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**DISTRICT II**

December 17, 2014

To:

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

2014AP588

In re the custody and placement of Tessa R. F. and Jakob M. F.:  
State of Wisconsin and Angela M. Kelley v. Raymond L. Franklin  
(L.C. #2006FA101)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Raymond L. Franklin appeals an order denying his motion for various requested measures of relief, including vacating a default judgment granted to Angela M. Kelley. Franklin argues that improper service of process deprived the circuit court of personal jurisdiction over him. We conclude Franklin has waived a jurisdictional challenge. Based upon our review of the briefs and the record, we conclude that this case, just shy of being frivolous, is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We affirm.

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

Franklin fathered two nonmarital children with Kelley. Walworth county case numbers 03FA337 and 03FA801 addressed child support and repayment of birth expenses for the two children.

In February 2006, Kelley filed a summons and petition to commence Walworth county case number 06FA101 regarding legal custody, physical placement, and child support. Service was accomplished by publishing a notice of hearing that listed the parties' names, the case number, the hearing's date, time, and place, and the presiding official. The summons was not published. Franklin did not appear at the hearing or file a WIS. STAT. § 802.06 motion challenging jurisdiction, the summons, process, or service. The court entered an order finding jurisdiction over the parties and resolving the matters Kelley raised.

In September 2006, Franklin signed and the court approved a stipulation modifying the amount of previously ordered child support. Six months later at a hearing on an Order to Show Cause for failure to pay child support, Franklin signed and the court approved two additional stipulations. One allowed Franklin's attorney to withdraw; the other continued the matter for a month. At the continued hearing, Franklin signed and the court adopted a fourth stipulation finding him in contempt for failure to pay child support. In May 2007, the parties presented the court with a fifth written stipulation they both had signed that addressed placement. None of the stipulations challenged jurisdiction or the adequacy of service. Rather, Franklin first raised the objection in December 2013 after being charged with five counts of failure to pay child support.

Whether a court has subject matter jurisdiction is a legal issue on which we do not defer to the trial court. *See Dykema v. Volkswagenwerk AG*, 189 Wis. 2d 206, 210, 525 N.W.2d 754 (Ct. App. 1994). Circuit courts have jurisdiction of all actions affecting the family. WIS. STAT.

§ 767.01(1). Filing a summons and complaint (or, here, a petition) in the court confers subject matter jurisdiction. See *Lak v. Richardson-Merrell, Inc.*, 100 Wis. 2d 641, 649, 302 N.W.2d 483, 487 (1981). There is no issue of subject matter jurisdiction.

This court also independently reviews a circuit court’s decision on a motion to dismiss for lack of personal jurisdiction. See *Hoops Enters., III, LLC v. Super W., Inc.*, 2013 WI App 7, ¶6, 345 Wis. 2d 733, 827 N.W.2d 120 (Ct. App. 2012). The purpose of a summons is “mere notice.” *Gaddis v. LaCrosse Prods., Inc.*, 198 Wis. 2d 396, 406, 542 N.W.2d 454 (1996). The parties debate whether supplying the hearing information on the notice, rather than by an authenticated summons, voided its service and amounted to a technical or fundamental defect. As our supreme court observed in *American Family Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis. 2d 524, 533, 481 N.W. 2d 629 (1992):

Defects are either technical or fundamental—where the defect is technical, the court has personal jurisdiction only if the complainant can show the defendant was not prejudiced, and, where the defect is fundamental, no personal jurisdiction attaches regardless of prejudice or lack thereof.

We need not decide which type of defect, if either, occurred or whether prejudice ensued. Even if the deviation constituted a fundamental defect, personal jurisdiction defects can be waived. *Studelska v. Avercamp*, 178 Wis. 2d. 457, 462, 504 N.W.2d. 128 (Ct. App. 1993). Over the years, Franklin appeared in court and signed five stipulations involving child support, physical placement, and contempt of court. Not until December 2013 did he raise a proper objection to personal jurisdiction. “[U]nder Wisconsin’s rules of civil procedure, certain affirmative defenses are waived unless raised in the first responsive pleading or raised by motion made prior to answering.” *Brunton v. Nuvel Credit Corp.*, 2010 WI 50, ¶33, 325 Wis. 2d 135, 785 N.W.2d 302; see WIS. STAT. § 802.06(2). Section 802.06 is “designed to

require the defendant to bring personal jurisdiction objections to the court's attention at the earliest possible moment." *Honeycrest Farms v. Brave Harvestore Sys.*, 200 Wis. 2d 256, 266, 546 N.W.2d 192 (Ct. App. 1996). By failing to do, Franklin waived any objection.

Upon the foregoing reasons,

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

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