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January 28, 2016

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

2015AP1097

Margaret Bach v. LIRC (L.C. # 2014CV9585)

Before Kloppenburg, P.J., Higginbotham, Blanchard, JJ.

Margaret Bach appeals from an order dismissing her petition for judicial review of a final decision of the Wisconsin Labor and Industry Review Commission (LIRC) denying her unemployment compensation. The circuit court dismissed the case on the grounds that Bach failed to comply with statutory requirements for service on a party “who appeared before the agency in the proceeding in which the decision sought to be reviewed was made” as required by

WIS. STAT § 227.53(1)(c) (2013-14).¹ 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. We affirm the order.

The facts are not in dispute. On October 9, 2014, LIRC dated and mailed its final decision affirming the decision of the administrative law judge adverse to Bach. Milwaukee County was a party to Bach's case before LIRC. On November 10, 2014, Bach filed a petition for judicial review of the decision with the Clerk of Circuit Court for Milwaukee County. Bach sent a copy of the petition for review to Milwaukee County Office of Corporation Counsel by first class mail, and service was not admitted in writing. It is not disputed that service was not timely made on Milwaukee County either by personal service or by certified mail.

We review a motion to dismiss de novo. *Turkow v. DNR*, 216 Wis. 2d 273, 280, 576 N.W.2d 288 (Ct. App. 1998). We accept all alleged facts and reasonable inferences as true, but draw all legal conclusions independently. *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 311-12, 529 N.W.2d 245 (Ct. App. 1995). Further, statutory interpretation is a question of law we review de novo. *German v. DOT*, 2000 WI 62, ¶7, 235 Wis. 2d 576, 612 N.W.2d 50.

The statute that governs judicial review of agency decisions states, in pertinent part:

[A]ny person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following procedural requirements:

(a)1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the

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

clerk of circuit court for the county where the judicial review proceedings are to be held....

....

(c) A copy of the petition shall be *served personally or by certified mail or, when service is timely admitted in writing, by first class mail*, not later than 30 days after the institution of the proceeding, *upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made* or upon the party's attorney of record.

WIS. STAT. § 227.53(1) (emphasis added).

Bach concedes that she did not serve Milwaukee County as provided in the statute; however, she argues that the law does not require strict compliance with the statute's service requirements. In support of this argument, she cites to language in *Hamilton v. DILHR*, 56 Wis. 2d 673, 203 N.W.2d 7 (1973), for the proposition that under some circumstances, a circuit court may still obtain jurisdiction on a petition for review even without strict compliance with the statute.

The supreme court has made clear, however, that *Hamilton* does not stand for the general proposition that a circuit court may obtain jurisdiction when there has not been strict compliance with WIS. STAT. ch. 277. See *Evans v. Bureau of Local & Reg'l Planning*, 72 Wis. 2d 593, 241 N.W.2d 603 (1976). In *Evans*, as the supreme court explained, the issue in *Hamilton* was that Hamilton had presented the petition to the clerk before the thirty-day deadline had expired, and "the county clerk had failed to accept the petition for judicial review for filing, or to promptly notify the appellant of such nonacceptance, which resulted in the expiration of the 30-day period and the frustration of what otherwise would have been a timely filing of the petition for review." *Id.* at 596. *Evans* distinguished *Hamilton* on that basis and noted that requiring strict compliance with statutory requirements for ch. 227 review "is consistent with earlier opinions of

this court.” *Id.* at 597. “[I]f statutory time limits to obtain appellate jurisdiction are to be meaningful they must be unbending.” *Id.* at 599. There is no allegation here that the failure to comply strictly with the requirements is due to the actions of the clerk; therefore, this case is not controlled by *Hamilton*.

Bach argues that she should be excused from strict compliance with the notice requirements of the statute because, she alleges, she was given incorrect information over the phone by a LIRC staff member as to the type of notice required. However, the statute is clear, and the record does not reflect any dispute concerning the fact that Bach, who is a lawyer, received a packet of information from LIRC with clear and detailed instructions for petitioning for review of the agency’s decisions and for proper service on the parties who appeared before the agency in the proceeding.

The terms of the statute are clear and Bach concedes that she failed to properly serve Milwaukee County properly. The circuit court therefore lacked jurisdiction to hear the case.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals