

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 27, 2010**

David R. Schanker  
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. 2009AP398**

Cir. Ct. Nos. 2005CV10271 and 2007CV1524

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**THERESA GARNER,**

**PLAINTIFF-APPELLANT,**

**V.**

**WISCONSIN STATE UNIVERSITY OF WISCONSIN MILWAUKEE,  
BETH WECKMUELLER, SANDRA HUMES BENTON,  
THERESA FRANZ AND UWM POLICE DEPARTMENT,**

**DEFENDANTS-RESPONDENTS.**

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**THERESA M. GARNER,**

**PLAINTIFF-APPELLANT,**

**UNIVERSITY OF WISCONSIN MILWAUKEE, UNIVERSITY OF  
WISCONSIN SYSTEM, UNIVERSITY OF WISCONSIN MILWAUKEE  
POLICE DEPARTMENT, SHAWNETTE STEPHENS, SANDRA  
BENTON HUMES AND AMY WATSON,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from orders of the circuit court for Milwaukee County:  
MEL FLANAGAN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Theresa M. Garner, *pro se*, appeals the circuit court’s order granting summary judgment in favor of the University of Wisconsin-Milwaukee, the University of Wisconsin System, the University of Wisconsin-Milwaukee Police Department, Shawnette Stephens and Sandra Benton Humes (collectively, “the University”). She also appeals an order denying her motion for reconsideration. Garner argues: (1) that the University violated WIS. STAT. § 103.13 (2007-08)<sup>1</sup> by denying her access to her personnel file; (2) that the University violated WIS. STAT. § 111.322, the Wisconsin Fair Employment Act; (3) that the circuit court should not have dismissed her claim for malicious prosecution against the University; (4) that her claims for defamation, slander and libel are not barred by the statute of limitations; and (5) that she has enforceable rights based on a right-to-sue letter issued by the Equal Employment Opportunity Commission. We affirm.

¶2 Garner argues that she has a claim against the University because it violated WIS. STAT. § 103.13 by denying her access to her personnel file. That statute does not vest an employee with a private remedy; the penalty for violating the statute is a forfeiture enforceable by an action in the name of the State. WIS. STAT. § 103.13(8) (“Any employer who violates this section may be fined not less than \$10 nor more than \$100 for each violation. Each day of refusal or failure to

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

comply ... is a separate violation.”). Because Garner has no enforceable private remedy, we reject this claim.

¶3 Garner argues that the University discriminated against her in violation of the Wisconsin Fair Employment Act, WIS. STAT. § 111.322(2m)(a)<sup>2</sup> (“[I]t is an act of employment discrimination to ... discharge or otherwise discriminate against any individual because ... [t]he individual files a complaint or attempts to enforce any right under ... [WIS. STAT. § ]103.13.”). Garner filed three different complaints under the Wisconsin Fair Employment Act alleging discrimination and retaliation. The Equal Rights Division found no probable cause on Garner’s complaints on December 9, 2003. To challenge the hearing examiner’s findings of fact and order, Garner was required to petition for review by the Labor and Industry Review Commission within twenty-one days. *See* WIS. STAT. § 111.39(5)(a) and (b). Garner did not do so, so she has lost the right to petition the Commission for review of these decisions. To the extent that Garner is attempting to assert new claims under the Wisconsin Fair Employment Act in this court proceeding, she may not do so. The Wisconsin Fair Employment Act “is not designed to create a private cause of action as long as an adequate remedy is otherwise available” in an administrative proceeding before the Commission. *Bachand v. Connecticut Gen. Life Ins. Co.*, 101 Wis. 2d 617, 627, 305 N.W.2d 149 (Ct. App. 1981). Garner is not entitled to relief based on the claims she filed under the Wisconsin Fair Employment Act.

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<sup>2</sup> WISCONSIN STAT. § 111.322(2m)(a) was amended, effective April 1, 2010, to extend its application to WIS. STAT. § 103.34 and WIS. STAT. § 106.01. 2009 WI Act 182, § 8.

¶4 Garner next argues that the circuit court should not have dismissed her claim for malicious prosecution against the University. A claim for malicious prosecution will lie only where there was “a prior institution or continuation of some regular judicial proceedings against the plaintiff.” See *Strid v. Converse*, 111 Wis. 2d 418, 423, 331 N.W.2d 350 (1983) (citation omitted). The University did not initiate any criminal or other prosecution against Garner, so her claim for malicious prosecution fails. Garner appears to believe that the University “prosecuted” her because it called the police to investigate harassing phone calls received by an employee, who identified Garner as the possible source for those calls. Garner is wrong. The University did nothing more than refer to the police information about potential criminal activity. There was no judicial proceeding instituted against Garner. Therefore, we reject this claim.<sup>3</sup>

¶5 Garner argues that the circuit court should not have dismissed her claim against the University for defamation, slander and libel. A cause of action for defamation, slander or libel must be filed “within 2 years after the cause of action accrues.” WIS. STAT. § 893.57. The statute of limitations does not begin to run until the date the injury is discovered, or reasonably should have been discovered. *Spitler v. Dean*, 148 Wis. 2d 630, 633, 436 N.W.2d 308 (1989). The statements about which Garner complains were made in 2003. Garner did not file her cause of action until February 9, 2007. Because Garner’s claims were filed outside the two-year limit, they are all barred by the statute of limitations.

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<sup>3</sup> Garner also asserts as a separate matter that she is entitled to relief for retaliatory malicious prosecution under the Wisconsin Fair Employment Act. We reject this claim because we have concluded that Garner was not prosecuted. We also reject this claim because Garner has not raised it through the proper administrative procedure, as explained above.

¶6 Finally, Garner argues that she has enforceable rights under a right-to-sue letter issued by the Equal Employment Opportunity Commission on August 12, 2005. Garner should have filed a civil complaint in federal court within ninety days of receiving the right-to-sue letter. 42 U.S.C. § 2000e-5(f)(1). Garner never pled any claims in relation to this letter. Because she did not do so, she is not entitled to relief.

*By the Court.*—Orders affirmed.

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

