

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 8, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-3688

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**STATE OF WISCONSIN EX REL.
URBAN A. HUBERT, JR.,**

PETITIONER-APPELLANT,

v.

**TOWN OF MENASHA POLICE DEPARTMENT AND
TOWN OF MENASHA FIRE DEPARTMENT
RECORDS CUSTODIAN,**

RESPONDENTS-RESPONDENTS.

APPEAL from orders of the circuit court for Winnebago County:
ROBERT A. HAWLEY, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Urban Hubert, Jr. appeals from orders entered by the circuit court which addressed his mandamus action to compel disclosure of records from the Town of Menasha Police and Fire Departments. The issue on

appeal is whether the circuit court erred when it reduced the amount of damages awarded to Hubert from \$200 to \$100, and when it required Hubert to pay a fee of \$191 for reproducing certain records. Because we conclude that the circuit court properly exercised its discretion, we affirm.

¶2 Hubert filed open records law requests with custodians of records of the Town of Menasha Police and Fire Departments. When he did not receive any responses, Hubert filed a petition for a writ of mandamus in the circuit court. Eventually a hearing was held and the circuit court found that Hubert was entitled to have the records released to him and awarded him \$200 in damages. The court also agreed to conduct an in camera inspection of the documents before ordering them released.

¶3 After reviewing the records, the court issued an order which released the records to Hubert. The court further ordered Hubert to prepay approximately \$191 for the reproduction of certain slides held by the Fire Department. In a subsequent order, the court reduced the amount of damages awarded to Hubert from \$200 to \$100, finding that Hubert had not been required to pay filing fees and the court had not been required to award him damages. Hubert moved for reconsideration and the court denied that request.

¶4 The issue on appeal is whether the court erred when it reduced the amount of damages awarded to Hubert and when it ordered Hubert to pay \$191 for the reproduction of the slides. Hubert contends that the circuit court erroneously exercised its discretion when it reduced the amount of damages awarded to him from \$200 to \$100. We will sustain a discretionary act of the circuit court if that court examined the relevant facts, applied a proper standard of law 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). Further, a circuit court has the statutory authority on its own motion to amend its findings and conclusions. *See Village of Thiensville v. Olsen*, 223 Wis.2d 256, 262, 588 N.W.2d 394, 397 (Ct. App. 1998).

¶5 Hubert brought his action to compel disclosure of the requested documents under § 19.37, STATS. Section 19.37(2)(a) provides that a requester who prevails in whole or in part in any action under this statute is entitled to not less than \$100 in damages. The section goes on to state that an incarcerated person is not entitled to any minimum amount of damages, but the court may award damages. Hubert is an incarcerated person. Therefore, he is not entitled to a minimum amount of damages. Once the circuit court realized it did not have to award him a minimum amount of damages, it reduced the award from \$200 to \$100. This action was within the circuit court's authority and was reasonable based on the law and facts before the court.

¶6 Hubert also contends that the circuit court erred when it directed him to pay \$191 to the custodian of records to have certain slides reproduced. Section 19.35(3), STATS., allows the authority in charge of the records to impose a fee upon the requester of the records for reproducing the records. Consequently, it was reasonable for the circuit court to direct Hubert to pay the fee before these records would be released to him. Because we conclude that the circuit court did not erroneously exercise its discretion in entering the orders at issue, we affirm.

By the Court.—Orders affirmed.

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

