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**DISTRICT III**

February 25, 2020

To:

Hon. William F. Kussel Jr.  
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You are hereby notified that the Court has entered the following opinion and order:

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2018AP2060                      Shawano County v. Alan Lloyd Bernitt  
2018AP2061                      (L. C. Case Nos.: 2018FO175, 2018FO176)

Before Hruz, J.<sup>1</sup>

**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).**

Alan Bernitt, pro se, appeals from default judgments entered against him for two ordinance violations. One violation involves Bernitt resisting or obstructing a law enforcement officer, and the other is for his disorderly conduct. *See* WIS. STAT. §§ 946.41(1), 947.01(1).

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Bernitt also appeals an order summarily denying his “Petition for Writ of Error Quo Warranto • Quo Warranto.” Based upon our review of the parties’ briefs and the appellate record, we conclude this appeal is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

On April 15, 2018, Shawano County Sheriff’s Department deputy Nathan Thornborrow personally served Bernitt with the two ordinance citations. These citations notified Bernitt to appear in Shawano County Circuit Court on May 29, 2018, at 8:30 a.m. Bernitt appeared in court as directed, and he entered not-guilty pleas. Bernitt also requested a jury trial. The circuit court informed him that to effectuate his request, he would need to pay the applicable jury fees within ten days. Bernitt claimed he was unable to afford paying the fees, which prompted the court to instruct him to fill out and file an indigency form, after which the court would consider waiving the fees. The following day Bernitt filed a petition for waiver of fees and costs, including an affidavit of indigency. The court then issued an order waiving Bernitt’s payment of jury fees.

While Bernitt was in court on May 29, he was hand-delivered a notice of a pretrial conference and jury trial that were both scheduled for October 2, 2018, at 1:30 p.m. Bernitt, however, failed to appear in court on October 2, and the circuit court entered default judgments against him and imposed monetary forfeitures as penalties. The next day, Bernitt filed a motion to reopen the default judgments, alleging only that there had been “misdirection as to the date of pretrial hearing” and “[i]nformation furnish [sic] to me over the telephone was inaccurate.” The court denied the motion the same day, finding that “[n]o legal defenses were stated, and the court record shows that the defendant was given a written notice of the next court hearing stating the correct date.”

On October 12, 2018, Bernitt filed a fifteen-page document denominated “Ex Parte Petition for Writ of Error Quo Warranto • Quo Warranto.” The submission generally argued that Judge Kussel, who presided over Bernitt’s cases, must “produc[e] within 20 days of [sic] all original documents required to prove his ... authority to hold office as a government official during” Bernitt’s cases. By order dated December 17, 2018, the circuit court summarily denied the petition. The court noted Bernitt’s prior default as well as its earlier denial of his motion to reopen the default judgment, and it stated that “[t]his Circuit Court case is Closed.” Bernitt now appeals.

Bernitt makes two arguments on appeal. First, he contends the circuit court erred by not reopening the default judgments, arguing that he was not properly informed of the pretrial hearing at which he failed to appear. Second, he asserts that the court erred by denying his “quo warranto” petition.

We have little difficulty affirming the circuit court’s decision to deny Bernitt’s motion to reopen the default judgments, which we review for an erroneous exercise of discretion. *See Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶29, 326 Wis. 2d 640, 785 N.W.2d 493. While the motion was promptly filed, Bernitt failed to provide any sufficient explanation for his failure to appear at the pretrial conference and jury trial noticed for October 2, 2018. The record includes a form that, in one column, has a “Hearing Notice.” Below that header, the form reads: “Next Court Date:” after which “10-2-18 @ 1:30” is written above a blank line. Below those items, a “Pre-trial” box and a “Jury Trial” box both contain checkmarks. Finally, at the bottom of the form, there appears: “CC: \_\_\_ Hand delivered to the Defendant in Courtroom[,]” with a

checkmark appearing above the blank line.<sup>2</sup> The foregoing is corroborated by the court's minutes entered for the hearing that day, which state: "Pre-trial conference scheduled for October 2, 2018 at 01:30 pm."

