars Shelton's claims against the DOC. The principle is well established that the State cannot be sued without its consent.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

See ***Fiala v. Voight***, 93 Wis. 2d 337, 342, 286 N.W.2d 824 (1980). An action against a state agency is an action against the State. ***PRN Assocs. LLC v. DOA***, 2009 WI 53, ¶51, 317 Wis. 2d 656, 766 N.W.2d 559. Because the DOC is merely "an arm of the [S]tate," *see* ***Mayhugh v. State***, 2015 WI 77, ¶32, 364 Wis. 2d 208, 867 N.W.2d 754, a suit against the DOC is an action against the State to which it must consent, *see* ***PRN Associates***, 317 Wis. 2d 656, ¶51. Shelton fails to show that the State has consented to be sued in tort. *See* ***Mayhugh***, 364 Wis. 2d 208, ¶¶44, 46 (holding that the State in fact has not consented to waive the DOC's sovereign immunity to suit in tort). Similarly, he fails to show that the State has consented to civil rights actions against it. *See* ***Boldt v. State***, 101 Wis. 2d 566, 584-85, 305 N.W.2d 133 (1981) (holding that the State has not consented to civil rights actions against it under 42 U.S.C. § 1983 or any other authority); *see also* ***Tocholke v. Wisconsin***, No. 09-C-1125, 2010 WL 2430999, at *3 (E.D. Wis., June 14, 2010) (following ***Boldt***), *aff'd per curiam*, 413 F. App'x. 889 (7th Cir. 2011).

¶6 In bolded typeface and capital letters, Shelton emphasizes his belief that the State subjected him to a bill of attainder, but that allegation does not affect our analysis. Regardless of how Shelton characterizes the wrongs he allegedly suffered, he cannot maintain his suit against the DOC unless he identifies the legal mechanism allowing him to pursue his claims of negligence and civil rights violations. He has not identified any such law, rule, or regulation. For all of the foregoing reasons, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. This opinion may not be cited except as provided under RULE 809.23(3).