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DISTRICT II

May 22, 2019

To:

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

2018AP1895

State of Wisconsin ex rel. Quentin Rogers v. Maria Silao-Johnson
(L.C. #2018CV445)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Quentin Rogers served respondent via certified mail rather than by personal service as required by WIS. STAT. § 801.11 (2017-18).¹ The circuit court dismissed Rogers petition for writ of certiorari on the grounds that the court lacked jurisdiction and competency. 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. As personal service of the writ was required

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

and as the respondent was not personally served, we summarily affirm the order of the circuit court dismissing Rogers's certiorari action.

Rogers filed his petition for writ of certiorari on May 29, 2018, and he mailed the petition and writ to the respondent. Rogers filed an affidavit of mailing with the circuit court stating that he had served the petition and writ by certified mail. Rogers did not personally serve the respondent. Rogers moved for a default judgment when the respondent did not file a return to the writ within thirty days of service (via mail). The respondent replied with a motion to quash the petition on the grounds that she had not been personally served with the writ. The court granted the respondent's motion and dismissed Rogers's certiorari action.

Once a certiorari action is commenced, personal jurisdiction must be obtained pursuant to WIS. STAT. § 801.11. See *Bergstrom v. Polk Cty.*, 2011 WI App 20, ¶12 & n.3, 331 Wis. 2d 678, 795 N.W.2d 482 (“The personal service requirements of WIS. STAT. § 801.11 apply to a certiorari action commenced by the filing of a summons and complaint. See WIS. STAT. §§ 801.02(1) and (5), 801.11.”); see also *State ex rel. Kieson v. Pollard*, No. 2015AP1534, unpublished slip op. ¶18 (WI App Dec. 22, 2016) (“Actions seeking equitable relief by certiorari, quo warranto, habeas corpus, mandamus, or prohibition plainly fall within the broad scope of § 801.01(2)—see, e.g., § 801.02(5)”).

Failure to properly serve a defendant is a fundamental defect fatal to an action, regardless of prejudice, and warrants dismissal. *Hagen v. City of Milwaukee Emp.'s Ret. Sys. Annuity & Pension Bd.*, 2003 WI 56, ¶13, 262 Wis. 2d 113, 663 N.W.2d 268; *Bartels v. Rural Mut. Ins. Co.*, 2004 WI App 166, ¶16, 275 Wis. 2d 730, 687 N.W.2d 84. “Wisconsin requires strict

compliance with its rules of statutory service, even though the consequences may appear to be harsh.” *Dietrich v. Elliott*, 190 Wis. 2d 816, 827, 528 N.W.2d 17 (Ct. App. 1995).

Rogers argues that as the attorney general filed a “Notice of Appearance” on behalf of the respondent, “special circumstances” equated to personal service as (1) the attorney general formally acknowledged receipt of a document on behalf of its client and (2) the attorney general formally admitted personal service. We disagree. The attorney general did not accept personal service or consent to jurisdiction. In the attorney general’s “Notice of Appearance,” the attorney general expressly stated that it appeared in this action “subject to and without waiving any objections to jurisdiction or the Court’s competency to proceed.”

As the respondent was required to be personally served and as Rogers failed to personally serve the respondent, the circuit court never obtained personal jurisdiction over the respondent, and we summarily affirm the order of the circuit court dismissing this certiorari action.

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