



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

May 10, 2017

To:

Hon. Kathryn W. Foster
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Margaret Bach
10321 W. Manitoba St.
West Allis, WI 53227

Brian E. Running
City Attorney
201 Delafield St.
Waukesha, WI 53188

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

2016AP1727-FT

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

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

Margaret Bach appeals a circuit court order dismissing her action against the Waukesha City Police Department. The circuit court determined it lacked jurisdiction over the case due to Bach's failure to serve an authenticated summons and complaint on the Waukesha Police Department. Pursuant to a presubmission conference and this court's order of September 21, 2016, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2015-16).¹ Upon review of those memoranda and the record, we summarily affirm the order. WIS. STAT. RULE 809.21.

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

Bach previously filed in the circuit court a petition for a writ of mandamus seeking access to a police report involving her son. At an October 12, 2015 hearing, after learning that Bach could not provide proof of service on the Waukesha Police Department, the circuit court dismissed the case on the ground that the matter was not diligently prosecuted. On appeal, we reversed the order of dismissal, determining that under WIS. STAT. § 801.02(1), the ninety days in which to accomplish service had not expired as of the time of the October 12, 2015 hearing. *Bach v. Waukesha City Police Department*, No. 2015AP2204-FT, unpublished op. and order (WI App May 25, 2016). We remanded the case to the circuit court with instructions that Bach “provide service to the Waukesha Police Department” no later than June 29, 2016. *Id.* at 3-4.

On June 24, 2016, Bach served an unauthenticated summons and complaint on the Waukesha Police Department. After the June 29, 2016 service deadline passed, the Waukesha Police Department moved for dismissal, arguing that Bach’s failure to serve an authenticated summons and complaint deprived the circuit court of jurisdiction over the action. The circuit court agreed and granted the motion to dismiss. Bach appeals.²

We conclude that the circuit court properly dismissed the action for lack of jurisdiction. The service of an unauthenticated summons and complaint fails to satisfy the service requirements set forth in WIS. STAT. § 801.02 and constitutes a fundamental defect which deprives the circuit court of personal jurisdiction over the claim. *American Family Mut. Ins.*

² In addition to challenging the circuit court’s dismissal and as in her prior appeal, Bach continues to assert that she is entitled to the requested police report and that the circuit court should have voided an order emanating from a Milwaukee County circuit court. The only issue presented in the instant appeal is whether the circuit court properly dismissed Bach’s action for lack of jurisdiction. As in the prior appeal, we do not address the merits of Bach’s mandamus action or the Milwaukee County circuit court order.

Co. v. Royal Ins. Co. of Am., 167 Wis. 2d 524, 527, 481 N.W.2d 629 (1992). In *American Family*, the Wisconsin Supreme Court drew a distinction between fundamental and technical defects, stating that “where the defect is fundamental, no personal jurisdiction attaches regardless of prejudice or lack thereof.” *Id.* at 532-33. The court held that a fundamental defect occurs where the summons and complaint “served upon the defendant is not authenticated.” *Id.* at 533-34.

Bach asserts that the Wisconsin Supreme Court has “updated” *American Family* in later cases so as to approve service “with greater errors” than the defect presented in the instant case. In particular, Bach suggests that under *Burnett v. Hill*, 207 Wis. 2d 110, 557 N.W.2d 800 (1997), her failure to provide an authenticated summons and complaint was a mere technical defect. We disagree.

In *Burnett*, the Wisconsin Supreme Court held that in the context of service by publication, the plaintiff’s mailing of an unauthenticated copy of the typed publication summons along with authenticated copies of the summons and complaint constituted a technical error in service. *Id.* at 117-19, 125. *Burnett* is readily distinguishable in that it concerns service by publication and because Bach never served any authenticated copies of the summons and complaint on the Waukesha Police Department. Consistent with *American Family*, we conclude that Bach’s failure to serve the Waukesha Police Department with an authenticated copy of the summons and complaint as required by WIS. STAT. § 801.02(1) and (3) constituted a fundamental defect depriving the circuit court of personal jurisdiction.

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 this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals