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**DISTRICT I**

October 27, 2017

To:

Hon. William Sosnay  
Circuit Court Judge  
Milwaukee County Courthouse  
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Milwaukee, WI 53233

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Naythan A. Schwab 471362  
Stanley Corr. Inst.  
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Stanley, WI 54768

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

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2016AP1717

Naythan A. Schwab v. Milwaukee County Jail  
(L.C. # 2016CV4218)

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Naythan A. Schwab, who is incarcerated and is proceeding *pro se*, appeals an order dismissing his civil complaint against the Milwaukee County Jail for lack of timely service. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We reverse.

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

Schwab brought an action alleging that he was injured due to jail flooding and improper treatment by the jail staff that caused him to slip, fall, and fracture his skull. Schwab's action was filed on March 18, 2016. Schwab was required to serve Milwaukee County with an authenticated copy of the summons and complaint within ninety days, which would have been June 16, 2016. *See* WIS. STAT. § 801.02.<sup>2</sup> Schwab did not ask the Milwaukee County sheriff to serve papers until August 8, 2016, which was beyond the ninety-day deadline. Therefore, the circuit court dismissed his action for lack of personal jurisdiction. *See Useni v. Boudron*, 2003 WI App 98, ¶12, 264 Wis. 2d 783, 662 N.W.2d 672 (“Proper service of a summons and complaint is required to confer personal jurisdiction on the court over the person served.”).

On appeal, Schwab argues that it was impossible for him to timely serve the action because the clerk returned a copy of the authenticated summons and petition to him on June 17, 2016, *after* the time for service had run. He points to the clerk's letter to him dated June 17, 2016, which returns the documents to him for service and indicates that the case was assigned a number, 2016CV4218. He also points to the official notice dated June 17, 2016, that gives him permission to proceed without prepayment of fees.

Both the Wisconsin Supreme Court and this court have applied tolling rules to various filing requirements related to prisoner actions. *State ex rel. Tyler v. Bett*, 2002 WI App 234, ¶11, 257 Wis. 2d 606, 652 N.W.2d 800. Tolling rules address “the lack of control that prisoners have over many of the steps needed” to commence an action. *See State ex rel. Steldt v.*

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<sup>2</sup> A plaintiff may serve a county by personally serving the chairperson of the county board or the county clerk, or by leaving a copy of the summons “in the office of such officer ... with the person who is apparently in charge of the office.” WIS. STAT. § 801.11(4)(b).

*McCaughtry*, 2000 WI App 176, ¶17, 238 Wis. 2d 393, 617 N.W.2d 201. The essence of these rules is that the time taken by a court to process a case tolls the deadlines a prisoner faces because the matter is out of the prisoner’s control. *See id.* For example, in *Steldt*, we ruled that once the court receives the documents from the prisoner to make a determination of indigence, “the time taken by the court to determine whether the prisoner must pay any fees before proceeding is out of the prisoner’s control,” and therefore the deadline for commencing the action “is tolled.” *Id.* Similarly, we ruled that the deadline for commencing an action “is tolled while a prisoner who timely requests a ‘three-strikes certification’ from the Department of Justice ... awaits its receipt.” *See Tyler*, 257 Wis. 2d 606, ¶12 (citing *State ex rel. Locklear v. Schwarz*, 2001 WI App 74, 242 Wis. 2d 327, 629 N.W.2d 30) (footnote omitted).

The same rationale applies here. After Schwab filed this action, the time for service was tolled until the circuit court processed Schwab’s paperwork, assigned his case a number, and returned a copy of the authenticated summons and complaint to him for service. Because the circuit court did not consider how tolling affected Schwab’s service deadline, we conclude that dismissal was improperly granted.

Therefore,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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