

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 12, 2004**

Cornelia G. Clark  
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. 03-2362  
STATE OF WISCONSIN**

**Cir. Ct. No. 03CV000010**

**IN COURT OF APPEALS  
DISTRICT I**

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**CEDRIC ALBERT HOLZE,  
  
PLAINTIFF-APPELLANT,**

**v.**

**STATE OF WISCONSIN LABOR AND  
INDUSTRY REVIEW COMMISSION  
AND STATE OF WISCONSIN DEPARTMENT  
OF WORKFORCE DEVELOPMENT,  
UNEMPLOYMENT INSURANCE  
DIVISION,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MEL FLANAGAN, Judge. *Appeal dismissed and cause remanded with  
directions.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Cedric Albert Holze appeals, *pro se*, from the trial court's order affirming a decision by the Labor and Industry Review Commission. The dispositive issue on appeal is whether the trial court was competent to exercise its subject matter jurisdiction over Holze's case.<sup>1</sup> We conclude that it was not. We dismiss the appeal and remand the case with directions to vacate the order and dismiss Holze's complaint with prejudice.

I.

¶2 Holze was terminated from his job at Security Link Incorporated in April of 2001. He initiated a claim for unemployment insurance benefits on July 9, 2002, requesting that his benefits start with the week of May 5, 2001. The Department of Workforce Development determined that Holze was eligible for benefits starting with the week of July 6, 2002, but denied Holze's request for retroactive benefits.

¶3 Holze appealed, and an administrative hearing was held on September 30, 2002. At the hearing, Holze testified that he did not initiate a claim until July 9, 2002, because "there was a great deal of information I had to immediately research based on [a then-pending felony charge]." He told the administrative law judge that he could not file his claim while he did the research because it "would have been an act against [his] conscience. I would not take something that I did not feel I was entitled to. And if I had done something illegal, if I was guilty of harming someone, I would not be entitled." In a written

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<sup>1</sup> Holze raises several issues on appeal. We do not address these issues, however, because the competency issue is dispositive. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

decision, the administrative law judge determined that Holze was not entitled to retroactive benefits because he failed to timely notify the Department of his intent to initiate a claim for unemployment insurance benefits, and that this failure was not due to exceptional circumstances. *See* WIS. STAT. § 108.08(1) (notification) (2001–02); WIS. ADMIN. CODE § DWD 129.01(4) (exceptional circumstances).<sup>2</sup>

¶4 Holze filed a petition for review with the Labor and Industry Review Commission. The Commission affirmed the administrative law judge, and adopted his findings and conclusion in a written decision and opinion issued on December 6, 2002. On January 3, 2003, Holze served on the Commission a thirty-six page document titled, “summons and complaint for review of December 06, 2002 Labor and Industry Review Commission decision pursuant [sic] to Wisconsin Statute chapter 108, 108.09(7) (a).” (Uppercasing omitted.)

¶5 The Commission moved to dismiss Holze’s complaint on the ground that the trial court was not competent to review Holze’s case because Holze did not file a proper summons. *See* WIS. STAT. RULES 801.09, 801.095 (content of summons). The trial court held a hearing on March 3, 2003. It determined that Holze’s summons was defective, but denied the Commission’s motion, and granted Holze ten additional days to serve an amended summons and complaint. On March 11, 2003, Holze filed an amended summons and complaint. The trial court affirmed the Commission, and Holze appeals.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2001–02 version unless otherwise noted.

## II.

¶6 This appeal requires us to decide two issues. First, did Holze's original summons comply with the statutory requirements.<sup>3</sup> Second, if Holze's summons did not comply with the statutory requirements, was the trial court competent to act in Holze's case. We begin with whether Holze met the statutory requirements for filing a summons.

¶7 The content, form, and manner of service of a summons are set out in WIS. STAT. RULES 801.09 through 801.13. As relevant, RULE 801.09 provides that a summons shall contain:

(2) A direction to the defendant summoning and requiring defendant to serve upon the plaintiff's attorney, whose address shall be stated in the summons, either an answer to the complaint if a copy of the complaint is served with the summons or a demand for a copy of the complaint. The summons shall further direct the defendant to serve the answer or demand for a copy of the complaint:

(a) Except as provided in par. (c), within 45 days, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for the defendant; or

(b) Within 45 days after a date stated in the summons, exclusive of such date, if no personal or substituted personal service has been made, and service is made by publication. The date so stated in the summons shall be the date of the first required publication.

(c) Within 20 days, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another

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<sup>3</sup> At the hearing on the motion to dismiss, the Commission did not dispute that the original summons was filed timely. *See* WIS. STAT. § 102.23(1)(a) (summons and complaint must be filed thirty days after commission decision).

authorized to accept service of the summons for the defendant if the proceeding is to foreclose or otherwise enforce a lien or security interest.

(3) A notice that in case of failure to serve an answer or demand for a copy of the complaint within the time fixed by sub. (2), judgment will be rendered against the defendant according to the demand of the complaint.

Additionally, WIS. STAT. RULE 801.095 requires that “[t]he summons shall be substantially in one of the forms specified in subs. (1) to (4),” and gives four examples of a summons.

¶8 Holze’s summons did not comply with the statutory requirements. As we have seen, Holze originally served on the Commission a document titled “summons and complaint for review of December 06, 2002 Labor and Industry Review Commission decision pursuant [sic] to Wisconsin Statute chapter 108, 108.09(7) (a).” (Uppercasing omitted.) This document did not contain all of the information required by WIS. STAT. RULE 801.09, and did not substantially resemble any of the forms specified in WIS. STAT. RULE 801.095. Specifically, Holze’s summons did not require the Commission to serve an answer within a specific time limit or notify the Commission that the failure to file an answer within the time limit would result in judgment being rendered against the Commission. Thus, the summons was fatally defective.<sup>4</sup> See *Mech v. Borowski*, 116 Wis. 2d 683, 686, 342 N.W.2d 759, 760 (Ct. App. 1983) (“Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may appear to be harsh.”). This leads to the second issue, whether the trial court

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<sup>4</sup> During the hearing before the trial court on the Commission’s motion to dismiss, Holze told the trial court that he was not a lawyer and he did the best he could. Holze’s *pro se* status is not a valid reason for his failure to comply with the statutory requirements. See *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16, 20 (1992) (“*Pro se* appellants must satisfy all procedural requirements.”).

was competent to act in Holze's case if the summons did not comply with the statutory requirements.

¶9 Competency is the ability of a court to exercise its subject matter jurisdiction. *State v. Bollig*, 222 Wis. 2d 558, 565–566, 587 N.W.2d 908, 911 (Ct. App. 1998). A court gains competence to proceed by following the statutory requirements established by the legislature. See *Miller Brewing Co. v. Labor & Indus. Review Comm'n*, 173 Wis. 2d 700, 705–706 n.1, 495 N.W.2d 660, 661–662 n.1 (1993). A court may lose competence to proceed in a matter, however, if the statutory requirements are not followed. See *id.*

¶10 The legislative requirements for obtaining judicial review of a commission decision involving unemployment benefits are clearly set forth. A party may seek judicial review of the Commission's decision under WIS. STAT. § 108.09(7). Under § 108.09(7)(a), a petition for judicial review must be commenced in accordance with WIS. STAT. § 102.23. Section 102.23(1) provides, as relevant that:

(a) ... Within 30 days after the date of an order or award made by the commission ... any party aggrieved thereby may by serving a complaint as provided in par. (b) and *filing the summons* and complaint with the clerk of the circuit court commence, in circuit court, an action against the commission for the review of the order or award.

(b) In such an action a complaint shall be *served with an authenticated copy of the summons*. The complaint need not be verified, but shall state the grounds upon which a review is sought.

(Emphasis added.) As we have seen, Holze filed a summons that was fatally defective. Accordingly, Holze did not properly comply with the statutory requirements for obtaining judicial review of a commission decision, and the trial court lost its power to act after the thirty-day time limit had run. We dismiss the

appeal and remand the case with directions to vacate the order and dismiss Holze's complaint with prejudice. *See Miller Brewing Co.*, 173 Wis. 2d at 706, 495 N.W.2d at 662 ("If an appellant does not comply with sec. 102.23(1)(a) the [trial] court cannot proceed with the case; the [trial] court must dismiss the action with prejudice and the appellant loses the right to judicial review of the [Labor and Industry Review Commission]'s decision.") (footnote omitted).

*By the Court.*—Appeal dismissed and cause remanded with directions.

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

