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May 15, 2019

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

2018AP1127

William A. Chapman v. Labor and Industry Review Commission
(L.C. #2018CV184)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

William A. Chapman, pro se, appeals from an order dismissing his action which sought review of a decision by the Labor and Industry Review Commission (Commission) regarding Chapman's worker's compensation claim. 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 (2017-18).¹ Because Chapman did not file and serve a proper summons on the defendants, the circuit court lacked competency and personal jurisdiction to proceed, requiring dismissal. We affirm.

Chapman alleges he was hurt in April 2008 in New Jersey while working for Kreilkamp Trucking, Inc. He filed a workers compensation claim in Wisconsin, and the Administrative Law Judge (ALJ) entered a decision. On February 28, 2018, the Commission affirmed the ALJ's decision with an order, which enclosed the time limit and procedures for obtaining judicial review of the decision.² The enclosed document, entitled Appeal Rights, stated in relevant part:

Any party aggrieved by the commission decision may begin a legal action for review of the commission decision in circuit court. The action must be commenced within 30 calendar days from the date of the commission decision. **Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons *and* of the complaint upon the commission, all within 30 calendar days from the date of the commission decision.**

On March 19, 2018, Chapman filed a document entitled Statement in Washington County Circuit Court. Based on its allegations, Chapman purportedly sought review of the Commission's February 28, 2018 order. This document did not name the court or county in which the action was being filed, did not provide the names and addresses of the parties, and did not provide a direction that summoned and required the defendants to serve an answer or demand a copy of the complaint.

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

² Chapman has not disputed the mailing date of the order, nor does he dispute that he received the order and the notice of appeal enclosure.

The Commission moved to dismiss on the grounds that the circuit court lacked competency and personal jurisdiction over the defendants. The Commission asserted that Chapman never filed a summons or served a summons on the Commission. The other defendants requested dismissal for similar reasons.

Chapman opposed the motion, arguing that the Commission “received the summons and signed for it on the 27th, of March at 8:23 am.” He attached a postal notification that someone on behalf of the Commission signed for the document, but Chapman did not provide a copy of, nor a statement describing, the document that he mailed. The circuit court’s electronic docket did not indicate that a summons had been filed; it only reflected that the pleading entitled Statement was filed on March 19, 2018.³

The circuit court dismissed the action, adopting the reasoning of the defendants. This appeal followed.

Determining what constitutes a properly filed and served summons presents a question of statutory interpretation which we review de novo. *See American Family Mut. Ins. v. Royal Ins. Co.*, 167 Wis. 2d 524, 529, 481 N.W.2d 629 (1992).

Wisconsin courts require strict compliance with the statutory procedures governing review of the Commission’s orders. *Cruz v. DILHR*, 81 Wis. 2d 442, 448-49, 260 N.W.2d 692 (1978). “A violation of these legislative strictures is beyond the competence of this court to

³ Chapman filed other documents on March 19 as well, but those appear to relate to the merits of the underlying dispute that gave rise to the agency’s decision. This case was dismissed before the administrative record was filed.

remedy.” *Id.*; see also *Gomez v. LIRC*, 153 Wis. 2d 686, 692, 451 N.W.2d 475 (Ct. App. 1989).

This strict compliance extends to the filing and service requirements of WIS. STAT. § 102.23(1). *Gomez*, 153 Wis. 2d at 692. The statute states in relevant part:

2. Within 30 days after the date of an order or award made by the commission, any party aggrieved by the order or award may commence an action in circuit court for review of the order or award by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court....

....

(b) In such an action a complaint shall be served with an authenticated copy of the summons.

WIS. STAT. § 102.23(1)(a)2., (b).⁴ In short, to have the Commission’s decision reviewed, one must file and serve within thirty days a summons and complaint upon the defendants.

A proper summons should include the following: (1) the title of the cause, the name of the court and county in which the action is being filed, the standard description and case code, and the names and addresses of the parties; (2) a direction to the defendant “summoning and requiring” the defendant to either serve an answer to the complaint if a copy of the complaint is

⁴ The Wisconsin Administrative Code also provides requirements for judicial review of Commission decisions, stating that an action for judicial review “is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission.” WIS. ADMIN. CODE § LIRC 3.05 (March 2019). The provision specifies that service by mail is acceptable, but “only if the pleadings are actually received by the commission within the appeal period.” *Id.*

served with the summons, or demand a copy of the complaint within a specified time period. WIS. STAT. § 801.09(1), (2).⁵

Chapman did not file a summons with the circuit court or serve a summons upon the defendants as required by WIS. STAT. § 102.23(1)(a) and (b). Instead, he filed a document captioned Statement, which cannot be construed as a summons because it did not contain, or substantially contain, the few, basic and mandatory provisions specified in WIS. STAT. § 801.09. The Statement did not name the court or county in which the action was being filed. It did not provide the names and addresses of the parties. And it did not provide a direction that summoned and required the defendants to serve an answer or demand a copy of the complaint.

Because Chapman did not comply with the requirements of WIS. STAT. §§ 102.23(1)(a) and 801.09, the circuit court did not have competency to hear his case, requiring dismissal. *See Miller Brewing Co. v. LIRC*, 173 Wis.2d 700, 706, 495 N.W.2d 660 (1993) (because sec. 102.23(1)(a) was not complied with, the circuit court could not proceed with the case). Moreover, Chapman's failure to file and serve a summons is a fundamental defect that deprived the court of personal jurisdiction over the defendants, also requiring dismissal. *See American Family Mut. Ins.*, 167 Wis. 2d at 533-34 (fundamental defects include failing to file a summons and complaint naming the defendant).

Upon reading Chapman's appellate brief and the letter he attached to his notice of appeal, we discern two possibly relevant arguments: (1) that he timely served by mail a summons on the

⁵ A summons must be "substantially in one of the forms specified" in WIS. STAT. § 801.095, depending upon the type of service and whether a complaint is attached. Sec. § 801.095.

Commission and (2) that electronic notice of his filed Statement was sufficient to comply with WIS. STAT. § 102.23(1)3. We disagree.

Chapman claims that he filed and served a summons on the Commission. His proffered evidence was an unsworn statement in his April 10, 2018 letter to the court, which did not attach a copy of the documents he alleged constitute a summons served on the Commission. Chapman has never argued that the documents he filed in circuit court were different than the documents he mailed to the Commission. Thus, as best as we can tell, he argues that his filed Statement constituted a summons. We have already discussed why this document does not constitute a summons.

In a June 4, 2018 letter addressed to the circuit court, Chapman asserts the summons and complaint were electronically served through the court, and the defendants responded without problem. We disagree that this approach complied with any authorized process. Putting aside the details of the lack of compliance, at no point has Chapman actually produced a copy of a proper summons that he claims he served, electronically or otherwise. Without a proper summons, the action cannot be sustained.

While some leniency may be allowed to pro se litigants, the fact that Chapman is representing himself is “[not] a license not to comply with relevant rules of procedural and substantive law.” *Waushara Cty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (alteration in original; citation omitted). Despite being given clear and straightforward Appeal Rights instructions by the Commission after it affirmed the ALJ, Chapman nonetheless did not properly file and serve a summons within thirty days of service of the Commission’s order. Dismissal of his case is mandatory.

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.

Sheila T. Reiff
Clerk of Court of Appeals