COURT OF APPEALS
DECISION
DATED AND FILED

September 14, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2776

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STEPHEN J. WEISSENBERGER,

PETITIONER-APPELLANT,

v.

ROBERT ZEBRO, SHERIFF, DUNN COUNTY SHERIFF'S DEPARTMENT,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dunn County: ROD W. SMELTZER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Gordon Myse, Reserve Judge

HOOVER, P.J. Stephen Weissenberger, pro se, appeals an order quashing his writs of mandamus to compel the Dunn County Sheriff, Robert Zebro, and the Dunn County Sheriff's Department (collectively, sheriff) to produce information he had requested in an open records request. Weissenberger

claims that the circuit court erroneously exercised its discretion by: (1) allowing the sheriff's attorney, Beverly Wickstrom, to influence the court into considering his confinement status; (2) inquiring why Weissenberger wanted the record; and (3) allowing Wickstrom to represent the sheriff.[1] Because Weissenberger has variously failed to develop his arguments, cite to the record or preserve his contentions, we reject his arguments and affirm the order quashing the writs of mandamus.

Weissenberger submitted an open records request to the sheriff requesting "a copy of a roster or some sort of listing of all of your employees including your law enforcement officers." The sheriff denied the request on two grounds: (1) access to the information would subject the employees and their families to a substantial risk of harassment or other jeopardy; and (2) Weissenberger's access would tend to discourage persons from serving as employees of the sheriff's department or jail.

Weissenberger subsequently filed an original and amended writ of mandamus, as well as an alternative writ under § 19.37, STATS., requesting the material identified in the open records request as well as monetary relief.[2] The

[1] Weissenberger's headings in his brief indicates a fourth issue: that the court "ABUSED ITS DISCRETION BY DISMISSING THIS MANDAMUS ACTION BY THE ERRONEOUS VIEW OF THE LAW." This heading contained one paragraph reciting this court's standard of review. We do not consider this to constitute an argument: it does not specifically assign actionable error or provide an argument to support his assertion that the trial court applied an erroneous view of the law. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis.2d 239, 244-45, 430 N.W.2d 366, 369 (Ct. App. 1988).

[2] Section 19.37, STATS., provides, in part:

> (1) MANDAMUS. If an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives under pars. (a) and (b).

(continued)

sheriff, represented by Wickstrom, moved to quash the writs. The court heard the motion and granted an order quashing all writs of mandamus issued. Weissenberger appeals that order.

We review Weissenberger's complaints that the circuit court improperly admitted evidence and permitted Wickstrom to represent the sheriff as discretionary matters.[3] We will not overturn the circuit court's discretionary decision if it examined facts of record, applied the proper legal standard and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *See* ***Loy v. Bunderson***, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982).

Next, our review in connection with the decision to deny access to records reflects a two-step process:

> First, we must decide if the trial court correctly assessed whether the custodian's denial of access was made with the requisite specificity. Second, we determine whether the stated reasons are sufficient to permit withholding, itself a two-step analysis. Here, our inquiry is: (1) did the trial court make a factual determination supported by the record of whether the documents implicate the public interests in secrecy asserted by the custodian[ ] and, if so, (2) do the countervailing interests outweigh the public interest in release.

> (a) The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate.

[3] First, evidentiary rulings are reviewed with deference to determine whether the circuit court properly exercised discretion in accord with the facts of record and with accepted legal standards. *See* ***State v. Blair***, 164 Wis.2d 64, 74, 473 N.W.2d 566, 571 (Ct. App. 1991). Second, Weissenberger argues that the court erroneously exercised its discretion by allowing Wickstrom to represent the sheriff.

Mayfair Chrysler-Plymouth v. Baldarotta, 162 Wis.2d 142, 157, 469 N.W.2d 638, 643 (1991) (quoted source omitted).[4] An order quashing a petition for mandamus is the same as an order dismissing a complaint. ***Mazurek v. Miller***, 100 Wis.2d 426, 430, 303 N.W.2d 122, 125 (Ct. App. 1981). Our review here is de novo. *See* ***id.***; ***Bartley v. Thompson***, 198 Wis.2d 323, 331, 542 N.W.2d 227, 230 (Ct. App. 1995) (a motion to dismiss presents a question of law).

Weissenberger first contends that the court erred by permitting Wickstrom to influence the judge by identifying Weissenberger's status as a committed sexually violent person. Any error in this regard was harmless. In his open records request, which was part of his petition, Weissenberger identified his own status. The opening sentence of his request stated: "I'm currently confined at the Wisconsin Resource Center (WRC), per Chapter 980, Wis. Stats. (the sexual violent persons act) …." He cannot now complain that opposing counsel made reference to something Weissenberger himself had placed in the record.

Moreover, Weissenberger offers no evidence indicating that the court's knowledge of his status affected the disposition of his writs.[5] He merely asserts that the trial court considered his identity. He does not demonstrate from the record that the court in fact relied in part on his status in quashing his writs of mandamus. A party who claims the trial court erroneously exercised its discretion has the burden of showing a misuse of discretion, and an appellate court will not

[4] Weissenberger does not, appeal, challenge the specificity of the sheriff's reasons.

[5] We agree with Weissenberger that his status, as of the date he filed the records request, does not affect the disposition of his request. *See* ***State ex rel. Ledford v. Turcotte***, 195 Wis.2d 244, 252, 536 N.W.2d 130, 133 (Ct. App. 1995). His status would be relevant for a request filed after April 28, 1998. *See* § 19.32(3), STATS., as amended by 1997 Wis. Act 94.

reverse unless the erroneous exercise is clearly shown. *See* § 805.18, STATS.; ***Colby v. Colby***, 102 Wis.2d 198, 207-08, 306 N.W.2d 57, 62 (1981).

