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DISTRICT III/II

January 18, 2017

To:

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St. Croix County Courthouse
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Warren Slocum
2220 122nd St.
New Richmond, WI 54017

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

2016AP593

Warren Slocum v. Star Prairie Township, Board, and Board of
Review (L.C. #2015CV354)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Warren Slocum appeals pro se from an order that granted summary judgment in favor of Star Prairie Township, Board, and Board of Review (the Town, for the Township; collectively, Star Prairie) and dismissed his case because he did not properly serve his claim alleging “Excessive Assessment/Taxes.” The order also granted Star Prairie’s motion for frivolous sanctions against Slocum pursuant to WIS. STAT. § 802.05 (2015-16).¹ Based on our review of the briefs and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21. We affirm the order.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

As he has since 2005, Slocum again contends he was required to pay too much in property taxes, this time for the 2014 tax year. He filed a summons and complaint against Star Prairie under WIS. STAT. § 74.35 seeking a \$1400 refund. The complaint did not identify the subject property or allege further facts.

Star Prairie filed an answer and affirmative defenses as well as motions to dismiss, to dismiss the Board, to dismiss on the basis of issue and claim preclusion, and for frivolous costs pursuant to WIS. STAT. § 802.05(3). It also filed supporting affidavits.² The circuit court thus treated the motions to dismiss as a motion for summary judgment. *See* WIS. STAT. § 802.06(2)(b); *see also Radlein v. Industrial Fire & Cas. Ins. Co.*, 117 Wis. 2d 605, 608-09, 345 N.W.2d 874 (1984).

The circuit court granted summary judgment in favor of Star Prairie and dismissed the case on the basis of Slocum's failure to file a claim. Because Slocum is a serial litigator on this same matter, the court also granted Star Prairie's motion for frivolous costs. Slocum moved unsuccessfully for reconsideration of the dismissal. The circuit court struck as untimely an "Affidavit of clarification re: service, etc." and an "Affidavit and certificate of service" Slocum filed after the summary judgment hearing but before the court issued its decision. He appeals.

According to Star Prairie's affidavits, Scott Counter is chairperson of the Town, a Wisconsin taxation district. On January 28, 2015, Slocum stopped by the Counter residence when Scott was not at home, gave "some papers" to Counter's wife, Carolyn, and asked her to give them to Scott. Carolyn is not an officer, director, or managing agent of the Town. Scott

² Slocum filed an "Affidavit opposing summary judgment, motions, etc."

was not personally served with a copy of Slocum's claim before January 31, 2015. Slocum also did not personally serve a copy of his claim before January 31, 2015, on Michael Burke, the Town's clerk-treasurer. Slocum mailed a copy of the claim to Burke on or about February 3, 2015, and placed a notice in the local newspaper on February 5.

We review a grant of summary judgment using the same methodology as the circuit court. See *City of Beaver Dam v. Cromheecke*, 222 Wis. 2d 608, 613, 587 N.W.2d 923 (Ct. App. 1998). The controlling principle of the well-known methodology is that "summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.*; see also WIS. STAT. § 802.08(2).

A claim for unlawful taxes under WIS. STAT. § 74.35 "shall ... [b]e served on the clerk of the taxation district in the manner prescribed in [WIS. STAT. §] 801.11 (4)." Sec. 74.35(2)(b)5. Service upon a town requires personal service of its chairperson or clerk. Sec. 801.11(4)(a)2. In lieu of delivering a copy of the summons to the specified officer, the copy "may be left in the office of the specified officer, director, or managing agent with the person apparently in charge of the office." Sec. 801.11(4)(b). The claim must be filed by January 31 of the year in which the tax is payable. Sec. 74.35(5)(a).

"[T]he detailed and comprehensive objection and appeals procedures provided in [WIS. STAT.] chs. 70 and 74 were intended to be the exclusive means by which taxpayers may challenge the valuation of real property assessed for taxation." *Hermann v. Town of Delavan*, 215 Wis. 2d 370, 382, 572 N.W.2d 855 (1998). Where an action is against a political corporation or other body politic and a statute prescribes how service is to be made upon that entity, the statute must be strictly complied with. *Town of Washington v. Village of Cecil*, 53

Wis. 2d 710, 712, 193 N.W.2d 674 (1972) (construing WIS. STAT. § 262.06(4) (1969-70), the predecessor to WIS. STAT. § 801.11(4)). Failure to serve the summons in the manner prescribed by statute renders the summons unserved and the attempted service invalid. *Town of Washington*, 53 Wis. 2d at 712. Service on a family member of the specified officer at his or her residence is not sufficient. *Id.*

None of Slocum's arguments present a genuine issue of material fact. Star Prairie is entitled to judgment as a matter of law.

Slocum does not address the circuit court's assessment of frivolous costs against him. An issue not briefed or argued on appeal is deemed abandoned. *Young v. Young*, 124 Wis. 2d 306, 317, 369 N.W.2d 178 (Ct. App. 1985).

Finally, Star Prairie filed a timely motion pursuant to WIS. STAT. RULE 809.25(3)(a) for costs, fees, and reasonable attorney's fees. The motion was held in abeyance pending the issuance of this decision. Slocum filed a response opposing the motion.

We agree with Star Prairie that Slocum knew, or should have known, that his appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law. WIS. STAT. RULE 809.25(3)(c)2. Slocum's appeal raised no issues of arguable merit and therefore is wholly frivolous. See *Baumeister v. Automated Products, Inc.*, 2004 WI 148, ¶34, 277 Wis. 2d 21, 690 N.W.2d 1 (to find an appeal frivolous the entire appeal must be shown to be frivolous).

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Respondent Star Prairie Township, Board, and Board of Review shall be awarded costs, fees, and reasonable attorney's fees. WIS. STAT. RULE 809.25(3)(a).

Diane M. Fremgen
Clerk of Court of Appeals