

State ex rel Marcus J. Kerby,
Plaintiff/Petitioner
vs.

FILED

JAN 18 2018

ORDER

Jon Litscher,
Defendant/Respondent

DANE COUNTY CIRCUIT COURT

Case No. 17 CV 1363

Petitioner appeared by phone and Respondent appeared by Asst. A.G. David Rice for an oral ruling. For the reasons stated on the record:

1. Certiorari is the correct posture for this case.
2. In such an action, refunds are subject to the notice of claim statute, 893.82. See unpublished decision **Pischke v. Sondalle**, 2000 WI APOP 43, 237 Wis. 2d 693. The issue of a refund is not before this court.
3. I agree with Respondent that the more specific statute at hand regarding 25% withholding of certain funds per s. 973.04 governs. Subsection (b) limits the types of funds from which fines up to a maximum of 25% can be paid. Those types of funds do not include money from family or friends. They only include those specifically listed. Any money received from friends or family are not within those categories, including the last items listed at money due the clerk of courts. Family and friends do not owe such money.
4. No DOC rule can override that or any other specific statute. Act 355 did nothing to change s. 973.04. The orders from the court stating the correct 25% maximum for withholding are, therefore, the valid orders DOC must follow.
5. Declaratory judgment and an injunction are appropriate and available remedies where an agency rule is unlawful and where needed to stop a practice, as here, that is not authorized.
6. Based on the above, I need not address any other issues raised.

IT IS ORDERED, the underlying interpretation by DOC of withholding more than 25% is invalid, declared to be invalid and an injunction is hereby issued preventing any further withholding that goes above the 25% and the types of funds available.

Dated January 18, 2018.

BY THE COURT



Shelley J. Graylord

ccPetitioner, AGA Rice