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DISTRICT IV

October 26, 2023

To:

Hon. Troy D. Cross
Circuit Court Judge
Electronic Notice

Karla Z. Keckhaver
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

Robert H. Jordan 351126
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

You are hereby notified that the Court has entered the following opinion and order:

2022AP1682

Robert H. Jordan v. Steven G. Giuati (L.C. # 2022CV122)

Before Kloppenburg, P.J., Graham, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robert Jordan appeals an order dismissing his civil complaint. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.

Jordan filed a complaint naming Steven Giuati and Angela Davis as defendants. He alleged a personal injury and sought monetary damages and other relief. The circuit court

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

dismissed the case without prejudice because Jordan did not provide proof of service of the summons and complaint on the defendants. Jordan appeals.

On appeal, Jordan does not make any argument as to defendant Davis. Therefore, as to the dismissal of Davis, we affirm.

As to Giuati, Jordan argues that the case should not be dismissed, because he attempted to serve Giuati by first using methods that do not comply with statutory requirements, and then by using the sheriff's department, but was not successful. However, these facts are not a basis to reverse the dismissal order, because service must actually be obtained, not just attempted. The statute requires that service "is made" on the defendant for the action to be commenced. WIS. STAT. § 801.02(1).

Jordan's complaint was filed on April 29, 2022, after the circuit court granted his petition to proceed without prepayment of the filing fee. By statute, Jordan then had ninety days to serve the defendants. WIS. STAT. § 801.02(1). Ninety days from April 29 was July 28, 2022. On September 12, 2022, Jordan filed a certificate of non-service that he received from the sheriff's department. The certificate stated that Giuati's address could not be determined, and that the department had unspecified "phone contact" stating that Giuati had "moved back to Puerto Rico." The record is clear that no service was made on Giuati by July 28, 2022, and therefore the circuit court properly dismissed the complaint on October 19, 2022.²

² The circuit court docket entries, and later correspondence from the clerk of the circuit court, state that the case was dismissed on July 27, 2022. However, there does not appear to have been either an oral or written order by the court on that date.

Jordan argues that, in light of his attempts and the obstacles he faced in making service, the time to serve should have been extended. However, that time may not be enlarged. WIS. STAT. § 801.15(2)(a).

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals