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DISTRICT I

March 16, 2017

To:

Hon. Daniel A. Noonan
Circuit Court Judge
Milwaukee County Courthouse
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Milwaukee, WI 53233

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

2015AP2597

Gayleen Thomas v. Wisconsin Department of Revenue
(L.C. # 2014CV8101)

Before Brennan, P.J., Kessler and Brash, JJ.

Gayleen Thomas, *pro se*, appeals the circuit court's order denying her motions to reopen an action dismissed on April 17, 2015. *See* WIS. STAT. § 806.07 (2015-16).¹ Thomas argues: (1) the circuit court should not have dismissed her petition for judicial review for lack of service; and (2) the circuit court misused its discretion in denying her motions to reopen. After reviewing the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

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

This appeal stems from a decision of the Department of Revenue (DOR) assessing additional income taxes against Thomas. The DOR's decision was affirmed by the Wisconsin Tax Appeals Commission. Thomas petitioned for judicial review, but the circuit court dismissed Thomas's petition for lack of proper service. Thomas brought a motion to reopen under WIS. STAT. § 806.07, which the circuit court denied. Thomas then brought a second motion to reopen, which the circuit court again denied.

As an initial matter, we note that only the circuit court's order denying Thomas's second motion to reopen is properly before us on appeal. Thomas did not timely file a notice of appeal from the circuit court's order dated April 17, 2015, dismissing her petition. Similarly, she did not file a timely notice of appeal from the circuit court's order dated September 16, 2015, denying her first motion to reopen. Nevertheless, we will briefly address Thomas's arguments pertaining to the prior orders because she is proceeding *pro se*.

Thomas first argues that the circuit should not have dismissed her petition for judicial review on the ground that she failed to properly serve the DOR. A person seeking judicial review of an administrative decision must serve the agency or one of its officials. WIS. STAT. § 227.53(1)(a)1. An "agency" is defined as "a board, commission, committee, department or officer in the state government." WIS. STAT. § 227.01(1). An "[o]fficial of [an] agency" means "a secretary, commissioner or member of a board of an agency." SECTION 227.01(7).

Thomas served the DOR's attorney, John Evans, by certified mail. Evans is not an "official" of the DOR identified for service by WIS. STAT. § 227.01(7). Because Thomas did not serve either the DOR or one of its officials, the circuit court properly dismissed the action. *See Kegonsa Joint Sanitary Dist. v. City of Stoughton*, 87 Wis. 2d 131, 144-45, 274 N.W.2d 598

(1979) (a suit against an agency must be dismissed if the plaintiff fails to comply with the service statute).

Thomas contends that Attorney Evans' legal secretary opens his mail for him and she properly accepted service as an official of the DOR when she opened the certified service letter that Thomas sent to Attorney Evans. Thomas points to WIS. STAT. § 227.01(7), which provides that an "[o]fficial of [an] agency" means "a secretary, commissioner or member of a board of an agency." This argument is unavailing because a legal secretary is not a "secretary" of the agency within the meaning of § 227.01(7). Moreover, Thomas sent the letter to Attorney Evans, not to his legal secretary.

Thomas next argues that the circuit court misused its discretion in denying her motions to reopen under WIS. STAT. § 806.07(1). Thomas has not adequately developed her argument. To the contrary, the argument she presents on this point is unintelligible. We will not consider issues that are inadequately briefed because "[w]e cannot serve as both advocate and judge." *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). Because Thomas has not shown that the circuit court misused its discretion, we reject Thomas's argument that the motions to reopen were improperly denied.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals