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**DISTRICT II**

December 4, 2013

To:

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

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2013AP372

State of Wisconsin v. Eiman Nassar (L.C. #2010PA32)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Eiman Nassar appeals from an order denying as untimely her petition for de novo review of a family court commissioner's ruling. Based on our review of the briefs and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We reverse and remand for a de novo hearing.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

On July 26, 2012, Ronald Wilson and Nassar litigated a paternity action at a trial/evidentiary hearing before a court commissioner. The commissioner decided paternity, custody, placement, and child support. The next day, Nassar filed a written demand for a de novo hearing but did not give notice to Wilson or the guardian ad litem (GAL). Twenty-one days later, on August 17, the commissioner entered his written order. The order stated that either party could request a de novo hearing if it filed a “written request ... with the Judge’s clerk within ten (10) days of receipt of the written order.” On September 11, forty-six days after filing her July 27 demand, Nassar provided Wilson and the (GAL) a copy of it.

Wilson and the GAL objected that the de novo hearing demand was untimely because it was not filed within ten days of receipt of the commissioner’s written order. The circuit court held a hearing on the timeliness of the de novo demand. The court dismissed it as not timely filed or served on opposing parties, and the lack of sufficient notice prejudiced the minor child. Nassar appeals.

WISCONSIN STAT. § 757.69(8) entitles a party to circuit court review of a court commissioner’s decision “upon motion of any party.” The statute does not state when the motion for review must be made. WISCONSIN STAT. § 802.01(2), governing motions in general, provides in relevant part:

(e) *When deemed made.* In computing any period of time prescribed or allowed by the statutes governing procedure in civil actions and special proceedings, a motion which requires notice under s. 801.15 (4) shall be deemed made when it is served with its notice of motion.

Nassar argues that § 802.01(2)(e) does not apply because § 757.69(8) does not involve computing a time period “prescribed or allowed” by a statute. Accordingly, she argues, one requesting a de novo hearing must turn for guidance to the county’s local rules. We agree.

In Ozaukee county, the applicable rule provides in relevant part:

307.1 REVIEW OF DECISIONS OF A COURT COMMISSIONER

Any determination, order, or ruling by a court commissioner may be certified to the branch of court to which the case has been assigned, upon a motion by any party. Such motion shall be filed within ten (10) days of the date of the determination, order, or ruling or, if the determination, order, or ruling was mailed, by allowing the statutory time for mailing in addition to the specified time.

OZAUKEE CNTY. CIR. CT. R. 307.1 (June 16, 2003). Nassar argues that her July 27 de novo demand was timely because she filed it well within ten days of the court commissioner’s July 26 oral “determination, order, or ruling.” She notes, and we must agree, that the rule does not limit determinations, orders, or rulings to written decisions. If the county intended such a restriction, it easily could have crafted the rule to say so, as various other counties have done.

Giving notice when the demand is filed well may be the better practice. Still, requests for de novo review, especially in family matters such as this, are not so unusual as to take the prevailing party completely off-guard. And, as noted above, the county could have written its rule to require that notice be provided when a party seeks de novo review. In so holding, we note and appreciate the circuit court’s concern for prejudice to the minor child. Nonetheless, we remand for a de novo hearing, the demand for which we conclude was timely made. Therefore,

IT IS ORDERED that the order of the circuit court is summarily reversed, pursuant to WIS. STAT. RULE 809.21, and remanded for a de novo hearing.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*