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**DISTRICT II**

May 25, 2016

To:

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Circuit Court Judge  
Waukesha County Courthouse  
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Waukesha, WI 53188

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

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2015AP2204-FT

Margaret Bach v. Waukesha City Police Department  
(L.C. #2015CV1402)

Before Gundrum, Hagedorn and Stark, JJ.

Margaret Bach appeals from an order dismissing her petition for a writ of mandamus against the Waukesha City Police Department. The circuit court dismissed the case on the ground that the matter had not been diligently prosecuted. Pursuant to a presubmission conference and this court's order of November 18, 2015, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2013-14).<sup>1</sup> Upon review of those memoranda and the record, we reverse the order of the circuit court and remand for further proceedings.

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

On July 14, 2015, Bach filed a petition for a writ of mandamus seeking access to a police report involving her disabled son.<sup>2</sup> Bach believed that she was entitled to the report under the state's open records law. The Waukesha Police Department disagreed on the ground that the report contained confidential medical information.

The circuit court held a hearing on the matter on October 12, 2015. There, it asked Bach whether she could provide proof of service. Bach replied that she could not but offered to provide service to the Waukesha Police Department that day. The court indicated that "the time for service had passed, as far as [it] was concerned." Accordingly, it dismissed the case for not being diligently prosecuted.

On appeal, Bach contends that the circuit court erred in dismissing her petition.<sup>3</sup> She notes that, at the time of the hearing, she still had an opportunity to provide service to the Waukesha Police Department. We agree.

WISCONSIN STAT. § 801.02 governs the commencement of actions and provides in relevant part:

(1) ... [A] civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint

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<sup>2</sup> Although Bach's petition is dated July 13, 2015, the circuit court's electronic docket entries indicate that it was filed on July 14, 2015.

<sup>3</sup> Bach also asserts that she is entitled to the report she requested and that the circuit court should have voided an October 16, 2012 order from a Milwaukee County circuit court, which prohibited her from filing any actions relating to her son without that court's approval. We do not address the merits of Bach's mandamus action in this appeal. Likewise, we do not address the validity of the October 16, 2012 order, as the parties did not adequately brief the ability of one circuit court to restrict a litigant's access to other circuit courts. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (appellate court may decline to address issues that are inadequately briefed).

naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.

....

(5) An action seeking a remedy available by ... mandamus ... may be commenced under sub. (1), by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith, or by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order.

Under this statute, Bach had to provide service to the Waukesha Police Department within ninety days after filing her petition. Ninety days after the July 14, 2015 filing was October 12, 2015.

As noted, Bach offered to provide service on October 12, 2015, but the circuit court told her that “the time for service had passed, as far as [it] was concerned.” It then dismissed the case for not being diligently prosecuted. We conclude that this was error, as Bach still had until the end of that day to complete service under WIS. STAT. § 801.02. Accordingly, we reverse the order of the circuit court and remand for further proceedings. On remand, Bach will have an additional opportunity to provide service to the Waukesha Police Department.<sup>4</sup>

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is reversed and the cause remanded.

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<sup>4</sup> Bach will have thirty-five days from the date of this opinion to provide service to the Waukesha Police Department. We reach this figure by taking the one day she is entitled to and adding the time for remittitur (thirty-one days) and mailing (three days). *See* WIS. STAT. RULE 809.26(1); WIS. STAT. § 801.15(5)(a).

IT IS FURTHER ORDERED that Margaret Bach will have until June 29, 2016, to provide service to the Waukesha Police Department.

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