

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 25, 2010

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. 2008AP2723

Cir. Ct. No. 2008CV471

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

TITUS HENDERSON,

PETITIONER-APPELLANT,

V.

**PETER HUIBREGTSE, RICK RAEMISCH, SGT. JONES, C.O. CAYA AND
G. BOUGHTON,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Grant County:
ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Titus Henderson appeals an order dismissing his petition for a temporary restraining order. We affirm.

¶2 Henderson’s petition named prison officials as defendants. Henderson relied on the harassment injunction statute, WIS. STAT. § 813.125 (2007-08).¹ He alleged various misdeeds committed against Henderson in prison by prison staff. The circuit court dismissed the petition on the ground that Henderson had failed to exhaust his administrative remedies as required by WIS. STAT. § 801.02(7)(b).

¶3 Henderson’s opening brief on appeal makes few, if any arguments related to exhaustion of remedies. He does not argue that the record, as it currently exists, shows exhaustion. The closest he comes is arguing that prison staff prevented him from sending documents to the court to show he exhausted his remedies. However, the circuit court held an evidentiary hearing at which Henderson testified that staff had prevented him from sending his documents, and the court apparently found that testimony not credible. The court stated that Henderson had not shown he had been prohibited from showing exhaustion of remedies. Based on the record before us, this finding is not clearly erroneous. *See* WIS. STAT. § 805.17(2). Therefore, we conclude the court properly dismissed this action for failure to exhaust remedies.

¶4 To the extent Henderson makes additional arguments about exhaustion in his reply brief, we decline to consider those because the respondents have not had an opportunity to respond. *See Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981).

By the Court.—Order affirmed.

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

This opinion will not be published.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

