

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 1, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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No. 00-0373

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

RONALD A. KEITH, SR.,

PLAINTIFF-APPELLANT,

V.

**STATE OF WISCONSIN, DEPARTMENT OF HEALTH AND
FAMILY SERVICES, DIVISION OF CARE AND TREATMENT
FACILITIES, AND WISCONSIN RESOURCE CENTER,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dane County:
PAUL B. HIGGINBOTHAM, Judge. *Affirmed*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Ronald A. Keith, Sr., appeals from a summary judgment order dismissing his multiple tort action against the State of Wisconsin, the Department of Health and Family Services (DHFS), the Division of Care and

Treatment Facilities (DCTF), the Wisconsin Resource Center (WRC), and the administrators of those agencies.¹ For the reasons discussed below, we reject each of Keith's claims of error and affirm the decision of the trial court.

BACKGROUND

¶2 Keith was committed to WRC as a sexually violent person in March of 1995. WRC is a state correctional institution, WIS. STAT. § 302.01 (1999-2000),² which is administered by DHFS to provide “psychological evaluations, specialized learning programs, training and supervision for inmates whose behavior presents a serious problem to themselves or others in state prisons and whose mental health needs can be met,” WIS. STAT. § 46.056(1). In addition to prison inmates, WRC also houses persons who are determined to be sexually violent in civil proceedings under WIS. STAT. ch. 980. WIS. STAT. § 980.065(1m). Although ch. 980 patients are under the custody and supervision of DHFS staff at WRC, security at the institution is provided by officers from the Department of Corrections (DOC). *See* § 46.056(2).

¶3 In May of 1998, Keith filed a civil action claiming that: (1) WRC lacked authority to place him in a high management unit for violating provisions in the WRC Patient Handbook because those provisions were not properly promulgated under WIS. STAT. ch. 227 or § 980.065(2); (2) WRC staff members improperly terminated a telephone call from his lawyer, ordered him to his room

¹ Although the caption does not include the administrators, they were named in Keith's complaint, and the appellate record does not appear to include an order dismissing them from the action.

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

for wearing socks without shoes in the ping pong room, and ordered him to rearrange his furniture after the arrangement had already been approved; (3) WRC improperly subjects its WIS. STAT. ch. 980 patients to DOC prison rules as well as to the policies governing patient conduct in other mental health facilities such as Mendota and the Winnebago Mental Health Institution; (4) WRC staff improperly imposed two days of four-hour dayroom confinement for disrespect without first counseling him about disrespectful conduct and in violation of his First Amendment rights; (5) WRC staff improperly sanctioned Keith for violations of non-existent rules and separated him from other patients upon whom he relied for spiritual support; (6) the group facilitators at WRC are unqualified to treat sex offenders and the conduct of many of the female facilitators evinces a desire to retaliate against sex offenders for their own personal negative experiences with men; (7) WRC staff have placed false or mischaracterized information into his treatment records and have refused to allow him to review the records for accuracy; (8) WRC has no staff qualified to treat mental, personality, and emotional disorders; (9) WRC has attempted to force him into group therapy instead of offering him individual therapy as was once recommended by a DOC psychiatrist; (10) WRC has no alcohol dependency treatment providers and staff informed Keith that they were going to change his alcohol dependency diagnosis to pedophilia in order to justify his required participation in sex offender group therapy; (11) WRC staff have informed Keith that they will keep him locked up for the rest of his life if he continues to deny that he committed the sex offenses to which he pleaded no contest; (12) prison guards have issued incident reports and subjected him to strip searches, random urinalysis, random room searches, and other acts of control beyond their authority and out of line with the treatment of patients at other mental health facilities; (13) WRC staff improperly denied Keith telephone access to his psychotherapist, paralegal advice from a fellow patient,

and conversations with his family; (14) WRC's failure to properly diagnose and treat Keith has exacerbated his disorders; (15) WRC failed to document most of the above incidents in his records; (16) WRC inappropriately hired alcoholics, street people, former drug users, welfare recipients, recent high school graduates, and other untrained individuals who interact with mental health patients; (17) WRC subjected Keith to experimental behavior modification treatment programs; (18) WRC placed Keith in the high management unit without a treatment or security justification, and the reason it gave for removing him was to stop him from educating another inmate on how to use the legal system to expose abuses; and (19) DCTF personnel have failed to respond appropriately to patient's alleged rights violations by WRC staff. The complaint was subsequently amended to add 42 U.S.C. § 1983 as a basis for relief.