Weissenberger's second contention is that the court erred by inquiring why Weissenberger wanted the records.[6] His "argument" consists of his assertion that the "trial court abused its authority by asking and using Weissenberger's rationale to deny his request to inspect public records" and a recitation of case law. He does not direct us to those portions of the record where he claims the court either elicited this information regarding his reasons for requesting the information or how the court utilized any such information in its decision. Rather, Weissenberger presumes that the trial court improperly considered the reason he requested the records because of the court's inquiry as to the reason. We will not indulge in his presumption.

Weissenberger's presumption that the court improperly considered his reasons for the request is belied by the court's immediate acknowledgment, after requesting Weissenberger's reasons, that they need not be stated.[7] Further, it appears that the circuit court, while making a general reference to Weissenberger's reason, applied the proper standards. The court determined that "the employees of the sheriff's department do not … need to have their names, et cetera, be pulled

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[6] We agree with Weissenberger that the reasons for the request do not affect the disposition of his request. *See* ***Turcotte***, 195 Wis.2d at 252, 536 N.W.2d at 133.

[7] The transcript reflects the following exchange after Weissenberger told the court why he wanted the records:

> [Weissenberger:] … Besides that, I believe under state law is that my reasons–I believe it's Lashar (phonetic) versus Turcotte, that the reasons for my request doesn't need to be stated but that is my reasons for wanting the information.
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> THE COURT: Understand. Okay.

out at random … which … can subject … those employees to harassment … or other … activities that serve no legitimate purpose." The court obviously assessed the sheriff's reasons for denying the request because the court referred to the reasons in its decision.

The court's and sheriff's reasons are in accord with those we stated in ***State ex rel. Morke v. Record Custodian, DHSS***, 159 Wis.2d 722, 465 N.W.2d 235 (Ct. App. 1990). ***Morke*** involved a request for a list of employees and other information from a penal institution. ***Id***. at 724, 465 N.W.2d at 235-36. In ***Morke*** we said concern for the safety and well-being of the prison staff and their families and for institutional morale outweigh the general rule in favor of access. ***Id***. at 726, 465 N.W.2d at 236. Further, we noted the policy reasons behind our open records law and determined that granting the information Morke sought neither informs the electorate, promotes better self-governance, nor concerns official acts of government employees. ***Id***. at 726-27, 465 N.W.2d at 237. In this case the circuit court also considered that these policy considerations would not be advanced by granting Weissenberger's request. Because Weissenberger does not address, on appeal, whether the sheriff's and circuit court's stated reasons are sufficient to permit withholding the information, we conclude they are sufficient to permit withholding.

Ultimately, Weissenberger advances mere supposition as to why the circuit court denied mandamus. He does not identify by record citation the actual basis given on the record for the denial. Section 809.19(1)(b), STATS., [8] requires

[8] Section 809.19(1)(b), STATS provides:

> (1) BRIEF OF APPELLANT. The appellant shall file a brief within 40 days of the filing in the court of the record on appeal. The brief must contain:

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an appellant to include in his/her brief a statement of the issues presented for review and how the trial court decided them. Section 809.19(2),[9] directs that the appellant's brief shall include a short appendix providing relevant trial court record entries, the trial court's findings or opinion and limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues. Weissenberger's omission of these record citations makes it difficult for us to efficiently address the appeal and places this court in a position where its own record investigation and research could be considered as advocating the position of one of the litigants. In ***State v. Shaffer***, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980), we stated that we would not consider inadequate argument or appeals that otherwise do not comply with § 809.19. Similarly, we have said that it is not our duty, nor do we have the resources, to sift and glean the record *in extenso* to determine whether it supports the appellant's argument. *See* ***Cascade Mtn. v. Capitol Indem. Corp.***, 212 Wis.2d 265, 270 n. 3, 569 N.W.2d 45, 47 n.3 (Ct. App. 1997). Nor will we abandon our neutrality by developing Weissenberger's argument for him. *See* ***Barakat v. DHSS***, 191 Wis.2d 769,786, 530 N.W.2d 392, 398 (Ct. App. 1995).

> (b) A statement of the issues presented for review and how the trial court decided them.

[9] Section 809.19(2), STATS., provides in pertinent part:

> (2) APPENDIX. The appellant's brief shall include a short appendix providing relevant trial court record entries, the findings or opinion of the trial court and limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

Weissenberger's final contention is that the circuit court erroneously exercised its discretion by allowing Wickstrom to represent the sheriff. For authority he cites SCR 20:4.2, which prohibits communications between an attorney and another lawyer's client absent consent of the lawyer.[10] He fails to explain how that rule applies in this instance, either through record citation or argument. Weissenberger also argues that because Wickstrom did not file a notice of appearance, her pleadings should be stricken. He presents no authority or argument in support of the proposition that an attorney must file a notice of appearance in order to represent a party in litigation. His arguments fail because they are undeveloped. As we have stated previously, we will not consider Weissenberger's amorphous and undeveloped arguments. *See* ***Barakat***, 191 Wis.2d at 786, 530 N.W.2d at 398. We also note that Weissenberger did not raise this issue before the circuit court, and as such it is waived. *See* ***State v. Keith***, 216 Wis.2d 61, 79-80, 573 N.W.2d 888, 897 (Ct. App. 1997).

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[10] SCR 20:4.2 (West 1998) provides:

> COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL
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> In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Based on the foregoing, we affirm the circuit court's order quashing Weissenberger's writs of mandamus.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.