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**DISTRICT IV**

July 13, 2015

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

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2015AP173

Keith Coburn v. Office of the Commissioner of Railroads  
(L.C. # 2014CV16)

Before Lundsten, Higginbotham and Sherman, JJ.

Keith Coburn appeals an order dismissing his petition for judicial review of a decision by the Office of the Commissioner of Railroads. 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 (2013-14).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The circuit court dismissed Coburn's petition due to defective service. Coburn argues that his use of service by Federal Express was sufficient to strictly comply with WIS. STAT. § 227.53, which requires that a petition for judicial review be served "personally or by certified mail upon the agency." Section 227.53(1)(a)1. He argues that because the term "mail" is not defined in the statute, we should interpret it to include private services that are functionally similar. However, we reject this argument because the term "certified mail" is generally understood to refer to mail delivered by the United States Postal Service. There is no ambiguity about the use of the term "mail" in this context that allows for a broader interpretation.

Coburn argues that his position is supported by case law in which we held that service by registered mail was sufficient to comply with a requirement for service by certified mail. *See Patterson v. Board of Regents of the Univ. of Wis. System*, 103 Wis. 2d 358, 309 N.W.2d 3 (Ct. App. 1981). However, this argument fails because in *Patterson* we were simply comparing different forms of postal service mail and explaining that registered mail necessarily encompassed certified mail. In this case, however, Coburn used a private service that cannot encompass certified mail, because the postal service was not involved.

Finally, Coburn argues that even if his service did not strictly comply with the statute, we should hold that the circuit court acquired competency because service by Federal Express sufficiently served the purpose of the statute. He relies on a case holding that service of a petition for judicial review before the agency issued its decision, instead of after, was adequate. *Wisconsin Environmental Decade, Inc. v. PSC*, 84 Wis. 2d 504, 267 N.W.2d 609 (Ct. App. 1981).

We recognize that the above case engages in an analysis of whether a particular failure to comply with a service statute thwarted the underlying purposes of the statute. However, while we might engage in such an analysis in some circumstances, here Coburn attempted service through a means entirely outside the statute. If we allow this instance, we see no stopping point, and all such services would have to be considered adequate for service in all cases. This exception would swallow the statute.

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

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