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**DISTRICT IV**

November 4, 2016

To:

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Circuit Court Judge, Br. 9  
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Lorraine Winchel  
701 Parkside Drive  
Waunakee, WI 53597

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

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2015AP1961

Lorraine Winchel v. LIRC (L.C. # 2015CV1315)

Before Kloppenburg, P.J., Sherman, and Blanchard, JJ.

Lorraine Winchel appeals an order dismissing her complaint. An administrative law judge denied Winchel's claim for worker's compensation benefits, stemming from a 2005 work injury, and that decision was upheld by the Labor and Industry Review Commission.<sup>1</sup> LIRC moved the circuit court for dismissal of Winchel's attempted judicial review, arguing that Winchel had not properly commenced the action. The circuit court agreed, and dismissed Winchel's complaint. Based upon our review of the briefs and record, we conclude at

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<sup>1</sup> The Labor and Industry Review Commission modified the decision of the administrative law judge, and as modified, affirmed the decision. The practical impact of the decision was to reject Winchel's claim for continued worker's compensation benefits.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>2</sup> We affirm.

After LIRC upheld the denial of further worker's compensation benefits to Winchel, she filed a single-page "Summons & Complaint" with the circuit court. Winchel named LIRC, the Department of Transportation (her former employer), and the State of Wisconsin, "[i]nsurer," as defendants. The document reads as follows:

You are hereby notified that the plaintiff, LORRAINE WINCHEL, named above has filed a cause of legal action against the above name[d] Defendants. This complaint states the nature and basis of the legal action:

\* Labor & Industry Review Commission acted without or in excess of its powers in making[] its findings and order;

\* Said findings and order, conclusions of law and order made by the Labor & Industry Review Commission are incorrect and/or do not support its order and award.

\* This is a Worker's Comp claim, for Lorraine Winchel, dates of injury 3/9/2005 + 12/14/2005.

LIRC moved to dismiss the action, arguing that Winchel had not properly commenced her action because she had not filed a summons, as required by WIS. STAT. §§ 102.23(1), 801.09, and 801.095. The circuit court agreed, and dismissed Winchel's complaint.

The procedure for obtaining judicial review of a LIRC order is set forth in WIS. STAT. § 102.23(1). That statute "defines the exclusive statutory scheme by which [a] party may file a summons and complaint in the circuit court." *Xcel Energy Servs., Inc. v. LIRC*, 2013 WI 64, ¶29, 349 Wis. 2d 234, 833 N.W.2d 665. Under § 102.23(1), an aggrieved party must commence

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

an action by “serving a complaint as provided in par. (b) and filing the summons and complaint ... in circuit court.” Section 102.23(1)(b) states that “[i]n such an action a complaint shall be served with an authenticated copy of the summons.”

Whether a summons has been properly filed presents a question of statutory interpretation which this court reviews independently from the circuit court. *See American Family Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis. 2d 524, 529, 481 N.W.2d 629 (1992).

The required contents of a summons are set forth in WIS. STAT. § 801.09. They include: (1) the title of the cause, the name of the court and county in which the action is being filed, the standard description and case code, and the names and addresses of the parties; (2) a direction to the defendant “summoning and requiring” the defendant to serve either an answer, if a copy of the complaint is served with the summons, or a demand for a copy of the complaint within a specified time period; and (3) a notice that in case of failure to timely serve an answer or demand for a copy of the complaint, judgment will be rendered against the defendant according to the demand of the complaint. Section 801.09(1)-(3). A summons must be “substantially in one of the forms” set forth in WIS. STAT. § 801.095, with the applicable form dependent on the type of service and on whether a complaint is served with the summons.

The document filed by Winchel falls woefully short of the statutory requirements for a summons. It contains only party names, addresses, and case class codes—essentially a case caption. Although Winchel includes the word “summons” on the document’s title, the body of the document contains no language that speaks to the statutorily required contents of a summons. It does not direct the defendants to file an answer to the complaint within the appropriate time limits. It does not include a notice that the failure to timely file an answer will result in a

judgment being rendered against a non-answering defendant. The document is nothing more than Winchel's complaint with the addition of the word "summons" in its title. We recognize that Winchel was representing herself. That fact, however, is "[not] a license not to comply with relevant rules of procedural and substantive law." *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (alteration in original) (citation omitted). Because Winchel did not comply with the procedure set forth in WIS. STAT. § 102.23(1), the circuit court correctly dismissed this action. See *Miller Brewing Co. v. LIRC*, 173 Wis. 2d 700, 706, 495 N.W.2d 660 (1993) (circuit court must dismiss the action with prejudice if a party fails to comply with § 102.23(1)).

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed.

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