¶4 In addition to declaratory judgment and injunctive relief, Keith sought damages in the amount of \$1,000 for each patient's rights violation, \$1,000 for each failure to document a patient's rights violation, \$250 for each day he was improperly held in a high management unit, "a substantial amount" for emotional distress suffered as the result of each statutory or constitutional violation identified, plus triple damages for fraud. The trial court entered summary judgment in the respondents' favor after addressing each of Keith's claims in a very detailed opinion. On appeal Keith challenges the summary judgment decision and also claims the trial court erred by refusing to appoint counsel for him. Additional facts will be set forth as necessary below.

STANDARD OF REVIEW

¶5 It is well established that this court applies the same summary judgment methodology as employed by the circuit court. WIS. STAT. § 802.08;

State v. Dunn, 213 Wis. 2d 363, 368, 570 N.W.2d 614 (Ct. App. 1997). We first examine the complaint to determine whether it states a claim, and then review the answer to determine whether it joins issue. *Id.* If we conclude the pleadings are sufficient to join an issue of law or fact, we examine the moving party's affidavits to determine whether they establish a prima facie case for summary judgment. *Id.* If they do, we look to the opposing party's affidavits to determine whether there are any material facts in dispute which require a trial. *Id.* Because we independently review the complaint and summary judgment materials, it is not necessary for us to specifically address all Keith's assertions of trial court error.³

ANALYSIS

¶6 We begin with an overview of the nature of Keith's claims. Keith seeks declaratory, injunctive, and monetary relief against the State and several of its agencies, institutions, and officials based on a number of alleged violations of his constitutional and statutory rights. He also claims the trial court should have appointed counsel on his behalf. Taking the last assertion first, we first note there is no statutory or constitutional entitlement to counsel in a civil suit such as this, and thus find no error in the trial court's refusal to appoint counsel.

¶7 We next note that declaratory and injunctive relief are available remedies for alleged violations of a patient's statutory rights and for invalid administrative rules. *See* WIS. STAT. §§ 51.61(7)(c) and 227.40. However, monetary damages are not available for all of the claims which Keith has raised.

³ Keith asserts, among other things, that the trial court erroneously referred to him as an inmate rather than a patient, and called him a sexual predator, rather than a sexually violent person. Any such inaccuracies in the trial court's decision have no effect on our analysis of the issues.

¶8 Claims for monetary damages against the State are barred by sovereign immunity unless the State consents to suit. *See* WIS. CONST. art. IV, § 27; ***Brown v. State***, 230 Wis. 2d 355, 363, 602 N.W.2d 79 (Ct. App. 1999). Sovereign immunity extends to state agencies and entities such as those named here. *See German v. DOT, Division of State Patrol*, 2000 WI 62, ¶18, 235 Wis. 2d 576, 612 N.W.2d 50. Thus, Keith's complaint is insufficient to state a claim for monetary relief against the State or the state entities named in this suit for torts under WIS. STAT. § 893.53 or the Wisconsin Constitution.