Although Bernitt alleged in his motion to reopen that there was "misdirection" regarding the trial date, and that he was furnished "inaccurate" information over the telephone, nowhere did he explain these vague allegations in his motion. Indeed, his motion provided no detail as to who allegedly did such things, when they were done, or what he was erroneously or otherwise improperly told.<sup>3</sup> Further, Bernitt's motion conspicuously failed to allege that he never received notice of the October 2 hearing, suggesting only that unexplained things happened after the May 29 hearing that caused him to believe he did not need to appear on October 2. Again, nowhere did Bernitt explain or allege what such things happened in this regard.

For the first time on appeal, Bernitt makes allegations in his briefs attempting to fill in such details, almost all of which have no record support. He asserts that he never received "paperwork" "properly notif[ying]" him of the hearing, including the notice produced at the May 29 hearing. Bernitt further suggests, without citing to any authority, that he would have needed to personally sign any such paperwork indicating that he had received it in order for the notice to be valid. There are other allegations in Bernitt's briefs devoid of any record support, none of which we need to address for that reason. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239,

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<sup>2</sup> On appeal, Bernitt presents a copy of the May 29, 2018 notice of hearing form where there is no checkmark on this line. This copy of the notice is nowhere in the record and, therefore, not proper for our consideration. *See South Carolina Equip., Inc. v. Sheedy*, 120 Wis. 2d 119, 125-26, 353 N.W.2d 63 (Ct. App. 1984). Regardless, the copy of the form in the court record does contain such a notation indicating the form had been hand-delivered to Bernitt in the courtroom that day.

244-45, 430 N.W.2d 366 (Ct. App. 1988). Rather, for the reasons explained above, the record demonstrates Bernitt received notice of the pretrial conference and jury trial scheduled for October 2, 2018, and there is no record support for any of Bernitt’s allegations aimed at explaining his failure to appear. Accordingly, we cannot conclude that the circuit court erroneously exercised its discretion in denying Bernitt’s motion to reopen the default judgments.

Regarding the denial of Bernitt’s “quo warranto” petition, we agree with the County that it is difficult to understand his argument, especially as advanced in his brief-in-chief. Indeed, Bernitt’s substantive argument on this issue in his initial brief is plainly a photocopy of his submission to the circuit court from November 20, 2018, which was weeks before the court even denied the petition. In those pages, Bernitt is clearly making an argument to the circuit court, not to this court, and also not in any manner that develops an argument for an error requiring relief in this appeal.

Further explanation and argument were provided in Bernitt’s reply brief. Giving some latitude to Bernitt insomuch as he is proceeding as a pro se litigant, we understand his argument to be that Judge Kussel was required to provide all documentation necessary to prove he properly fulfilled his role as a judge in Bernitt’s cases, lest the entire case proceedings be deemed void.

Bernitt’s purported appeal of the circuit court’s denial of his “quo warranto” petition fails for at least two reasons. First, the petition was untimely in relation to the cases he now appeals. As the court noted in its denial of the petition, by the time he filed the petition, the default judgments had already been entered and his motion to reopen the default judgments had already

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<sup>3</sup> Even now, on appeal, when Bernitt alleges he “was told verbally that [his] pretrial would be on  
(continued)

been denied. While Bernitt had not yet perfected his appeal, the cases were closed. Second, it is a matter of public record that Judge Kussel is a duly elected circuit court judge in Wisconsin; his authority to preside over Bernitt's cases is without question. *See* WIS. CONST. art. VII, §§ 7, 8. Bernitt has never explained in what respect he believes Judge Kussel's certificate of election to office was improperly or illegally issued. *See* WIS. STAT. § 784.06. Bernitt's blatant attempt to void the judgments entered against him by invoking an arcane and, more importantly, misplaced legal doctrine simply has no basis in fact or in law.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. 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*

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Oct. 3 at 1:30," he does not explain *who* allegedly told him this information.