

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 17, 1996

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0377

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

DENNIS J. ARNOLD,

Plaintiff-Appellant,

v.

CITY OF MILWAUKEE,

Defendant-Respondent.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL D. GUOLEE, Judge. *Affirmed.*

FINE, J. Dennis J. Arnold appeals, *pro se*, from the trial court's dismissal of his complaint. Although Arnold's notice of appeal and pleadings in this matter are largely incomprehensible, we assume that he appeals from both aspects of the trial court's order: (1) dismissal of his complaint as against Milwaukee County, upon which service was apparently made, because the complaint failed to state a claim against Milwaukee County; and (2) dismissal, without prejudice, of the complaint insofar as it purports to state a claim against the City of Milwaukee. We affirm.

The County of Milwaukee and the City of Milwaukee are distinct and separate entities. A civil action against a person or entity is commenced by the filing with the circuit court of “a summons and complaint naming the person” or entity “as defendant,” “provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 60 days after filing.” RULE 801.02(1), STATS. In order to be legally sufficient, a complaint must set forth a “short and plain statement of the claim” asserted against the defendant, “identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief.” RULE 802.02(1)(a), STATS. A complaint that does not state a claim against the defendant must be dismissed. See RULE 802.06(2) & (3), STATS.

Neither the summons in this case (subtitled “Notice of motion to dismiss or for a more definite statement”) nor the attached document that purports to be the complaint names the County of Milwaukee as a defendant. Moreover, as the trial court pointed out, the document purporting to be the complaint does not allege any action or inaction by the County of Milwaukee or any of its employees that could form any basis for a claim against the County of Milwaukee. The trial court's dismissal of the complaint as against the County of Milwaukee for failure to state a claim against the County of Milwaukee is affirmed.

The summons in this action names the City of Milwaukee as the defendant. The circuit court, however, does not have jurisdiction over a defendant unless proper service is made on that defendant within 60 days of the date the summons and complaint were filed with the court. RULE 801.02, STATS.

Appellate courts decide appeals based on the law and the facts that are revealed by the appellate record, and we are bound by the record as it comes to us. *Duhame v. Duhame*, 154 Wis.2d 258, 269, 453 N.W.2d 149, 153 (Ct. App. 1989). Thus, when the appellate record does not support the appellant's contention that the trial court erred, we must assume that the missing material supports the trial court's ruling. *Ibid.*

There is nothing in the record on appeal that indicates that the City of Milwaukee was ever served with an authenticated copy of the summons

and complaint. Indeed, Arnold does not even contend that there was service on the City of Milwaukee. Accordingly, the trial court's dismissal of the complaint against the City of Milwaukee without prejudice is affirmed.

By the Court. – Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.