

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 30, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0592

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

THOMAS WILLAN,

PETITIONER-APPELLANT,

v.

COLUMBIA COUNTY AND TOWN OF LODI,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Columbia County:
RICHARD REHM, Judge. *Affirmed.*

Before Vergeront, Deininger, JJ., and William Eich, Reserve Judge.

¶1 PER CURIAM. Thomas Willan appeals an order denying his claim for damages under the open records law, and a prior order concluding that

Columbia County had complied with the trial court's writ of mandamus.¹ Willan raises several issues. We affirm.

¶2 This case arises from Willan's request to Columbia County in April 1999 for "all documents pertaining to doing business with Wisconsin Graphics or Heartland Litho in Madison that is [sic] related to ballot printing for the last 5 years in Columbia County." Willan was given records in three stages. The first two stages were in April and May 1999. In late May, Willan filed this mandamus action for production of additional records. In June 1999 the trial court entered a mandamus order directing the County to release certain records. The County provided Willan with a third group of records later that month.

¶3 At the end of that month, the court held a hearing. At the end of the hearing the court concluded, based on the testimony of witnesses at the hearing, that the County had provided all the records that complied with Willan's request. Willan argues on appeal that this finding was incorrect. He cites several portions of the testimony that he believes show the existence of additional records. Without attempting to describe each of those portions here, we are satisfied that the trial court did not err. The portions are either taken out of context, or relate to documents which may have existed at some earlier point, but for which there is no evidence that they still existed at the time of the hearing. To the extent that some of the testimony was ambiguous, it was not so ambiguous that the trial court's finding can be considered clearly erroneous.

¹ Willan attempted to appeal the court's determination that the County had complied with the mandamus order. However, we dismissed the appeal of the non-final order.

¶4 At a later hearing, the trial court took up the issue of whether Willan is entitled to damages under WIS. STAT. § 19.37(2)(a) (1997-98).² The applicable law is well-established. To obtain damages under that subsection, the requester must show that his prosecution of the mandamus action could reasonably be regarded as necessary to obtain the record, and that a causal nexus exists between that action and the custodian's release of the requested record. *Eau Claire Press Co. v. Gordon*, 176 Wis. 2d 154, 160, 499 N.W.2d 918 (Ct. App. 1993). In this case, the court concluded that Willan's mandamus action could reasonably be regarded as necessary, but that there was no causal nexus between his action and the County's release of records.

¶5 On appeal, Willan argues that his mandamus action caused the County's release of the third group of documents, in June 1999. That group consisted of 299 pages of records. At the trial court hearing on damages, Willan offered only one of those records as an exhibit, and only that one record was discussed in any detail during the testimony. The burden is on the requester to establish the causal nexus between his mandamus action and the release of the records. *Racine Educ. Ass'n v. Board of Educ.*, 145 Wis. 2d 518, 522, 427 N.W.2d 414 (Ct. App. 1988). Because Willan did not provide information about the remainder of the June records, he did not meet his burden to establish a causal nexus for those records. If the documents are not in the record, it would be impossible to find that their release was caused by Willan's mandamus action, because it would be impossible to determine whether those records were within the scope of his original open records request or the trial court's writ.

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶6 The one record that was put into evidence at the hearing was a copy of an invoice from Wisconsin Graphics. The trial court ruled that this was not a record that Willan was entitled to receive, because he had already been given a copy of that document, except for some handwritten notations that appeared on the later copy. On appeal, Willan makes no argument directed at the trial court's analysis of this record. We conclude that the issue is inadequately briefed, and we do not address it further. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

¶7 Willan argued in the trial court that he should be allowed to collect damages for emotional distress under WIS. STAT. § 19.37(2)(a). The trial court concluded that this type of damages is not available under that provision. Because we have concluded that Willan has not established the required basis for an award of *any* type of damages under that subsection, we do not address this issue further.

¶8 Willan also argues that he is entitled to punitive damages under WIS. STAT. § 19.37(3). The trial court held that punitive damages were not available because Willan had not prevailed in his mandamus action. Willan's appellate brief does not address this rationale for denying punitive damages. Accordingly, we conclude the issue is inadequately briefed, and we do not discuss it further.

¶9 Willan's briefs on appeal contain several passages using inappropriate language and making personal attacks. This type of rhetoric is unacceptable, and in the future we may strike any brief or other paper containing such material. *See* WIS. STAT. § 802.06(6) and WIS. STAT. RULE 809.84.

By the Court.—Order affirmed.

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