¶9 The State has partially waived its claim to sovereign immunity, however, by providing that any patient whose rights are protected by WIS. STAT. § 51.61 of Wisconsin's Mental Health Act may sue for a violation of those rights which either results in actual damages or was willfully and knowingly done. Section 51.61(7)(a) and (b). The patient's rights set forth in § 51.61 apply to sexually violent persons committed under WIS. STAT. § 980.06. Section 51.61(1); ***State v. Anthony D.B.***, 2000 WI 94, ¶13, 237 Wis. 2d 1, 614 N.W.2d 435. Keith claims all but one of the alleged violations have caused him actual damage in the form of emotional distress. In order to recover for emotional distress, however, there must be some physical manifestation of emotional harm. *See Bowen v. Lumbermens Mut. Cas. Co.*, 183 Wis. 2d 627, 632, 517 N.W.2d 432 (1994). The materials which Keith submitted on summary judgment do not establish any such physical manifestation. Therefore, Keith must show that each alleged violation was willfully and knowingly done in order to claim statutory damages of not less than \$500 nor more than \$1,000 per incident for alleged violations of his patient's rights. ***Schaidler v. Mercy Medical Center of Oshkosh, Inc.***, 209 Wis. 2d 457, 465, 563 N.W.2d 554 (Ct. App. 1997).

Discipline and Control Measures

¶10 Claims one through five, twelve, thirteen and eighteen deal in various respects with the scope of WRC's authority to discipline and control patients, the validity of the procedures it uses to impose sanctions, and the propriety of specific actions which it took against Keith. Keith primarily challenges his transfer to a high management unit for lying to staff and being disrespectful of other patients. Additionally, Keith complains about DHFS's decisions to confine him to his room for comments he made about staff; to send him to his room for not wearing shoes; to have him rearrange his room furniture; to deny telephone access to his lawyer, his psychotherapist, and his family; to send him out of the library; to prevent him from giving paralegal advice to a fellow patient; and to separate him from other patients. He also contends he was improperly subjected to random strip searches, urine tests, and room searches by DOC personnel.

¶11 Keith raises several statutory and constitutional grounds for his claims. He contends a number of the measures taken by DHFS and DOC personnel violated his statutory rights as a patient under WIS. STAT. § 51.61. He argues that his due process rights under the Fourteenth Amendment were infringed because the WRC handbook provisions he was found to have violated were impermissibly vague and he was not properly counseled before sanctions were imposed. He invokes the First Amendment to support his asserted rights to criticize staff and communicate with various people. He also argues that the handbook provisions are invalid under Wisconsin law because they have not been formally promulgated under WIS. STAT. § 980.065(2) or ch. 227.

¶12 We begin with Keith's claims that his statutory patient's rights have been violated. WISCONSIN STAT. § 51.61 sets forth a list of rights held by mental health patients in Wisconsin. The rights are further defined and clarified in WIS. ADMIN. CODE § HFS 94.01. For clarity's sake, we will organize our discussion of those rights which Keith claims WRC staff have violated according to their placement in the statutes and administrative code, rather than the order in which Keith mentions them in his complaint.

¶13 WISCONSIN STAT. § 51.61(1)(e) and WIS. ADMIN. CODE § HFS 94.07(1) guarantee an inmate the right to the least restrictive conditions necessary to achieve the purpose of admission. Transfers to more restrictive settings must be justified by documented treatment or security concerns. Section HFS 94.07(2). Under § 51.61(1)(i) and WIS. ADMIN. CODE § HFS 94.10, isolation, seclusion, and physical restraint may only be used in emergency situations or as part of a written treatment program. The materials presented on summary judgment show Keith was transferred into the high management unit as the result of conduct which staff deemed to pose a security risk. The transfers were appropriately documented. Keith has not alleged he was ever placed in restraints. We are satisfied the restrictions placed upon Keith in the high management unit did not rise to the level of isolation and that they were appropriately tailored to achieve the purpose of admission. We are similarly satisfied that requiring patients to wear shoes outside of their room and to maintain their furniture in an arrangement designed to facilitate access to the room were appropriate conditions in the commitment environment. We conclude that the facts presented by Keith are insufficient to allow him to prevail on a claim under § 51.61(1)(e) or (i).

