

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 10, 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. 2007AP2494

Cir. Ct. No. 2007SC4983

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JOHNNY LACY, JR.,

PLAINTIFF-APPELLANT,

V.

**PETER HUIBREGTSE, VICKI SEBASTAIN, CAPTAIN JOHN W. SHARPE,
SERGEANT ROBERTS AND SERGEANT JASON ROBERTS,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, P.J.¹ Johnny Lacy Jr., an inmate at the Wisconsin Secure Program Facility (WSPF) in Boscobel, appeals pro se an order

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.

granting the motion of the defendants (collectively, Huibretgse) for summary judgment and dismissing his complaint. We affirm.

¶2 On March 9, 2007, Lacy filed a complaint in small claims court against Huibretgse asserting violations of assorted federal statutes.² Specifically, Lacy claimed prison staff retaliated against him for filing complaints in the prison inmate complaint review system and in the courts; not communicating with guards; and lying about his need for programs. Lacy moved for default judgment on grounds that Huibretgse's answer failed to respond to a number of his causes of action. Huibretgse moved for summary judgment.

¶3 The small claims court commissioner held a hearing and dismissed Lacy's motion for a default judgment and granted Huibretgse's motion for summary judgment. Lacy demanded a de novo proceeding before the circuit court. The circuit court held a hearing de novo and dismissed Lacy's complaint and granted Huibretgse's motion for summary judgment. Lacy appeals.

¶4 Lacy first contends that he is entitled to a default judgment, asserting that Huibretgse's answer responded only to his retaliation claim, and none of the other claims in the complaint. We disagree.

¶5 Wisconsin's notice pleading statute, as Lacy notes, does not require that the complaint provide a comprehensive statement of the facts. *See* WIS. STAT. § 802.02(1). However, it does require that a complaint "identif[y] the transaction or occurrences or series of transactions or occurrences out of which the claim

² Among these were 42 U.S.C. § 1983, Title II of the American with Disabilities Act, 42 U.S.C. § 12132, 504 of the Rehabilitation Act, 29 U.S.C § 794, and the Institutionalized Person Act of 1974, 42 U.S.C. § 1997(e).

arises.” *Id.* Lacy’s complaint fails on this count except with regard to his retaliation claim. Lacy’s complaint contains no facts that would support a claim under 42 U.S.C. § 1983, Title II of the American with Disabilities Act, 42 U.S.C. § 12132, 504 of the Rehabilitation Act, 29 U.S.C § 794, or the Institutionalized Person Act of 1974, 42 U.S.C. § 1997(e), the various federal statutes Lacy alleges were violated. In the words of the circuit court, “simply reciting these various laws does not state a legally sufficient cause of action.” We therefore conclude that Lacy is not entitled to a default judgment, and Huibretgse’s answer meets the requirements of WIS. STAT. § 804.11.

¶6 Lacy next argues that the circuit court erred when it dismissed his complaint without allowing him to amend it. We disagree. Lacy never requested to amend the complaint by letter or by motion. Lacy cannot assert that the circuit court erred in denying him the opportunity to amend his complaint when Lacy never sought to submit an amended complaint.

¶7 Lacy next argues that the court erred in granting summary judgment for failing to state a claim upon which relief can be granted. We review an order granting summary judgment de novo, applying the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 317, 401 N.W.2d 816 (1987). Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08.

¶8 After an independent review of the record, we conclude that Huibretgse is entitled to summary judgment. As noted, Lacy failed to assert any fact that would entitle him to recover under 42 U.S.C. 1983, Title II of the Americans With Disabilities Act of 1990, 42 U.S.C. 12132, 504 of the

Rehabilitation Act, 29 U.S.C. 794, Institutionalized Person Act of 1974 and 42 U.S.C. 1997(e). Pleadings must provide some factual basis for the claim. *United Capitol Ins. Co. v. Bartolotta's Fireworks Co., Inc.*, 200 Wis. 2d 284, 298, 546 N.W.2d 198 (Ct. App. 1996). We therefore conclude that Lacy's complaint failed to state a legally sufficient claim for a violation of any of the federal statutes listed in his complaint.

¶9 Moreover, summary judgment was appropriate as to Lacy's retaliation claim. Lacy argues that Huibregtse made him sleep with his head towards the toilet in retaliation for Lacy filing numerous complaints within the prison system and in the courts. However, Lacy fails to point to specific facts to support his general allegations, such as which complaints or state or federal court cases he filed that lead Huibregtse to retaliate against him. *See Hasan v. United States Dep't of Labor*, 400 F.3d 1001, 1004 (7th Cir. 2005). Further, Lacy fails to show that after filing the complaints that only he and no other similarly situated individuals were subject to the adverse action. *Id.* In fact, according to Deputy Warden Huibregtse's affidavit, all inmates must sleep in a position in which prison officers can verify the inmate's safety (such as sleeping with one's head towards the toilet). Huibregtse states that this policy has been in place as long as WSPF, formerly known as the Supermax Correctional Institution, has been open.

¶10 As to the remaining arguments contained in Lacy's brief not specifically addressed in this opinion, we conclude they are wholly undeveloped and conclusory, and we do not address them. *See Associates Fin. Servs. Co. of Wis., Inc. v. Brown*, 2002 WI App 300, ¶4 n. 3, 258 Wis. 2d 915, 656 N.W.2d 56 (appellate courts generally do not consider conclusory assertions and undeveloped issues).

By the Court.—Order affirmed.

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

