

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 6, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 01-0871  
STATE OF WISCONSIN**

**Cir. Ct. No. 00-CV-590**

**IN COURT OF APPEALS  
DISTRICT II**

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**HARLAN RICHARDS,**  
  
**PLAINTIFF-APPELLANT,**  
  
**V.**  
  
**JANE GAMBLE,**  
  
**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Sheboygan County:  
TIMOTHY M. VAN AKKEREN, Judge. *Affirmed.*

Before Nettesheim, P.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Harlan Richards appeals pro se from a circuit court order dismissing his claims against Jane Gamble, the warden of Kettle Moraine Correctional Institution (KMCI). Richards alleges that Gamble violated rules of the Department of Corrections when the prison refused to deposit a personal check into Richards's prison account and restricted his ability to send personal property

out of the prison. Because we conclude that Gamble did not err in her interpretation and application of the DOC rules, we affirm the order dismissing Richards's claims.

¶2 As a preliminary matter, we address the filing fee for this appeal. In a June 4, 2001 order, we acknowledged Richards's argument that WIS. STAT. § 814.29(1m) (1999-2000),<sup>1</sup> which governs filing fees owed by prisoners,<sup>2</sup> unconstitutionally denies him access to the courts and deprives him of equal protection. We required the State to respond to this argument in its respondent's brief, and we stated we would unfreeze Richards's prison trust fund accounts pending our determination on this issue. Thereafter, this court issued an order on June 12, 2001, unfreezing Richards's prison trust fund accounts. However, the order also erroneously stated that the filing fee had been paid.<sup>3</sup> In light of the error involving the filing fee, the court concludes that it will not expend scarce judicial resources to decide Richards's challenges to § 814.29(1m).

¶3 We turn to the merits of Richards's appeal. Richards sued Gamble<sup>4</sup> in tort for alleged violations of WIS. ADMIN. CODE § DOC 309.46 (depositing of

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

<sup>2</sup> "Prisoner" is defined in WIS. STAT. § 801.02(7)(a) 2.

<sup>3</sup> Even though Richards contends in his reply brief that someone else paid the filing fee on his behalf, this is not the case. The fee has not been paid, and the June 12 order was issued in error.

<sup>4</sup> We need not address whether the claims are properly made against Jane Gamble personally because we affirm the dismissal of the complaint. For purposes of our decision, a reference to Gamble is deemed a reference to Gamble in her capacity as an employee of the Department of Corrections.

inmate's money) and § DOC 309.20(4)(d)1 (policies and procedures for the disposal of an inmate's personal property). In his complaint, Richards alleges that a \$25 personal check arrived at KMCI for deposit in his prison account. KMCI declined to deposit the check in Richards's account because KMCI has a policy prohibiting personal checks. Richards alleges this policy violates the provisions of § DOC 309.46.<sup>5</sup> Richards also alleges that KMCI violated § DOC 309.20(4)(d)1 when it declined to let him send personal property out of the prison with visitors. Richards sought a declaratory judgment that in declining to accept personal checks, KMCI violated § DOC 309.46, and in preventing him from sending out his personal property, KMCI violated § DOC 309.20(4)(d)1.

¶4 The circuit court granted Gamble's motion to dismiss Richards's complaint.<sup>6</sup> We review a circuit court's dismissal for failure to state a claim de novo, accepting as true the facts alleged in the complaint and the reasonable inferences drawn from those facts. *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 311-12, 529 N.W.2d 245 (Ct. App. 1995). We must liberally construe the complaint, and we will affirm the dismissal of a claim only if "it is quite clear that under no conditions can the plaintiff recover." *Id.* at 311 (citation omitted). In ruling on the motion to dismiss, the circuit court applied the correct legal standard.

¶5 Richards alleges that KMCI violated the rules relating to disposal of an inmate's property. He alleges that his personal property was transferred with

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<sup>5</sup> Richards exhausted his administrative remedies and then sought circuit court review from which this appeal is taken.

<sup>6</sup> The motion was in the form of a pre-answer motion to dismiss. WIS. STAT. §§ 802.06(2)(a)6, 802.06(2)(b).

him to KMCI from Fox Lake Correctional Institution. WISCONSIN ADMIN. CODE § 309.20(4)(d)1 provides:

Each warden shall develop policies and procedures subject to the approval of the administrator, relating to the disposal of personal property of inmates within the institution. The department shall provide inmates the option of choosing the method of disposal subject to security concerns. The department shall include the following components:

....

(d) Inmates who are currently incarcerated shall be notified that the options for disposal of their personal property are as follows:

1. The department shall, upon notification to the inmate, *return to the sender* items received at an institution which are not approved. The department shall forward these items by commercial carrier to a person on the inmate's visiting list at the inmate's expense, or arrange to have these items picked up by a person on the inmate's approved visiting list within 30 days. The institution shall immediately dispose of items which are not approved and pose a security concern to the institution. The warden shall dispose of property which cannot be disposed of as provided in this paragraph, at the discretion of the warden. (Emphasis added).

¶6 The circuit court found that under the facts alleged in Richards's complaint, there was no "sender" because Richards's property was transferred with him from another institution. Therefore, the court held that Richards did not state a claim relating to KMCI's refusal to let him send his property out of the prison with visitors. For the reasons stated by the circuit court, we agree that

Richards's reliance on this provision is misplaced and the court did not err in dismissing this claim.<sup>7</sup>

¶7 We turn to Richards's claim that Gamble violated WIS. ADMIN. CODE § DOC 309.46 by rejecting the personal check sent to him. Richards contends that this rule mandates acceptance of a personal check. Section DOC 309.46 provides:

All money in any form delivered to any institution for the benefit of an inmate shall be delivered to the institution business manager. The institution business manager shall credit the appropriate account in the name of the inmate in accordance with these sections and ch. DOC 324.

¶8 KMCI Policy and Procedure 111.11 states: "All money sent to an inmate shall be in the form of a money order or bank check, made payable to the inmate with his inmate number listed." Under this policy, personal checks are not allowed.

¶9 The circuit court construed WIS. ADMIN. CODE § DOC 309.46 as a procedural provision specifying the person at the institution to whom money for an inmate shall be delivered, not a substantive provision dictating that the prison must accept funds sent to an inmate no matter what their form. The court concluded that KMCI's policy of rejecting personal checks on behalf of inmates does not violate § DOC 309.46.

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<sup>7</sup> We further note that KMCI has a policy in its property/clothing handbook which prohibits an inmate from sending property out with visitors. KMCI requires all property leaving the prison to be sent out via a commercial delivery service.

¶10 We agree with the circuit court. WISCONSIN ADMIN. CODE § DOC 309.20(1) allows the warden to develop policies and procedures relating to the acquisition, possession and use of inmate property. The KMCI procedure barring personal checks falls within that authority, which Richards has not challenged except to claim that the “no personal checks” rule runs afoul of § DOC 309.46. We reject Richards’s interpretation of § DOC 309.46 and affirm the circuit court.

*By the Court.*—Order affirmed.

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

