COURT OF APPEALS
DECISION
DATED AND FILED

March 6, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2015AP1244 **Cir. Ct. No. 2013CV11294**

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

TAYLOR Q. SCOTT,

PLAINTIFF-APPELLANT,

V.

UNIVERSITY OF WISCONSIN SYSTEM BOARD OF REGENTS, ANTHONY R. PROCACCIO, PUBLIC RECORDS CUSTODIAN FOR THE UNIVERSITY OF WISCONSIN-MILWAUKEE, DR. MICHAEL LALIBERTE, VICE CHANCELLOR STUDENT AFFAIRS UNIVERSITY OF WISCONSIN-MILWAUKEE AND DR. TIMOTHY W. GORDON, DEAN OF STUDENTS, UNIVERSITY OF WISCONSIN-MILWAUKEE,

DEFENDANTS-RESPONDENTS.

APPEAL from orders of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed*.

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

¶1 PER CURIAM. Taylor Q. Scott appeals the circuit court's orders denying his petition for writ of *mandamus* seeking disclosure of public records from the University of Wisconsin-Milwaukee (UWM). Scott argues: (1) UWM improperly redacted student names from documents it provided him pursuant to his request under the open records law; (2) the documents he sought were not education records because they were not "maintained" by UWM; and (3) the circuit court misused its discretion by declining his request to conduct an *in camera* review of the records. We affirm.[1]

¶2 Briefly stated, the procedural history is as follows. Scott, who is a former UWM student, made a request to UWM for records under the open records law. *See* WIS. STAT. § 19.31 (2015-16).[2] He sought communications by and to student Pahoua Xiong containing certain keywords or numbers, and correspondence and emails to or from Vice Chancellor Michael Laliberte containing the same keywords or numbers. UWM initially denied the request. Scott then made another records request expanding his prior request to include communications and emails sent or received by Dean of Students Timothy W. Gordon containing certain keywords and numbers.

[1] After this appeal was submitted to the panel for decision, Scott moved the court to consider a printed version of a slide presentation that appears on the University of Wisconsin System website. We deny the motion.

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

¶3 Scott eventually filed a *mandamus* action in the circuit court to obtain the records and UWM produced over 2000 pages. UWM redacted student names from the documents it produced in accord with and as required by the Family Educational Rights and Privacy Act (FERPA). UWM also indicated that it did not disclose some responsive records due to attorney-client privilege. The parties attempted to resolve issues related to the redactions, but eventually Scott moved the circuit court to order UWM to turn over the records or, in the alternative, for an *in camera* inspection of the redacted documents. The circuit court denied Scott's motion and denied his petition for a writ of *mandamus*. Scott now appeals that decision.

¶4 "A petition for writ of mandamus is a proper means by which to challenge a refusal to disclose documents sought under the open records law." ***Watton v. Hegerty***, 2008 WI 74, ¶7, 311 Wis. 2d 52, 751 N.W.2d 369; *see also* WIS. STAT. § 19.37(1). The person seeking to compel disclosure of records must establish that four criteria are satisfied: (1) "the petitioner has a clear legal right to the records sought"; (2) the governmental custodian "has a plain legal duty to disclose the records"; (3) the petitioner will suffer substantial damages if the records are not disclosed; and (4) "the petitioner has no other adequate remedy at law." ***Watton***, 311 Wis. 2d 52, ¶8.

¶5 The open records law accords a presumption of accessibility to public records as a matter of policy. *See* WIS. STAT. § 19.31. That statute provides:

> In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them…. [This law]

> shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business.

Id. Nevertheless, "[a]ccess to records may be denied where there is a specific statutory exemption to disclosure, Wis. Stat. § 19.36, or where this is a common law or public policy exception." ***Watton***, 311 Wis. 2d 52, ¶10.

¶6 Scott first argues that UWM improperly redacted student names from documents it provided him because the mere presence of a student's name in a record does not make it an education record under FERPA.

¶7 Scott's argument is unavailing. The Wisconsin Supreme Court has addressed the scope of protection from disclosure provided by FERPA when a request for records is made under the Wisconsin open records law, WIS. STAT. § 19.35. *See* ***Osborn v. Board of Regents***, 2002 WI 83, ¶¶18-32, 254 Wis. 2d 266, 647 N.W.2d 158. The ***Osborn*** court explained that an "education record," as defined by 20 U.S.C. § 1232g(a)(4)(A), is a record that "contain[s] information directly related to a student." ***Osborn***, 254 Wis. 2d 266, ¶22 n.11. The court also explained that after personally identifiable information, such as a name, is redacted, the document is no longer an "education record" under FERPA because it does not contain information directly related to a student. ***Id.*** Based on ***Osborn***, the presence of a student's name in a document maintained by UWM makes the document an education record under FERPA. *See* ***id.***

¶8 Scott also argues that the documents he seeks are not education records because education records are limited to those "maintained by" the school or its agents under 20 U.S.C. § 1232g(a)(4)(A)(ii). Scott contends that "[m]aintaining a record on someone implies something more active and deliberate tha[n] merely having custody of a document." Scott contends that the documents

he seeks are maintained by multiple sources in the University system, and therefore "are far too scattered" to be education records. We reject this argument because Scott has cited no legal authority to support it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("Arguments unsupported by references to legal authority will not be considered.").

¶9 Scott next argues that the circuit court misused its discretion when it denied his request for an *in camera* inspection of the more than 2000 pages of documents provided to him by UWM, which he asserts were redacted for no discernable reason. We will uphold a circuit court's decision denying a request for *in camera* review unless the circuit court misuses its discretion. *See* ***Lane v. Sharp Packaging Sys., Inc.***, 2002 WI 28, ¶55, 251 Wis. 2d 68, 640 N.W.2d 788. A circuit court properly exercises its discretion if it "examine[s] the relevant facts, applie[s] a proper standard of law, and using a demonstrative rational process, reache[s] a conclusion that a reasonable judge could reach." ***Id.***, ¶19.

¶10 "If a document necessarily falls within a statutory or common law exception to the open records law, there is no need for an *in camera* inspection." *See* ***George v. Knick***, 188 Wis. 2d 594, 599, 525 N.W.2d 143 (Ct. App. 1994). The circuit court declined to conduct an *in camera* review because Scott did not explain with specificity why he believed that some of the redactions were improperly made under FERPA and other applicable law. The court reasoned that *in camera* inspection was not necessary because UWM provided specific reasons for non-disclosure that overrode the general presumption of disclosure. The circuit court applied the proper standard of law to the facts and made a reasoned

and reasonable decision. Therefore, the circuit court properly exercised its discretion in denying the motion for an *in camera* inspection.[3]

By the Court.—Orders affirmed.

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

[3] Scott argued in the circuit court that UWM was not entitled to assert attorney-client privilege to withhold some of the documents. He did not renew this argument on appeal. However, Scott contends that the circuit court should have conducted an *in camera* review of the documents withheld based on attorney-client privilege. For the reasons explained above, the circuit court properly exercised its discretion in deciding not to conduct an *in camera* review.