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DISTRICT II

January 15, 2014

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

2013AP967

Jasxbreen Massey v. James Greer (L.C. # 2012CV1714)

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

Jasxbreen Massey appeals pro se from a circuit court order dismissing his case for failure to serve an authenticated copy of his summons and complaint upon the defendants within the required statutory time period. 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 (2011-12).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

In November 2012, Massey filed a civil complaint against James Greer, et al. In March 2013, the circuit court dismissed Massey's case without prejudice because no service was made of an authenticated copy of the summons and complaint upon the defendants within the required statutory time period. Massey moved the court to reconsider the dismissal. The court denied his request. This appeal follows.

Defects in the commencement of an action are either fundamental or technical. *American Family Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis. 2d 524, 533, 481 N.W.2d 629 (1992). Where the defect is technical, the circuit court "has personal jurisdiction only if the complainant can show the defendant was not prejudiced." *Id.* However, "where the defect is fundamental, no personal jurisdiction attaches regardless of prejudice." *Id.*

The general requirements for commencement and service of a civil action are contained in WIS. STAT. § 801.02(1), which 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 90 days after filing.

A fundamental defect occurs when the complainant fails to meet these requirements. *See American Family Mut. Ins. Co.*, 167 Wis. 2d at 533.

Here, it is undisputed that Massey failed to meet the requirements of WIS. STAT. § 801.02(1) when he did not serve an authenticated copy of his summons and complaint upon the defendants within ninety days after filing. This was a fundamental defect in service, denying the circuit court of personal jurisdiction over the defendants. Although Massey complains that the

circuit court should have done more to make him aware of these requirements, it was under no obligation to do so. *See Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (neither a circuit court nor a reviewing court has the duty to walk pro se litigants through procedural requirements). As a result, we are satisfied that the circuit court properly dismissed Massey's case.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals