COURT OF APPEALS
DECISION
DATED AND FILED

October 4, 2016

Diane M. Fremgen
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. 2015AP1883 **Cir. Ct. No. 2015CV183**

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

THOMAS WOZNICKI,

PLAINTIFF-APPELLANT,

V.

JEFF MOBERG, RECORDS CUSTODIAN,
SCHOOL DISTRICT OF NEW RICHMOND,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County: ERIC J. LUNDELL, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 SEIDL, J. Thomas Woznicki appeals an order denying his request for an injunction prohibiting his former employer—the New Richmond School

District (District)—from releasing his District personnel file under Wisconsin's open records law, WIS. STAT. §§ 19.31–39.[1] We conclude that any public interest in nondisclosure of Woznicki's personnel file is outweighed by the strong and presumptive public interest in public access to, and disclosure of, his personnel file. Therefore, we affirm the circuit court's order.

BACKGROUND

¶2 The relevant facts are not in dispute. The District employed Woznicki as a teacher from 1987 to 1997. In 1994, "Woznicki was charged with having consensual sex with a minor over the age of sixteen." ***Woznicki v. Erickson***, 202 Wis. 2d 178, 181, 549 N.W.2d 699 (1996). However, the St. Croix County district attorney later dismissed the criminal case against Woznicki. ***Id.*** at 181-82. Woznicki's District personnel file includes information relating to an investigation of disciplinary matters involving Woznicki.

¶3 In March 2015, Citizens for Responsible Government (CRG Network) made an open records request seeking disclosure of Woznicki's District personnel file.[2] On April 1, 2015, Jeff Moberg, the District's record custodian at the time, informed CRG Network the District planned to release Woznicki's personnel file, but that, pursuant to WIS. STAT. § 19.356, it first had to notify Woznicki of its intention to do so. Moberg then informed Woznicki that the District had received an open records request for his District personnel file; the

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] Initially, the District incorrectly informed Woznicki that the New Richmond News was the requestor of his District personnel file.

District intended to release his District personnel file, with his home address redacted; and that Woznicki could challenge the District's decision under § 19.356.

¶4 On April 16, 2015, Woznicki filed this action against Moberg, seeking an injunction prohibiting the District from disclosing his District personnel file. The District argued that the strong public interest in public disclosure of the file outweighed the public interest in its nondisclosure. After conducting an *in camera* review of Woznicki's personnel file, the circuit court determined that the public interest in disclosure outweighed Woznicki's interest in nondisclosure.[3] Woznicki now appeals. Additional facts are set forth below where relevant.

DISCUSSION

¶5 Woznicki argues that the public interest in nondisclosure of his District personnel file outweighs the public interest in the file's disclosure. Specifically, he argues: (1) the public interest in having the District adhere to its records retention policy outweighs the public interest in disclosure of his personnel file; and (2) the public interest in protecting him from a private citizen's

[3] In concluding that the public interest in disclosure of Woznicki's personnel file outweighed Woznicki's *personal* interest in nondisclosure, the circuit court did not utilize the proper legal test. However, based on our de novo review using the proper legal standard, we affirm the court's decision.

harassment outweighs the public interest in disclosure of his personnel file.[4] As we explain below, the strong and presumptive public interest in public disclosure of Woznicki's personnel file outweighs any public interest in nondisclosure.

I. Standard of Review

¶6 The interpretation and application of a statute to an undisputed set of facts presents a question of law that we review de novo. *See* ***State v. Popenhagen***, 2008 WI 55, ¶32, 309 Wis. 2d 601, 749 N.W.2d 611. Whether a public interest in nondisclosure of Woznicki's personnel file outweighs the strong public interest in public access and disclosure is also a question of law that we review de novo without deference to the circuit court's decision. *See* ***Zellner v. Cedarburg Sch. Dist.***, 2007 WI 53, ¶17, 300 Wis. 2d 290, 731 N.W.2d 240.

