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**WISCONSIN COURT OF APPEALS**
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

**DISTRICT I/IV**

April 7, 2015

*To*:

Hon. Michael Guolee
Circuit Court Judge
Safety Building
821 W. State St.
Milwaukee, WI 53233-1427

John Barrett
Clerk of Circuit Court
901 N. 9th Street, Room G-8
Milwaukee, WI 53233

Charlotte Gibson
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Matthew S. Mayer
Mallery & Zimmerman, S.C.
P.O. Box 479
Wausau, WI 54402-0479

Timothy W. Schelwat
Hupy and Abraham, S.C.
111 E. Kilbourn Ave., Suite 1100
Milwaukee, WI 53202

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

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2014AP1213 Cheryl M. Sorenson v. Richard A. Batchelder
(L. C. No. 2013CV5012)

Before Blanchard, P.J., Higginbotham, and Sherman, JJ.

Richard Batchelder, a state employee, appeals from an order denying a motion to dismiss Cheryl Sorenson's complaint for improper service of a notice of claim upon the Wisconsin Attorney General. We conclude the complaint must be dismissed because Sorenson did not strictly comply with the notice of claim statute, and the circuit court thus lacked competency to proceed. Accordingly, we reverse.

Sorenson commenced an action against the Wisconsin Department of Administration and Batchelder, claiming he negligently operated his vehicle within the scope of his employment at the DOA, causing the collision in which she suffered injuries.[1] Sorenson served a notice of claim on the attorney general by personal service. The state defendants moved to dismiss the complaint against Batchelder on the grounds that the notice of claim was improperly served, and against the DOA on sovereign immunity grounds. The circuit court dismissed the DOA, but denied the motion as to Batchelder. We granted a petition for leave to appeal the nonfinal order.[2]

WISCONSIN STAT. § 893.82(3) provides, in relevant part, that no civil action or civil proceeding may be brought against any state officer, employee or agent unless a claimant first timely serves upon the attorney general written notice of claim. Section 893.82(5) requires that the "notice under sub. (3) … shall be served upon the attorney general at his or her office in the capitol by certified mail."

Sorenson acknowledges that she did not timely serve the notice of claim by certified mail, as required by WIS. STAT. § 893.82(5). Instead, she served the notice of claim via personal service. Nevertheless, Sorenson argues strict compliance is not always required, citing ***Hines v. Resnick***, 2011 WI App 163, 338 Wis. 2d 190, 807 N.W.2d 687. We conclude, using a plain language interpretation of the statute, that Sorenson's argument is incorrect, and that her reliance on ***Hines*** is unavailing.

[1] At the trial court, the state asserted Batchelder was, in fact, an employee of the Wisconsin Department of Health Services. However, for purposes of the motion to dismiss, Sorenson's allegation that he was a DOA employee was presumed correct.

[2] Petition for Leave to Appeal a nonfinal order was granted by this court June 23, 2014. References to Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

***Hines*** involved peculiar facts. There, we responded to an argument by the state that a claimant had erred by mailing a notice of claim to the wrong address for the Attorney General's Office, even though it turned out that certified mail addressed to the attorney general was never actually delivered to or received by anyone at the capitol office of the attorney general. In the course of our decision, as pertinent here, we concluded that personal service would be "obviously" noncompliant with WIS. STAT. § 893.82(5):

> However, the undisputed facts in this case establish that service by certified mail to the attorney general's capitol office never occurs, and cannot occur, regardless of how a claimant addresses a notice, or what physical location the claimant has in mind as its destination. *And, obviously, a claimant cannot comply with the statute by hand delivering a notice to the attorney general's capitol office because such service would not comply with the certified mail requirement.*

***Hines***, 338 Wis. 2d 190, ¶14 (emphasis added).

We acknowledge that the parties in ***Hines*** did not specifically address the issue of personal versus certified service under WIS. STAT. § 893.82. However, our conclusion in the course of our discussion that personal service was "obviously" insufficient was central to our ruling as to how certified service must be accomplished.

The circuit court in the present case relied upon ***Weis v. Board of Regents***, 837 F. Supp. 2d 971 (E.D. Wis. 2011). However, that case was decided before ***Hines***, and as a federal district court case, is not binding precedent in any event. We are bound by our prior decisions. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). Moreover, the court in ***Weis*** relied upon ***Patterson v. Board of Regents***, 103 Wis. 2d 358, 309 N.W.2d 3 (Ct. App. 1981), which involved an entirely different statutory scheme.

Sorenson argues that personal service, although not compliant with the literal language of WIS. STAT. § 893.82(5), is more "complete" and serves the statute's "underlying purpose and spirit." However, Sorenson's contention that personal service is "better" is not tied to the language nor to the apparent intent of the statute. A specific purpose of the certified mailing requirement is to allow the Attorney General's Office to more easily identify a specific form of mail requiring its attention. *See* ***Hines***, 338 Wis. 2d 190, ¶26. Expanding the service options to include a non-mail form of service would fail to further that purpose. Furthermore, the policy reasons underlying the rules mandating strict compliance with service requirements would not be served by permitting service methods outside those prescribed by the statute on the theory that they may appear to be equally good or better:

> [S]uch rules are necessary "to 'maintain a simple, orderly, and uniform way of conducting legal business in our courts. Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice. If the statutory prescriptions to obtain jurisdiction are to be meaningful they must be unbending.'"

***Gimenez v. State Med. Examining Bd.***, 229 Wis. 2d 312, 321-22, 600 N.W.2d 28 (Ct. App. 1999) (quoting ***Gomez v. LIRC***, 153 Wis. 2d 686, 693, 451 N.W.2d 475 (Ct. App. 1989)).

We also note that in other service statutes the legislature has specifically chosen to allow both certified mail and personal service. *See, e.g.*, WIS. STAT. §§ 32.05(4), 32.06(3), 48.978(2)(c)2, 66.0217(4)(b), 109.09(2)(b)2, 196.135(3), 283.53(2)(b), 707.38(4)(b), 766.588(4)(b), 895.07(1)(j). The legislature's decision to allow personal and certified mail service in other statutes shows that when the legislature wants to allow both forms of service, it knows how to do so.

Finally, Sorenson argues that the state forfeited its right to challenge service because it paid for the damage to Sorenson's vehicle, and the state should be estopped from subsequently claiming the notice of claim was invalid. However, failure to comply with WIS. STAT. § 893.82(5) deprives the court of competency to proceed. *See* ***Gimenez***, 229 Wis. 2d at 321. Moreover, Sorenson cites no authority in support of the argument that forfeiture and estoppel can result as a consequence of merely paying a separate property damage claim. Therefore, we do not address the issue further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily reversed pursuant to WIS. STAT. RULE 809.21.

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