¶14 WISCONSIN STAT. § 51.61(1)(L) protects a patient's right to religious worship, and WIS. ADMIN. CODE § HFS 94.16 requires an institution to make reasonable provisions to allow patients to attend religious services and to be visited by the representatives of their faith. Keith's allegation that he was separated from a fellow patient upon whom he relied for spiritual support does not violate these provisions because the fellow patient was not an official representative of his faith.

¶15 WISCONSIN STAT. § 51.61(1)(m) requires patients to be provided with a humane environment affording patients comfort, safety, dignity and privacy. The administrative code provision which implements this statutory requirement sets limits on when and how body searches and room searches can be conducted. WIS. ADMIN. CODE § HFS 94.24. Body searches of patients are permitted "[i]f, for security reasons, the facility routinely conducts personal searches of patients." Section § HFS 94.24(2)(d)1d. Keith himself admits the random body searches and urine tests to which he has been subjected are routinely conducted at the institution, and he has submitted no materials that would show the searches are conducted for any reason other than the security justification asserted by the respondents. Similarly, staff may search the room and personal belongings of a WIS. STAT. ch. 980 patient who is housed at a secure mental health facility "in accordance with written facility policies" without violating the patient's statutory right to privacy. Section HFS 94.24(2)(e). Keith does not assert that the searches of his room deviated from WRC's written policies. We therefore conclude that the body and room searches performed by DOC personnel did not violate Keith's statutory right to a humane and dignified environment.

¶16 WISCONSIN STAT. § 51.61(1)(p) provides that patients should have reasonable access to a telephone. WISCONSIN ADMIN. CODE § HFS 94.20

specifies that a patient's reasonable telephone access should include an unlimited number of calls to or from counsel and at least one personal call per day. However, WIS. ADMIN. CODE § HFS 94.05 allows an institution to deny or limit a patient's right when there is reason to believe the exercise of the right would create a security problem, adversely affect treatment, or interfere with the rights of others. Keith's allegation that he was directed to terminate a call from counsel does not state a violation of his right to reasonable telephone access because the institution's reason given for restricting the call was that it was being shared with another inmate. In other words, it was a restriction on the manner of the call, not the number or duration of Keith's contacts with counsel. The other restrictions on Keith's telephone calls were made in response to Keith's abuse of his telephone privileges, and thus fell within the security exception.⁴ In sum, we are satisfied that none of the discipline or control measures taken by WRC violated Keith's statutory rights under § 51.61.

¶17 We are similarly satisfied that none of the discipline or control measures violated Keith's First Amendment rights. As we have previously noted, institutional security concerns are sufficient to warrant some restriction of First Amendment rights. *Lomax v. Fiedler*, 204 Wis. 2d 196, 222, 554 N.W.2d 841 (Ct. App. 1996). Thus, WRC could properly require Keith to refrain from making negative comments about staff or other patients. WRC also may limit the areas in which patients may provide legal assistance to one another. See *Lewis v. Casey*, 116 S. Ct. 2174, 2179-82 (1996). Thus, WRC did not violate Keith's First Amendment rights by designating the ping pong room as the place for patients to

⁴ Furthermore, the trial court noted that these claims had been previously adjudicated in another case. Keith is therefore barred from relitigating them.

discuss legal matters, or removing Keith from the library for attempting to discuss legal matters there.

¶18 We turn next to Keith's due process claims. The threshold question in a due process claim is whether the challenged action burdens a life, liberty or property interest which is substantial enough to be protected under the Fourteenth Amendment. *West v. Macht*, 2000 WI App 134, ¶14, 237 Wis. 2d 265, 614 N.W.2d 34, *review denied*. Keith alleges that he lost some recreation privileges, some privacy in the design of the showers, some use of his word processor, some hours of television use, and the company of other patients with whom he wished to associate as a result of his confinements and unit placements. He has not, however, identified any independent source of law that would entitle him to have such privileges within the context of his commitment. *See generally Meachum v. Fano*, 427 U.S. 215, 224-25 (1976) (noting that prisoners may be transferred to any institution "within the normal limits or range of custody which the conviction has authorized the State to impose"). Nonetheless, there is a line of cases which treat disciplinary sanctions for rule violations by prison inmates as infringements upon a liberty interest in freedom of movement. *Wolff v. McDonnell*, 418 U.S. 539, 556-57 (1974). Because the respondents concede that at least some of the restrictions at issue were imposed upon Keith in response to violations of handbook provisions, we will assume for the sake of argument that Keith has a liberty interest in freedom of movement at stake.

¶19 Our next inquiry is the nature of the respondents' interest in the challenged handbook provisions governing conduct and sanctions. Keith maintains that WRC has no authority to "punish" him when he has been civilly confined for treatment. A mental health institution may, however, lawfully restrict a patient's constitutional rights to the extent necessary to protect legitimate

therapeutic and institutional interests, including treatment goals, security of the patients, visitors and staff, and orderly administration of the facility. *West*, 2000 WI App 134 at ¶17. We are satisfied that WRC has a legitimate interest in governing the behavior of WIS. STAT. ch. 980 patients so as to maintain administrative control of the population and ensure the safety of staff and other patients. Additionally, we defer to the judgment of WRC personnel that the provisions facilitate treatment. *Youngberg v. Romero*, 457 U.S. 307, 322-23 (1982) (professional judgment is given presumptive validity). We therefore conclude WRC has legitimate governmental interests at stake, which must be balanced against Keith's liberty interest.

¶20 We turn our consideration, then, to the adequacy of the process which Keith received before being sanctioned for violations of handbook provisions governing conduct. As has often been noted, the procedures which are constitutionally required under any given circumstances depend upon "the precise nature of the government function involved as well as of the private interest that has been affected by government action." *Wolff*, 418 U.S. at 560. Thus, the procedural requirements designed for ordinary citizens may not apply to probationers, parolees or prisoners. *Id.* However, as Keith points out, "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals." *Youngberg*, 457 U.S. at 321-22.

¶21 WRC provided Keith with a copy of the patient handbook, which described the institutional policies and expected behavior of patients. The handbook classifies misconduct into major and minor categories. Major misconduct is defined as behavior that jeopardizes the safety or security of

patients, staff or others or presents significant management difficulties.⁵ Minor misconduct is defined as behavior which violates institution or unit expectations,⁶ but does not place anyone in immediate jeopardy or present significant management problems.

¶22 The handbook includes a number of procedural provisions. Patients must have notice of the conduct expectations that apply to them before sanctions may be imposed and those expectations must be applied consistently among patients. Decisions about violations should be based on the best evidence available. Sanctions cannot be imposed on a patient who cannot control his behavior and a sanction cannot be excessive in relation to a violation. Unless an immediate response is required for security, patients should be counseled after the first violation and warned after the second violation before summary or formal sanction procedures are instigated. The counseling and warning procedures are intended to help the patient understand the consequences of his misconduct and identify alternatives for modifying behavior. Staff must document alleged violations with a description of the facts, the notice given, any aggravating or mitigating circumstances, and their conclusions.

⁵ Examples of major misconduct include arson, assault, battery, erratic behavior caused by schizophrenia or other mental illness, escape, failure to take direction, repetitive harassment, inciting a disturbance, lying or providing inaccurate information, manufacturing or possessing weapons, physical aggression or intimidation, destruction of property, possession, delivery or use of alcohol or drugs, repetitive rule violations, stalking, taking advantage of a less capable peer, verbal aggression including insulting, profane or derogatory comments, threats, gossip or false accusations. Disrespect, disruptive conduct, and theft can be categorized as major or minor misconduct at staff's discretion.

⁶ The term "rules" is used in the handbook. We chose not to use it to avoid suggesting that these provisions are "rules" within the meaning of WIS. STAT. §§ 227.01(13) and 227.10(1). See discussion *infra* ¶26.

