

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 30, 1995

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. 94-2980

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

LOUIE AIELLO,

Plaintiff-Appellant,

v.

**GARY McCAUGHTRY, LYNN OESTREICH,
G. D. GRAMS, and ANNA SECCHI,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.*

Before Dykman, Sundby, and Vergeront, JJ.

PER CURIAM. Louie Aiello appeals from an order denying his motion for relief from judgment under § 806.07, STATS. Because Aiello's motion for relief does not show that he is entitled to relief under § 806.07, but merely repeats arguments already addressed by the court, we conclude that the trial court's reliance on the reasons in its decision on the judgment was not an erroneous exercise of discretion. Therefore, we affirm.

Aiello sued prison officials under 42 U.S.C. § 1983.¹ The trial court determined that Aiello's action was frivolous and explained why an award of attorney's fees was appropriate. Before the trial court determined the amount, it directed Aiello "to submit an updated affidavit concerning his financial information including any money in his inmate account." In response, Aiello averred that he was "completely indigent in March of 1993." In respondents' fee request, counsel noted that Aiello "currently has no funds in his inmate account which may be used to satisfy a judgment, [however,] he has plenty of time to accumulate money through prison employment to pay any judgment for costs." The trial court then imposed attorney's fees.² See 42 U.S.C. § 1988.

After abandoning an appeal from the judgment, Aiello instead sought relief under § 806.07, STATS., claiming that the judgment should be vacated because he was unable to pay the fees.³ He framed this single substantive issue as three separate grounds for relief under § 806.07(1)(a), (g) and (h). The trial court denied his motion "[f]or the reasons stated in the Memorandum Decision of August 11, 1993." Aiello contends that this constitutes an erroneous exercise of discretion. We disagree.

Aiello had previously presented evidence on his indigency, which the court had already considered. In his motion for relief, he merely recast his previous arguments and further substantiated his indigency, rather than showing that a criterion for relief under § 806.07(1), STATS., was met. Under these circumstances, the court's reliance on the reasons in its decision on the judgment sought to be vacated constitutes a proper exercise of discretion.

By the Court. – Order affirmed.

¹ Aiello claimed that prison officials violated his federal constitutional rights by curtailing his access to the showers and to clean laundry during a prison lockdown.

² Although respondents' actual attorney's fees were \$960, they requested only \$500. The trial court awarded them \$250.

³ Aiello does not challenge the trial court's determination that his action was frivolous, its discretion to award attorney's fees, or the amount of the award.

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