II. Wisconsin's Open Records Law

¶7 Wisconsin's open records law "embodies one part of the legislature's policy favoring the broadest practical access to government." ***Hempel v. City of Baraboo***, 2005 WI 120, ¶22, 284 Wis. 2d 162, 699 N.W.2d 551 (footnote omitted). "[T]he clearly stated, general presumption of our law is that all public records shall be open to the public." ***Linzmeyer v. Forcey***, 2002 WI 84,

[4] Woznicki also makes other arguments on appeal. He argues: (1) the legislative intent of Wisconsin's open records law does not support disclosure of his personnel file; (2) the District's records retention policy evinces minimum public interest in disclosure of his personnel file; and (3) a person requesting public records through an intermediary party frustrates the legislative purpose of WIS. STAT. § 19.356. However, these arguments are either based on factual assertions that are unsupported by citation to the record or are inadequately developed. Therefore, we decline to address them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (declining to address inadequately developed arguments); ***Tam v. Luk***, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990) (declining to address arguments premised on unsupported factual assertions).

¶15, 254 Wis. 2d 306, 646 N.W.2d 811. "This presumption reflects the basic principle that the people must be informed about the workings of their government and that openness in government is essential to maintain the strength of our democratic society." ***Id.*** "Access is only to be denied 'in an exceptional case.'" ***John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach***, 2014 WI App 49, ¶14, 354 Wis. 2d 61, 848 N.W.2d 862 (quoting WIS. STAT. § 19.31 (2011-12)).

¶8 Although "[t]he presumption favoring disclosure is strong, [it] is not absolute." ***Hempel***, 284 Wis. 2d 162, ¶28. "The strong presumption of public access may give way to statutory or specified common law exceptions, or if there is an overriding public interest in keeping the public record confidential." ***Kroeplin v. DNR***, 2006 WI App 227, ¶13, 297 Wis. 2d 254, 725 N.W.2d 286. However, "[i]f neither a statute nor common law creates a blanket exception, [we] must decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure." ***Hempel***, 284 Wis. 2d 162, ¶28. Since Woznicki does not argue that his District personnel file is subject to a statutory or common law exception, we address whether any public interest in nondisclosure of his personnel file outweighs the strong public interest in its disclosure. *See* ***Linzmeyer***, 254 Wis. 2d 306, ¶23.

¶9 In determining whether a public interest in nondisclosure outweighs the public interest in disclosure, we must examine "all [of] the relevant factors … in the context of the particular circumstances." ***Seifert v. School Dist. of Sheboygan Falls***, 2007 WI App 207, ¶31, 305 Wis. 2d 582, 740 N.W.2d 177 (citation omitted). Relevant factors may include the requestor's identity and purpose in requesting a public record. *See* ***Hempel***, 284 Wis. 2d 162, ¶66 (requestor's motivation is a relevant factor); ***State ex rel. Ardell v. Milwaukee Bd.***

of Sch. Dirs., 2014 WI App 66, ¶¶16-17, 354 Wis. 2d 471, 849 N.W.2d 894 (requestor's identity is a relevant factor).

III. Application of Wisconsin's Open Records Law

¶10 Assuming there is a public interest in having the District adhere to its records retention policy, Woznicki argues that interest outweighs the public interest in disclosure of his personnel file. Specifically, he contends the District violated its own records retention policy when it retained "Woznicki's personnel file for eighteen years after he separated … with the District." There would be nothing to disclose had the District properly followed its policy and destroyed his personnel file. However, contrary to Woznicki's assertion, the District did not violate its records retention policy by retaining his personnel file for eighteen years.

¶11 Woznicki cites no authority in support of his argument in this regard, and we see no merit in the argument. Nothing in the District's records retention policy requires the District to destroy its records. The District's retention policy is consistent with state law, which permits—but does not require—school districts to destroy obsolete school records, as long as certain procedures are followed. *See* WIS. STAT. § 19.21(6) (noting that "a school district *may* provide for the destruction of obsolete school records" (emphasis added)). Furthermore, even assuming the District violated its own retention policy, or violated Wisconsin's records retention law, § 19.21, it is irrelevant to our analysis of whether Woznicki's personnel file must be disclosed under Wisconsin's open records law. *See* ***State ex rel. Gehl v. Connors***, 2007 WI App 238, ¶¶12-15, 306 Wis. 2d 247, 742 N.W.2d 530 (whether a government entity complies with Wisconsin's records retention law is irrelevant to the issue of whether a record

must be disclosed under Wisconsin's open records law); ***id.***, ¶15 ("The public records law addresses the duty to disclose records; it does not address the duty to retain records." (footnote omitted)).

¶12 Woznicki next argues the public interest in protecting him—as the subject of a public records request—from harassment outweighs the public interest in disclosure of his personnel file. Specifically, he contends that: (1) an individual we refer to as J.B. contacted Woznicki and his wife numerous times by mail and email in 2014 and 2015; (2) most of the messages J.B. sent the Woznickis asked Woznicki to admit that he had an inappropriate relationship with J.B.'s sister when Woznicki was a teacher with the District; (3) the messages J.B. sent constitute harassment under WIS. STAT. § 813.125(1)(b); and (4) if Woznicki's District personnel file is disclosed, J.B. will use the information contained within it to further harass him.

¶13 In some instances, safety concerns may "outweigh[] the presumption of disclosure." ***Ardell***, 354 Wis. 2d 471, ¶10; *see also* ***Klein v. Wisconsin Res. Ctr.***, 218 Wis. 2d 487, 490, 496-97, 582 N.W.2d 44 (Ct. App. 1998) (concluding that a state employee's personnel file should not be released to patients committed to a state facility as sexually violent persons, despite the presumption favoring public access to records, based partly upon concerns for the employee's safety). Although "the possibility of threats, harassment or reprisals alone is a legitimate consideration for a custodian, the public interest weight given to such a consideration increases or decreases depending upon the likelihood of threats, harassment or reprisals actually occurring." ***Erpenbach***, 354 Wis. 2d 61, ¶26 (emphasis omitted). Mere embarrassment from the disclosure of a public record is not sufficient, especially, as in this case, when truly private information, such as Woznicki's address, will be redacted. *See* ***Milwaukee Journal Sentinel v.***

Wisconsin DOA, 2009 WI 79, ¶62, 319 Wis. 2d 439, 768 N.W.2d 700 ("[T]he potential for embarrassment is not a basis for precluding disclosure.").

¶14 Here, CRG Network, not J.B. who contacted the Woznickis, requested the disclosure of Woznicki's District personnel file.[5] *See* ***Ardell***, 354 Wis. 2d 471, ¶¶16-17 (requestor's identity is a relevant factor). CRG Network has not harassed Woznicki and nothing in the record suggests CRG Network will use the information contained in Woznicki's personnel file to harass him. Furthermore, Woznicki has failed to demonstrate a reasonable probability that if his personnel file is disclosed to CRG Network, J.B. will use the information contained within to harass him.[6]

¶15 In contrast to the public interest Woznicki asserts supports nondisclosure of his personnel file—which contains information relating to an investigation of disciplinary matters, *see supra* ¶¶2, 10-11, 14—there is significant public interest supporting disclosure. Wisconsin's open records law presumes that public records are accessible to the public. ***Linzmeyer***, 254 Wis. 2d 306, ¶23. In addition:

> Public school teachers … are in a significant position of responsibility and visibility. They are entrusted with the

[5] Woznicki himself concedes that "the initial request for [his] personnel file that served as the basis for [his] claim was made by CRG Network." Woznicki's belief that J.B. initiated the open records request through CRG Network is unsubstantiated and speculative.

[6] It is true that this individual sent Woznicki numerous messages in 2014 and 2015, most of which asked Woznicki to admit he had an inappropriate relationship with the individual's sister when Woznicki was a teacher with the District. However, none of the messages the individual sent: (1) violated a court injunction; (2) contained threats to physically harm Woznicki; or (3) contained threats to engage in other unlawful activity. *Cf.* ***State ex rel. Ardell v. Milwaukee Bd. of Sch. Dirs.***, 2014 WI App 66, ¶¶11-13, 354 Wis. 2d 471, 849 N.W.2d 894 (requestor denied access to public records because he physically harmed and harassed the "record subject" and later violated a court injunction prohibiting him from contacting the record subject).

> responsibility of teaching children, and the public has an interest in knowing about … allegations of teacher misconduct and how they are handled. The public also has an interest in knowing how the government handles disciplinary actions of public employees.

Zellner, 300 Wis. 2d 290, ¶53 (citation omitted). "[A]s a teacher, [Woznicki was] in the public eye, and [was] charged with the important societal responsibility of educating children." ***Linzmeyer***, 254 Wis. 2d 306, ¶29. "Thus, [Woznicki's] position [was] one where the public should be able to expect some increased accountability." ***Id.***

¶16 We conclude that Woznicki has failed to demonstrate that a public interest in nondisclosure of his District personnel file outweighs the strong and presumptive public interest in access to, and disclosure of, his personnel file under Wisconsin's open records law. We therefore affirm the order denying Woznicki's request for an injunction.

By the Court.—Order affirmed.

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