¶23 If misconduct is found to have occurred, sanctions may be imposed. Available sanctions include room confinement, the loss of rights and privileges within the institution, and a requirement that the patient wear bright orange clothing for easy identification. In addition, conduct may be referred for criminal prosecution and the patient's management status may be reviewed.

¶24 The patient may choose to accept a summary sanction, which cannot last for more than thirty days and cannot be reviewed, or the patient can request a formal sanction procedure. The formal sanction procedure permits the patient to present information to the supervisor or shift captain and requires the supervisor or shift captain to disclose various information to the patient and to document the decision. The patient may then request review by the treatment team and the treatment team's decision can be reviewed by the director. A separate grievance procedure and judicial review are also available.

¶25 We are persuaded that this scheme provides patients with procedural safeguards appropriate to the treatment setting at WRC. Keith complains that the definitions in the handbook provisions governing conduct are impermissibly vague, particularly in comparison with provisions governing the conduct of prison inmates. It is true that many of the handbook provisions simply list the prohibited conduct by name, with no further explanation. Unlike prisoners in DOC custody, however, patients are first counseled and then warned that their behavior is unacceptable before sanctions are imposed. Thus, WRC patients have verbal notice which is more specific than the written notice accorded to DOC prisoners. Keith also complains that WRC staff failed to follow the handbook provisions by counseling him. He admits however, that he was "warned" twice. He does not explain what is involved in counseling that is not included in a warning, and we are persuaded that the semantic distinction is insignificant. We conclude the

process which Keith received was constitutionally adequate, and Keith has failed to state a claim under 42 U.S.C. § 1983.

¶26 Keith’s final challenge to the disciplinary measures taken against him is that the handbook provisions should have been formally promulgated. He first contends that DHFS was required to promulgate disciplinary rules under WIS. STAT. § 980.065(2). That provision is inapplicable on its face, however, because it requires rules to be promulgated only for secure units or facilities which DOC contracts to provide for HFS under that subsection.

¶27 Keith next argues the handbook provisions he violated were invalid because they were not promulgated according to WIS. STAT. ch. 227, and he was not accorded a contested hearing as provided in that chapter. WISCONSIN STAT. § 227.10(1) provides that “[e]ach agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute.” An administrative rule which has been adopted without compliance with statutory procedures is invalid. *LeClair v. Natural Resources Board*, 168 Wis. 2d 227, 233, 483 N.W.2d 278 (Ct. App. 1992).

¶28 The respondents concede that the handbook provisions were not promulgated according to the procedures set forth in WIS. STAT. ch. 227, but claim that promulgation is not necessary because the handbook “[c]oncerns the internal management of an agency and does not affect private rights or interests.” WIS. STAT. § 227.01(13) (listing exceptions from the procedural requirements of the chapter). We agree that promulgation is not necessary, but for a different reason. By the plain language of the statute, the promulgation requirement applies only to *agencies*. WIS. STAT. § 227.10(1). The definition of “rule” is also limited to a

“regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an *agency*” Section 227.01(13). An “agency” is defined as “the Wisconsin land council on a board, commission, committee, department or officer in the state government, except the governor, a district attorney or a military or judicial officer.” Section 227.01(1). Here, the agency charged with care and control of WIS. STAT. ch. 980 patients is DHFS. However, the patient handbook was adopted by WRC, not DHFS. The statute does not require individual institutions under the supervision of DHFS to promulgate as rules policies developed by the institution to govern the conduct of patients.

Qualifications of Staff

¶29 Claims six, eight, ten, and sixteen all challenge the qualifications of staff members at WRC. However, the State asserts that the staff at WRC are hired through a civil service procedure. Keith has not identified any staff member who failed to meet the civil service requirements and he has not shown that any of his enumerated rights under WIS. STAT. § 51.61 have been violated by the mere composition of the staff. Nor does he specify what criteria he believes should have been used in the hiring process. We conclude that his dissatisfaction with the staff does not state a cause of action.

