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**DISTRICT IV**

June 20, 2018

To:

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Myrtle M. Morris  
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You are hereby notified that the Court has entered the following opinion and order:

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2017AP1603

Myrtle M. Morris v. John Kaul d/b/a Kaultronics Co./U.S.-Cellular  
(L.C. # 2016CV105)

Before Lundsten, P.J., Blanchard and Kloppenburg, 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).**

Myrtle Morris, pro se, appeals from a circuit court order dismissing her personal injury claims against John Kaul<sup>1</sup> without prejudice due to her failure to serve Kaul. Morris argues that the circuit court erred in granting Kaul's motion to dismiss for lack of personal jurisdiction. Based upon our review of the briefs and record, we conclude at conference that this case is

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<sup>1</sup> The full caption of the circuit court's dismissal order lists the defendant as "John Kaul d/b/a Kaul Tronics Co./U.S.-Cellular."

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>2</sup> We reject Morris’s arguments and affirm.

Morris filed a complaint against Kaul alleging that she slipped and fell in the parking lot of Kaultronics Communications in Richland Center. Kaul filed a motion to dismiss for lack of personal jurisdiction, arguing that he was not properly served within ninety days, as required by WIS. STAT. § 801.02(1).<sup>3</sup> Kaul supported his motion with an affidavit stating that he had not received a copy of the summons and complaint and had not authorized anyone to accept service on his behalf. The circuit court granted Kaul’s motion after a hearing and dismissed Morris’s complaint without prejudice.

“The service of a summons in a manner prescribed by statute is a condition precedent to a valid exercise of personal jurisdiction.” *Mared Indus., Inc. v. Mansfield*, 2005 WI 5, ¶10, 277 Wis. 2d 350, 690 N.W.2d 835 (quoted source omitted). “Whether service of a summons is sufficient to obtain personal jurisdiction over a defendant involves the interpretation and application of a statute to undisputed facts and is reviewed as a question of law.” *Id.* (quoted source omitted).

Service of process is governed by WIS. STAT. § 801.11. This statute sets forth four methods for serving a natural person:

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

<sup>3</sup> This statute provides: “A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.” WIS. STAT. § 801.02(1).

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), service may be made by publication of the summons as a class 3 notice, under ch. 985, and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

(d) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

WIS. STAT. § 801.11(1).

As best we can tell from Morris's brief, Morris was unable to serve Kaul under the first two methods. Accordingly, Morris attempted to serve Kaul by publication. This option requires service by "publication of the summons as a class 3 notice, under ch. 985, and by mailing." WIS. STAT. § 801.11(1)(c). In turn, a class 3 notice under Chapter 985 requires three insertions. WIS. STAT. § 985.07(3)(a). "Insertion," when used to indicate the publication of a legal notice more than one time, means once each week for consecutive weeks ...." WIS. STAT. § 985.01(1m).

Morris concedes that her attempt to serve Kaul by publication was insufficient because the legal notice was published for only one week.

Morris argues that the circuit court should have done more to help her serve Kaul. Alternatively, she argues that service on Kaul's insurer should be sufficient. However, these arguments are not supported by any pertinent legal authority. For example, Morris appears to be relying on the service rules for corporations or limited liability companies. *See* WIS. STAT. § 801.11(5). However, in order for the court to have personal jurisdiction over Kaul, Morris must follow the provisions for serving a natural person under WIS. STAT. § 801.11(1).

In his response brief, Kaul argues that the circuit court properly dismissed the complaint due to Morris's failure to comply with WIS. STAT. § 801.11(1). Kaul further argues that Morris cannot serve Kaul through an agent without proof that Kaul has authorized that agent to accept service. *See **Mared Indus., Inc.***, 277 Wis. 2d 350, ¶21 (concluding that an agent must have actual authority to accept service under WIS. STAT. § 801.11(1)(d) and that apparent authority is not sufficient). Here, Kaul submitted an affidavit denying that he has authorized anyone to accept service on his behalf. Morris has not pointed to any record evidence to dispute this.

In addition, Morris did not file a reply brief. We take this as an admission that Kaul's arguments are correct. *See **Fischer v. Wisconsin Patients Comp. Fund***, 2002 WI App 192, ¶1 n.1., 256 Wis. 2d 848, 650 N.W.2d 75 ("An argument asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted."). Accordingly, we conclude that the circuit court did not err in dismissing Morris's complaint without prejudice.

Upon the foregoing reasons,

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*