



OFFICE OF THE CLERK  
**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](http://www.wicourts.gov)

**DISTRICT II**

February 17, 2016

To:

Hon. James G. Poulos  
Circuit Court Judge  
Washington County Courthouse  
P.O. Box 1986  
West Bend, WI 53095

Theresa Russell  
Clerk of Circuit Court  
Washington County Courthouse  
P.O. Box 1986  
West Bend, WI 53095-1986

Clayton Patrick Kawski  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

John Berman  
P.O. Box 72101  
Davis, CA 95617

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

---

2015AP1084

John Berman v. Wisconsin Department of Safety and Professional Services (L.C. #2014CV821)

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

John Berman appeals from a circuit court order dismissing his mandamus action in favor of the defendant-respondent, the Wisconsin Department of Safety and Professional Services (DSPS). 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.

Berman filed in the circuit court a petition for a writ of mandamus seeking to compel the DSPS to take certain action. Berman did not serve the petition or its supporting papers on the

---

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

DSPS. The circuit court issued a writ commanding the DSPS to make a return on the writ petition by February 12, 2015, adding that “[a]ttached hereto, provided only as a matter of convenience to the Respondent, is a copy of the Petition for Writ of Mandamus and a copy of Declaration in Support of Petition for Writ of Mandamus.”

A docketed certificate of mailing reflects that on January 5, 2015, court staff mailed “a copy of the Writ of Mandamus and Petition for a Writ of Mandamus to the Wisconsin Department of Safety and Professional Services.”

Asserting that Berman failed to accomplish proper service, the DSPS moved to quash the writ, and Berman opposed the motion. Determining that it lacked personal jurisdiction over the DSPS because it “was not timely personally served as required by [WIS. STAT.] § 801.02(5) and [WIS. STAT.] § 801.11 of the Wisconsin Statutes,” the circuit court entered an order granting the motion to quash and dismissing the action “not on the merits.” Berman appeals.

In pertinent part, WIS. STAT. § 801.02(5) provides that an action in mandamus may be commenced “by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith.”<sup>2</sup> WISCONSIN STAT. § 801.11 provides the manners of service giving rise to a circuit court’s authority to exercise personal jurisdiction over a defendant. In an action against a body politic such as the DSPS, the statute requires personal service upon “an officer, director, or managing agent” of the DSPS, or upon the office of such person with

---

<sup>2</sup> WISCONSIN STAT. § 801.02(5) provides three methods for commencing a mandamus action: (1) by summons and complaint as set forth in § 801.02(1); (2) “by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith”; or (3) “by filing a complaint . . . , if service of an authenticated copy of the complaint and of an order signed by the judge . . . is made upon the defendant.” See *Tobler v. Door Cty.*, 158 Wis. 2d 19, 25, 461 N.W.2d 775 (1990). It is undisputed that Berman attempted to commence the action using the second method.

someone else “apparently in charge of the office.” See § 801.11(4)(a), (b). The failure to comply with the service requirements in § 801.11(4) deprives the circuit court of personal jurisdiction over a claim. See, e.g., *Hagen v. City of Milwaukee Emps Ret. Sys. Annuity & Pension Bd.*, 2003 WI 56, 262 Wis. 2d 113, 663 N.W.2d 268.

We conclude that the circuit court’s mailing a copy of Berman’s writ petition to the DSPS did not constitute proper service under WIS. STAT. §§ 801.02(5) and 801.11(4). Service was deficient because it was not completed by Berman, it was not by personal service, and it was not made upon an authorized recipient. We reject Berman’s assertion that in the absence of language specifying the proper manner of service in mandamus actions commenced under “method #2” of § 801.02(5), the service requirements of §801.11 do not apply. “[A] proceeding by mandamus is essentially a civil action, and the rules of practice as to civil actions apply.” *Moore v. Stahowiak*, 212 Wis. 2d 744, 747, 569 N.W.2d 711 (Ct. App. 1997) (alteration in original) (citation omitted). See also *Tobler v. Door Cty.*, 158 Wis. 2d 19, 24-25, 461 N.W.2d 775 (1990) (citing as support for its holding the Wisconsin Judicial Council’s Note to WIS. STAT. § 801.02, which clarifies that the statute was amended “to allow an action seeking an extraordinary remedy to be commenced in the same manner as any other civil action,” and that aside from the amendment allowing the circuit court judge to enter an order shortening the time allowed for a response (referred to by the parties in this case as “method #3”), “the rules of civil procedure govern to the extent applicable”). To properly commence his action in mandamus, Berman was required to comply with both §§ 801.02(5) and 801.11(4). On Berman’s lack of compliance, the circuit court failed to acquire personal jurisdiction and properly dismissed the action.

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*