Treatment

¶30 Claims nine through eleven, fourteen and seventeen all challenge the nature and sufficiency of the treatment which WRC has given Keith. WISCONSIN STAT. § 51.61(1)(f) gives a patient the right to adequate treatment appropriate for his condition within the limit of available funds, while § 51.61(1)(j) gives a patient the right to refuse to be subjected to experimental research. The standard for

appropriate treatment is that of ordinary medical care. *See Wright v. Mercy Hosp., Inc.*, 206 Wis. 2d 449, 468-69, 557 N.W.2d 846 (Ct. App. 1996). Thus, Keith's allegations may be sufficient to state a claim for medical negligence in violation of his statutory rights as an involuntarily committed patient.

¶31 Allegations alone are not sufficient to survive a motion for summary judgment, however. WISCONSIN STAT. § 802.08(3) provides:

When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial.

Here, the respondents provided an affidavit from WRC's clinical director, Dr. Anthony Thomalla, explaining why the diagnosis of pedophilia was correct and why Keith's refusal to acknowledge his behavior was significant, and stating that the treatment afforded to Keith at WRC was appropriate and well recognized by the psychiatric community. Although Keith disputed Thomalla's opinion, he did not provide any contrary expert opinion on the subject.⁷ *See Dean Med. Ctr., S.C. v. Frye*, 149 Wis. 2d 727, 734-735 n.3, 439 N.W.2d 633 (Ct. App. 1989) (affidavit by expert is required when "issue is one on which expert testimony must be produced at trial"). Expert opinion is required on the issue of whether a professional has complied with the standard of care appropriate to that profession unless the alleged "breach is so obvious that it may be determined by the court as a matter of law or where the standard of care is within the ordinary knowledge and

⁷ The 1984 recommendation of a DOC therapist that Keith could benefit from individual therapy did not address the propriety of the actual course of treatment which Keith was afforded at WRC.

experience of the jurors.” *Helmbrecht v. St. Paul Ins. Co.*, 122 Wis. 2d 94, 112, 362 N.W.2d 118 (1985). That is not the case here. Moreover, Keith does not dispute that he refused to participate in the behavior modification treatment program which he characterized as experimental. Therefore, the trial court correctly determined there was no material fact remaining to be tried on the treatment issues.

Accuracy of File

¶32 Claim seven relates to the accuracy of the information in Keith’s treatment file. WISCONSIN STAT. § 51.61(1)(n) provides patients with the right to inspect all treatment records and to challenge their accuracy as provided in WIS. STAT. § 51.30. Under § 51.30(4)(f), a facility is required to grant or deny a request to correct a record within thirty days, stating its reasons in writing. When a request is denied, the patient is allowed to place his own statement into the file. The facility is not, however, obligated to remove the statement or record to which the patient objects. *See id.* Here WRC staff members were entitled to characterize Keith’s behavior according to their judgment, and the materials submitted by the respondents show Keith was allowed the opportunity to have his own version of events placed into the file.

Remaining Claims

¶33 In claim nineteen Keith alleges that DCTF personnel failed to enforce the rights of patients at WRC. His allegations are general in nature, however, and do not identify any specific incidents, other than by reference to some issues already mentioned elsewhere in the complaint. Moreover, Keith appears to be making claim nineteen on behalf of other patients. Since this is not a class action, we have no basis to consider any alleged violations to the rights of

other patients. Such challenges should be raised through the grievance process and judicial review of the results of the grievance process in individual cases.

¶34 Finally, claim fifteen, regarding WRC's failure to document patient's rights violations, must fail as a result of the determinations discussed above that Keith has failed to establish any actual violations occurred. In sum, after reviewing the pleadings and the materials submitted by the parties, we see no disputed facts sufficient to warrant trial on any of Keith's claims.

By the Court.—Judgment affirmed.

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

