

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 25, 1996

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

NOTICE

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

No. 94-3254

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
THOMAS W. REIMANN,**

Petitioner-Appellant,

v.

DALE POLIAK,

Respondent-Respondent.

APPEAL from an order of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. Thomas W. Reimann appeals from an order dismissing his claim against Dale Poliak. Reimann is an inmate at Green Bay Correctional Institution where Poliak is the manager of the Health Services Unit. Reimann claims costs, fees and damages under § 19.37(2), STATS., for Poliak's alleged violation of the open records law. Because we conclude that the trial court properly dismissed that claim, we affirm.

On January 9, 1994, Reimann sent Poliak a memo in which he asked to see certain Department of Correction policies and procedures regarding dental care. On January 24, Poliak responded with a form indicating that the request was granted, adding "[t]here are two pages of record. Submit a money transmittal to the business office. Have a check made out to Bureau of Health Services in the amount of \$.30 (\$.15 per page). Once the check is received by the Health Services Unit, the records you have requested will be released."

On January 25, 1994, Reimann wrote to Poliak objecting to what Reimann deemed a denial of access to the records. On January 31, Poliak responded that Reimann would receive access, as previously indicated, when he paid the thirty cent bill. Reimann returned a memo the same day stating that the request for prepayment violated § 19.35(3)(f), STATS., that Reimann had commenced a mandamus action to force disclosure of the records (which was not true), and that he only wanted to read the policies, not purchase them. On the next day, Reimann was allowed to come to the Health Services Unit and read the policies.

Reimann commenced this action on February 9. The trial court issued an alternative writ of mandamus on February 14 and Poliak was served on February 25. Reimann subsequently filed an amended petition acknowledging that he had reviewed the records on February 1. The action proceeded on his claim for costs, fees and damages under § 19.37(2)(a), STATS. Both sides moved for summary judgment, and the court entered judgment for Poliak.

Section 19.37(2)(a), STATS., provides that a record requester can recover reasonable attorney fees, damages of not less than \$100 and other actual costs, if the requester prevails in whole or in substantial part in an action filed to gain access to public records. Punitive damages are available if the record custodian has arbitrarily and capriciously denied or delayed a response to a request, or charged excessive fees. Sections 19.37(3), STATS. To recover fees under § 19.37(2)(a), the requester "must show that prosecution of the action could reasonably be regarded as necessary to obtain the information, and that a causal nexus exists between that action and the agency's surrender of the information." *Racine Educ. Ass'n v. Board of Educ.*, 145 Wis.2d 518, 522, 427 N.W.2d 414, 416 (Ct. App. 1988) (quoted source omitted).

We decide motions for summary judgment in the same manner as the trial court and without deference to its decision. *Schaller v. Marine Nat'l Bank*, 131 Wis.2d 389, 394, 388 N.W.2d 645, 648 (Ct. App. 1986). Summary judgment is appropriate if, as here, the material facts are not in dispute and permit only one reasonable inference. *Wagner v. Dissing*, 141 Wis.2d 931, 940, 416 N.W.2d 655, 658 (Ct. App. 1987).

On the undisputed facts, Reimann cannot show a causal nexus between this action and the record access he gained on February 1. Poliak erred in two ways when he initially required a \$.30 copying fee before granting Reimann's request. First, Reimann did not request a copy of the policies. He only asked to see them. Second, the record custodian cannot require prepayment from a requester unless the copying cost exceeds \$5.00. Section 19.35(3)(f), STATS. However, when Poliak received Reimann's January 31 memo informing him of those errors, he immediately complied with Reimann's request. Reimann cannot reasonably argue that this lawsuit prompted Poliak's decision because he did not commence it until February 9.

Costs are assessed against Reimann and shall be deducted from his prison account as of the date of this decision. *See* § 814.29(3)(b), STATS.

By the Court. – Order affirmed.

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