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**DISTRICT III**

August 23, 2016

To:

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

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2015AP1575

Jerry Kapalczynski v. Joseph Paul (L. C. No. 2015CV68)

Before Stark, P.J., Hruz and Seidl, JJ.

Joseph Paul appeals an order denying his motion to dismiss Jerry Kapalczynski's personal injury lawsuit. Paul, a state employee, contends the circuit court should have dismissed the action because Kapalczynski failed to properly serve the notice of claim. Based upon our review of the briefs and record, and consistent with our supreme court's decision in *Sorenson v.*

*Batchelder*, 2016 WI 34, \_\_ Wis. 2d \_\_, \_\_ N.W.2d \_\_, we conclude at conference that this case is appropriate for summary disposition and reverse the order. *See* WIS. STAT. RULE 809.21.<sup>1</sup>

In February 2013, Kapalczynski was operating a vehicle that was involved in a head-on collision with a vehicle operated by Paul. At the time of the collision, Paul was acting in the course and scope of his employment as a Wisconsin Department of Natural Resources warden. Kapalczynski served notice of claim on the attorney general by personal service in June 2013 and, in April 2015, Kapalczynski filed the underlying personal injury lawsuit. Paul moved to dismiss the complaint against him based on improper service of the notice of claim. The circuit court denied the motion, and we granted Paul’s petition for interlocutory appeal.

WISCONSIN STAT. § 893.82 applies to claims brought against state employees, and § 893.82(2m) provides that “[n]o claimant may bring an action against a state officer, employee or agent unless the claimant complies strictly with the requirements of this section.” With respect to notice, the statute provides, in relevant part:

[N]o civil action or civil proceeding may be brought against any state officer, employee or agent for or on account of any act growing out of or committed in the course of the discharge of the officer’s, employee’s or agent’s duties ... unless within 120 days of the event causing the injury, damage or death giving rise to the civil action or civil proceeding, the claimant in the action or proceeding serves upon the attorney general written notice of a claim stating the time, date, location and the circumstances of the event giving rise to the claim[.]

WIS. STAT. § 893.82(3). In turn, § 893.82(5) requires that “[t]he notice under sub. (3) shall be sworn to by the claimant and shall be served upon the attorney general at his or her office in the

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

capitol by certified mail. Notice shall be considered to be given upon mailing for the purpose of computing the time of giving notice.”

Paul argues strict compliance with WIS. STAT. § 893.82 cannot be accomplished without serving notice of claim on the attorney general by certified mail. We agree. In *Sorenson*, our supreme court held “that delivering notice by personal service does not comply with the plain language of WIS. STAT. § 893.82(5), which requires service of notice of claim on the attorney general by certified mail.” *Sorenson*, 2016 WI 34, ¶46.

To the extent Kapalczynski contends that “literal” compliance with the statutes is not always required where doing so would produce an absurd or unreasonable result, the *Sorenson* court rejected a similar argument. There, the court noted that service by certified mail is wholly consistent with the purposes of the statute—“namely, to effect service and to ‘[p]rovide the attorney general with adequate time to investigate claims ... [,][p]rovide the attorney general with an opportunity to effect a compromise without a civil action ... [,][and] [p]lace a limit on the amounts recoverable in civil actions.” *Id.*, ¶42 (quoting WIS. STAT. § 893.82(1)). The court determined that just because another mode of service might also fulfill these stated purposes does not give rise to an absurd result, adding that the “legislature specifically chose the acceptable mode of service, and we may not second guess its choice.” *Id.*, ¶43 (citation omitted). Because strict compliance with WIS. STAT. § 893.82 is mandatory, Kapalczynski’s failure to serve notice of claim on the attorney general by certified mail requires dismissal of his case.

Upon the foregoing,

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

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