



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

July 10, 2025

To:

Hon. Stacy A. Smith
Circuit Court Judge
Electronic Notice

Faye B. Hipsman
Electronic Notice

Alecia Pellegrini-Kast
Clerk of Circuit Court
Juneau County Justice Center
Electronic Notice

Deshawn D. Johnson 456307
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

You are hereby notified that the Court has entered the following opinion and order:

2023AP1666

Deshawn D. Johnson v. Jason Hinchley (L.C. # 2023CV83)

Before Graham, Nashold, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Deshawn Johnson appeals an order dismissing his personal injury complaint. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ The issue is whether Johnson complied with the notice of claim statute for suits against state employees. We conclude that he did not and, therefore, we affirm.

Johnson's complaint alleged that Johnson was housed at a state prison; that he was a "servery" worker whose job was to retrieve loaded food carts from the prison's main kitchen and

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

bring them to serve meals to inmates; and that while he and another inmate were pushing a loaded food cart in the proper manner, the cart suddenly tipped over, pinning Johnson's foot and causing injuries. Johnson alleged that further investigation by staff showed that the cart was improperly loaded, with heavier items at the top and lighter items at the bottom.

The prison issued an incident report, and Johnson filed two notices of claim with the attorney general's office. One of them was untimely, and there is apparently no dispute that the timely notice adequately described the incident and Johnson's injury, but did not identify the names of any state employees who were involved in the incident.

Johnson then filed a complaint in the circuit court, which named two defendants, Jason Hinchley and Mike Schultz, along with "John and Jane Doe(s) 1-6." The complaint alleged that the named defendants were food service administrators, and that the six Doe defendants were food service staff members "whose duty is to supervise inmates and to ensure that all safety policies and procedures set forth are follow[ed] by staff and inmates." The complaint also stated: "At time of filing, the actual and correct spelling of names of other Food Service Staff being sued are unknown to plaintiff at this time. Plaintiff will name the defendants once the institution Warden release[s] or provide[s] such information to the plaintiff."

The defendants moved for summary judgment on the ground that Johnson failed to provide the attorney general's office with a timely notice of claim, as required by WIS. STAT. § 893.82. That statute requires the notice to include "the time, date, location and the circumstances of the event giving rise to the claim for the injury, damage or death and the names of persons involved, including the name of the state officer, employee or agent involved." Sec. 893.82(3). The circuit court granted the motion on that basis as to all of the defendants.

On appeal, Johnson concedes that the prison's incident report provided him with the names of Hinchley and Schultz, and that his claims against them were properly dismissed because their names were available to him and he failed to include them in the notice of claim that he filed. However, he argues that his notice of claim should be considered sufficient as to the Doe defendants, because he attempted to learn their names but was unable to.

Johnson argues that Wisconsin case law has clarified that, for notice of claim purposes, strict compliance is not required if the plaintiff used reasonable diligence to obtain the names of the state actors. In particular, he relies on *Modica v. Verhulst*, 195 Wis. 2d 633, 536 N.W.2d 466 (Ct. App. 1995). We do not agree that this case creates such a standard.

In *Modica*, we concluded that strict compliance is necessary, and that the plaintiffs' notice of claim failed to comply strictly with the statute because it did not identify one of the defendants by name. *Id.* at 639-47. The opinion then responded to the dissent, which the majority described as proposing that the time to file a notice of claim did not begin to run until the plaintiffs learned the defendant's name or, in the exercise of reasonable diligence, should have learned it. *Id.* The majority opinion then assumed the dissent to correctly state the law, and reviewed the facts to determine whether the plaintiffs had exercised reasonable diligence. *Id.* at 648. The majority concluded that they had not. *Id.* In doing so, the majority stated: "At a minimum, reasonable diligence required that plaintiffs ask [the hospital] for the name of the individual" involved. *Id.* In making that reference to what reasonable diligence required, the majority was not creating or endorsing such a standard, but was only showing that the plaintiffs' argument failed even under the dissent's proposed reasonable diligence standard, which the majority opinion had already expressly rejected.

In Johnson's case, even if we assume, without deciding, that such an exception to strict compliance exists, we are not persuaded that Johnson exercised reasonable diligence. Johnson points to three attempts he made to discover the names of the kitchen staff working at the time of the incident alleged in the complaint. Two of those requests were made to officials, including the department secretary, during the inmate complaint review process. Johnson also argues that he asked for this information to be provided to him in the notice of claim itself. None of these requests received the desired response.

However, Johnson could have done more. He could have submitted an information request or letter to officials at the prison. Johnson attached copies of such requests to his reply brief, but it is not clear that these items were part of the circuit court record. Moreover, the copies are only of requests, without showing what response he received. As a result, they do not show that further diligence of this type would have been ineffective to obtain the names.²

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

² The defendants argue that Johnson could also have submitted a request for this information under the public records law. However, by statute, that avenue appears to be closed to any committed or incarcerated person, unless the request is for a record that contains specific references to that person or his or her children, or the record is otherwise accessible to the person by law. WIS. STAT. § 19.32(3). It is not apparent that a public records request for these names would have been successful.