COURT OF APPEALS
DECISION
DATED AND FILED

November 7, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP2260 **Cir. Ct. No. 2016CV5299**

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

WAUWATOSA SCHOOL DISTRICT,

PLAINTIFF-APPELLANT,

V.

WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed*.

Before Kessler, Brash and Dugan, JJ.

Per curiam opinions 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).

¶1 PER CURIAM. Wauwatosa School District appeals an order dismissing its action against Wisconsin Interscholastic Athletic Association

(WIAA). The issue is whether the District's action fails to state a claim. We affirm.

¶2 "'A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint.'" ***Data Key Partners v. Permira Advisers LLC***, 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693 (citation omitted). "[A] complaint must plead facts, which if true, would entitle the plaintiff to relief." ***Id.***, ¶21; *see also* WIS. STAT. § 802.02(1)(a) (2015-16).[1] "When we review a motion to dismiss, factual allegations in the complaint are accepted as true for purposes of our review." ***Data Key Partners***, 356 Wis. 2d 665, ¶18. Based on the facts alleged, whether the complaint states a legally cognizable claim is a question of law. ***Id.***, ¶17.

¶3 The District argues that WIAA violated the duty of good faith and fair dealing implied in its contract with the District by acting in an arbitrary and capricious manner when it realigned the conferences in which the schools play sports. ***School Dist. of Slinger v. Wis. Interscholastic Athletic Ass'n***, 210 Wis. 2d 365, 563 N.W.2d 585 (Ct. App. 1997), is dispositive. ***Slinger*** forecloses a breach of contract action against WIAA when the breach relates in some manner to conference realignment. ***Id.*** at 378-79.

¶4 The District contends that ***Slinger*** is distinguishable. The District argues that the school district in ***Slinger*** alleged breach of contract on the ground that it had a contractual right to a reasonable athletic conference alignment. ***Id.*** at 367. In contrast, the District here alleges breach of contract on the ground that it

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

has an implied contractual right to good faith and fair dealing when WIAA realigns conferences.

¶5 This is a distinction without a difference. ***Slinger*** explains that in order to state a claim for breach of contract, the plaintiff must allege the existence of a contractual right, the applicability of the contractual right, and a breach of the contractual right. ***Id.*** at 375-76. The ***Slinger*** court examined the WIAA constitution, bylaws, and rules on conference realignment and concluded that the WIAA membership had collectively agreed that an individual conference member does not have a contractual right to a particular conference alignment. ***Id.*** at 378. A cognizable breach of contract claim does not lie where, as here, there is no existing contractual right between the plaintiff and the defendant. *See* ***id.*** at 375-76. The District's breach of contract claim against WIAA fails because WIAA member schools do not have a contractual right to a particular conference alignment. *See* ***id.*** at 378. Therefore, the circuit court properly dismissed the District's complaint for failure to state a claim.

By the Court.—Order affirmed.

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