

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 28, 2008

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. 2007AP1707

Cir. Ct. Nos. 2007IP55; 2007SC7432

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

WILLIAM FREDERICK WILLIAMS,

PLAINTIFF-APPELLANT,

v.

CHRISTINE KAMIN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed in part; reversed in part and
cause remanded with directions.*

¶1 BRIDGE, J.¹ William Frederick Williams, appearing pro se,
appeals an order dismissing his small claims replevin action for failure to state a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

claim upon which relief may be granted. The court determined that Williams failed to comply with the notice of claim statute, WIS. STAT. § 893.82(3). We conclude that the outcome of this case is controlled by *Lewis v. Sullivan*, 188 Wis. 2d 157, 524 N.W.2d 630 (1994), and that, although that portion of Williams' complaint seeking compensatory damages is barred by his failure to comply with the notice of injury statute, that portion of his complaint seeking declaratory relief is not. We therefore affirm in part, reverse in part, and remand the cause for further proceedings.

¶2 Whether a complaint states a claim upon which relief can be granted is a question of law which we review de novo. *Repetti v. Sysco Corp.*, 2007 WI App 49, ¶2, 300 Wis. 2d 568, 730 N.W.2d 189. Williams' complaint seeks the return of items that he alleges were held by his parole agent, Christine Kamin, after he was released from prison. It requests the return of the property or, in the alternative, "just compensation" for the property.² The complaint does not allege compliance with the notice of claim statute, WIS. STAT. § 893.82(3).

¶3 WISCONSIN STAT. § 893.82(3) provides:

no civil action or civil proceeding may be brought against any state officer, employee or agent for or on account of any act growing out of or committed in the course of the discharge of the officer's, employee's or agent's duties ... unless within 120 days of the event causing the injury, damage or death giving rise to the civil action or civil proceeding, the claimant in the action or proceeding serves upon the attorney general written notice of a claim stating

² Williams also argues that the detention of his property violates his constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution and article I, sections 1 and 13 of the Wisconsin Constitution. However, this argument was not raised in Williams' complaint, and we therefore decline to address it. See *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶11, 261 Wis. 2d 769, 661 N.W.2d 476.

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.... [A] specific denial by the attorney general is not a condition precedent to bringing the civil action or civil proceeding.

The notice of injury statute imposes a condition precedent to the right to maintain an action. *Ibrahim v. Samore*, 118 Wis. 2d 720, 726, 348 N.W.2d 554 (1984). The statute applies to actions for compensatory damages, but does not apply to claims for injunctive and declaratory relief. *Sullivan*, 188 Wis. 2d at 169. Thus, because Williams did not comply with § 893.82(3), his claim for compensatory damages fails. However, his claim for declaratory relief (the return of his property) does not. We therefore affirm in part, reverse in part, and remand the cause to the circuit court to determine the merits of Williams' claim for declaratory relief.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

