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DISTRICT IV

May 17, 2016

To:

Hon. Juan B. Colas
Circuit Court Judge
215 South Hamilton, Br.10, Rm. 7103
Madison, WI 53703

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

2015AP2131 Co Leigh Co, LLC v. Wisconsin Labor and Industry Review
Commission (L.C. # 2015CV1226)

Before Higginbotham, Sherman and Blanchard, JJ.

Co Leigh Co, LLC, appeals a circuit court order dismissing Co Leigh Co's petition for certiorari review of a decision by the Labor and Industry Review Commission (LIRC). 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).¹ We summarily affirm.

In May 2015, Co Leigh Co petitioned for judicial review of LIRC's decision as to Co Leigh Co's unemployment insurance contribution liability. Co Leigh Co named only LIRC as the defendant in the action. LIRC moved to dismiss for failure to name a necessary party, the

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

Department of Workforce Development (DWD), within the statutory period for seeking judicial review. Co Leigh Co opposed the motion to dismiss, arguing that the court should exercise its inherent powers to allow Co Leigh Co to amend its petition to include DWD as a defendant. The circuit court dismissed Co Leigh Co's action, explaining that failure to name a necessary party deprived the court of competency to act and that Co Leigh Co had not identified any basis for the court to allow amendment to Co Leigh Co's petition after the time to petition for judicial review had passed.

Co Leigh Co does not dispute that it failed to name DWD as an adverse party within the statutory time for seeking judicial review. *See* WIS. STAT. § 108.10(4) (providing that an employer must seek judicial review of LIRC's unemployment insurance decision within 30 days, and must name DWD as an adverse party under WIS. STAT. § 102.23(1)(a)). Additionally, Co Leigh Co does not dispute that its failure to name DWD as an adverse party within the statutory time frame deprived the court of competency to proceed, requiring dismissal of the action. *See Miller Brewing Co. v. LIRC*, 173 Wis. 2d 700, 706, 495 N.W.2d 660 (1993) (holding that failure to comply with the requirements under WIS. STAT. § 102.23(1)(a) to bring the action and name adverse parties within 30 days deprives the circuit court of competency to proceed; "the circuit court must dismiss the action with prejudice and the appellant loses the right to judicial review of LIRC's decision"). Co Leigh Co argues, however, that the circuit court had inherent authority to allow Co Leigh Co to amend its petition after the time to seek judicial review had lapsed. We disagree.

Co Leigh Co argues that the circuit court had inherent power to allow Co Leigh Co to amend its complaint to name DWD as an adverse party because the amendment was necessary to allow the court to accomplish its purpose of providing a forum to review LIRC's decision. *See*

Breier v. E.C., 130 Wis. 2d 376, 385-87, 387 N.W.2d 72 (1986) (explaining that the circuit courts have inherent powers that allow them to accomplish the purposes for which they were created, and that those powers cannot be abrogated by the legislature); *State ex rel. Godfrey & Kahn, S.C. v. Circuit Court for Milwaukee County*, 2012 WI App 120, ¶42, 344 Wis. 2d 610, 823 N.W.2d 816 (circuit courts have inherent powers “that are necessary to enable courts to accomplish their constitutionally and legislatively mandated functions”). We are not persuaded. Circuit courts need not allow untimely amendments to petitions for certiorari review to provide a forum to review LIRC decisions; rather, employers may obtain judicial review of LIRC’s unemployment insurance decisions by complying with statutory requirements. See *State v. Braunsdorf*, 98 Wis. 2d 569, 580, 297 N.W.2d 808 (1980) (explaining that “an inherent power is one without which a court cannot properly function”). Co Leigh Co did not meet the statutory requirements for seeking judicial review of LIRC’s decision, and under the clear holding in *Miller*, lost its right to that review.

Therefore,

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

Diane M. Fremgen
Clerk of Court of Appeals