

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

March 5, 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. 95-1228**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**DEBORAH L. GUENTHER  
and GLENN GUENTHER,**

**Plaintiffs-Appellants,**

**v.**

**ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY,**

**Defendant-Respondent.**

APPEAL from an order of the circuit court for Milwaukee County:  
LOUISE M. TESMER, Judge. *Affirmed.*

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

PER CURIAM. Deborah L. and Glenn Guenther appeal from an order of the circuit court dismissing their cause of action against St. Paul Fire and Marine Insurance Company for failure to effectuate proper service. On appeal, the Guenthers argue that they sufficiently complied with § 801.02, STATS., by placing a copy of the summons and complaint in the United States

Express Mail, addressed to the Commissioner of Insurance, on the sixtieth day after filing the summons and complaint. The only issue is whether, on the record before us, the Guenthers' attempted service was timely under § 801.02, STATS. That is a question of law that we review *de novo*. *Dungan v. County of Pierce*, 170 Wis.2d 89, 93-94, 486 N.W.2d 579, 581 (Ct. App. 1992).

Section 801.02(1), STATS., provides:

A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, 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.

It is undisputed that the summons and complaint in this action were filed on December 6, 1994. It is also undisputed that the Guenthers mailed the summons and complaint to the Commissioner of Insurance on the sixtieth day, February 6, 1995. It is further undisputed that the summons and complaint were received by the Commissioner of Insurance on the sixty-first day, February 7, 1995.

In attempting to effectuate service on the Commissioner of Insurance, the Guenthers utilized § 601.73(1)(a), STATS., which provides:

REQUIREMENTS FOR EFFECTIVE SERVICE. Service upon the commissioner or secretary of state under s. 601.72 is service on the principal, if:

(a) Two copies of the process are left in the hands or office of the commissioner or secretary of state respectively.

In construing the rules of civil procedure, we apply ordinary principles of statutory construction. See *Davies v. Heiman*, 186 Wis.2d 370, 376, 520 N.W.2d

917, 919 (Ct. App. 1994). If the meaning of a statute is clear on its face, we will not look outside the statute in applying it. *Wisconsin Elec. Power Co. v. Public Service Comm'n*, 110 Wis.2d 530, 534, 329 N.W.2d 178, 181 (1983). The Guenthers assert that “left in the hands” includes placing in the mail. The trial court disagreed, interpreting § 601.73(1)(a), STATS., as requiring actual receipt. From the text of the statute itself, it is clear that the Guenthers proposed construction is implausible. The language of § 601.73(1)(a), STATS., specifically “left in the hands ... of the commissioner” indicates that service through the Commissioner of Insurance is made at the time the summons and complaint are physically in the office of the Commissioner of Insurance. Therefore, the Guenthers failed to satisfy the requirements of § 801.02(1), STATS., by mailing the summons and complaint on the sixtieth day because the documents were not physically received by the Commissioner of Insurance until the sixty-first day.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.