

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 11, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1922

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. QUINN JOHNSON,

PLAINTIFF-APPELLANT,

V.

**MICHAEL J. SULLIVAN, STEPHEN PUCKETT, AND
KANNENBERG,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
ROBERT R. PEKOWSKI, Judge. *Affirmed.*

Before Vergeront, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Quinn Johnson appeals from an order dismissing his declaratory judgment action against several employees of the Wisconsin Department of Corrections (DOC). Johnson claims that WIS. STAT.

§ 301.21(2m)(a) (1999-2000),¹ which authorized his transfer to a privately run out-of-state prison, is unconstitutional in several respects. For the reasons discussed below, we reject Johnson's arguments and affirm.

BACKGROUND

¶2 Johnson has been an inmate of the Wisconsin prison system under the custody and supervision of the DOC since 1994.² In June of 1998, the Fox Lake Program Review Committee informed Johnson that he was to be transferred to the Whiteville Correctional Facility in Tennessee. The transfer occurred later that year. Johnson objected and filed suit seeking to declare the transfer unconstitutional. After several procedural events not relevant to this appeal, the trial court placed Johnson's suit on hold pending a decision from this court as to whether WIS. STAT. § 301.21 authorized the transfer of prisoners out of state, and, if so, whether it violated due process. After we held in *Evers v. Sullivan*, 2000 WI App 144, 237 Wis. 2d 759, 615 N.W.2d 680, *review denied*, that the statute does authorize out-of-state transfers and does not violate due process, the trial court dismissed Johnson's suit, and he appeals.

STANDARD OF REVIEW

¶3 We independently review the trial court's dismissal of Johnson's suit for failure to state a claim. *Id.* at ¶ 5.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

² Johnson was sentenced to twenty-two years and six months in prison for possession of cocaine with intent to deliver.

ANALYSIS

¶4 Johnson contends *Evers* does not control the disposition of this appeal because he has raised issues that were not presented in that case. Specifically, he argues that allowing the transfer of Wisconsin inmates to private correctional facilities in other states: (1) violates the supremacy clause by extending Wisconsin's territorial limits; (2) violates the supremacy clause by depriving transferred inmates of the remedies available under 42 U.S.C. § 1983 for violations of their constitutional rights; and (3) violates the due process clause by subverting the procedures set forth in, and the intent underlying, the interstate compact agreement, WIS. STAT. § 302.25, and the extradition statute, WIS. STAT. § 976.03.³ We are persuaded that none of these contentions has merit.

¶5 First, Wisconsin has not extended its territorial limits by contracting with a Tennessee prison to house Wisconsin prisoners. Tennessee has authorized private entities such as the Correctional Corporation of America to do business within its state. It could withdraw its authorization if it chose to do so. In the meantime, prisoners who are housed in Tennessee are subject to Tennessee laws.⁴ WIS. STAT. § 301.21(2m)(a)8(b). Keith has not pointed to any sovereign right of Tennessee which Wisconsin has infringed.

³ Johnson attempts to develop some additional arguments, such as an equal protection claim, in his reply brief. We will not, however, consider arguments which are raised for the first time in the reply brief or which are too poorly developed to merit a response. *Henry v. General Cas. Co.*, 225 Wis. 2d 849, 868 n.10, 593 N.W.2d 913 (Ct. App. 1999), *review denied*; *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

⁴ Keith believes it is inconsistent to say that prisoners housed in Tennessee are subject to Tennessee law at the same time they remain under the custody of the Wisconsin Department of Corrections (DOC). We disagree. The DOC retains the ultimate responsibility for care and control of the prisoners while delegating day-to-day supervision. The DOC's duties in this respect vary little depending upon whether the prisoners under its control are subject to Wisconsin law or Tennessee law.

¶6 Second, Keith is mistaken in his supposition that private prison guards are exempt from liability under 42 U.S.C. § 1983. Federal law establishes that such officials are acting under the color of law. *See Richardson v. McKnight*, 521 U.S. 399, 403 (1997). We therefore see no problem under the supremacy clause.

¶7 Finally, sending prisoners out of state does not violate the interstate compact agreement because the contract at issue is not one between two states, and does not increase Wisconsin's political power in relation to federal authority. U.S. CONST. art. I, § 10, cl. 3; *Cuyler v. Adams*, 449 U.S. 433 (1981). The extradition statute does not apply because it deals with persons who have been charged with crimes, not those who have already been convicted. *See* WIS. STAT. § 976.03(2). Failure to comply with provisions which are inapplicable on their face does not violate due process.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

