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DISTRICT IV

March 13, 2020

To:

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C. G. G.

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

2019AP412

In re the Support of E. A. G.: State of Wisconsin v.
Raymond R. Barton (L.C. # 2018FA135)

Before Blanchard, Graham and Nashold, 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).

Raymond R. Barton, pro se, appeals an order for child support. 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 defects in service of the summons and petition deprived the circuit court of personal jurisdiction, we reverse and remand with directions to dismiss the case as to Barton.

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

The State of Wisconsin petitioned for an order requiring Barton to pay child support for his then-minor daughter. The State mailed the summons and petition, a notice of motion and motion for hearing, and an acknowledgment of service form to Barton and to the child's mother. The child's mother signed and returned the form acknowledging service. Barton did not. Instead, Barton filed a challenge objecting to the circuit court's personal jurisdiction on grounds that the State failed to accomplish service as required by statute.

At a January 15, 2019 hearing on the petition, the State acknowledged that Barton was not properly served, and the circuit court adjourned the matter until February 12, 2019, so that the State could serve Barton. On February 8, 2019, the State filed a certificate signed by a sheriff's deputy indicating that the deputy had tried but was unable to personally serve Barton. At the adjourned hearing, the circuit court entered an order granting the State's petition for child support. Barton appeals.

In pertinent part, WIS. STAT. § 801.11(1) provides that a court may exercise personal jurisdiction over a defendant who is a natural person by serving a summons as follows:

(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

(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.

It is undisputed that Barton was never served personally, by substitute service, or by publication. WIS. STAT. § 801.11(1)(a)-(c). Barton argues, and we agree, that the State's failure to accomplish service by any of the methods set forth in § 801.11(1) deprived the circuit court of personal jurisdiction over Barton. *Danielson v. Brody Seating Co.*, 71 Wis. 2d 424, 429, 238 N.W.2d 531 (1976) (“The service of a summons in a manner prescribed by statute is a condition precedent to a valid exercise of personal jurisdiction.”). As such, the court lacked authority to enter the order for child support.

In its respondent's brief, the State asserts that the child support agency “had intended to pursue both mailing and publication as a substitute for personal service” but decided not to take further action because the circuit court determined that the agency's efforts at personal service were reasonable. Along these lines, the State's brief incorrectly frames the dispositive question as whether or not it “made a reasonably diligent effort at service on Barton.” The State's brief misses the mark. “Reasonable diligence” in attempting personal service does not relieve the petitioner of the duty to provide service in compliance with the other methods allowed under WIS. STAT. § 801.11(1). When, despite diligent efforts, a petitioner is unable to accomplish personal or substitute service on a defendant, service by publication is not just permissible—it is required.

The State's brief also suggests that the absolute lack of statutory service should be excused either because Barton was allegedly attempting to evade service, or because he knew the petition had been filed and suffered no prejudice. These arguments are contrary to established legal principles. As the State itself acknowledges, “Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may appear to be harsh.” *American Family Mut. Ins. Co. v. Royal Ins. Co. of Am.*, 167 Wis. 2d 524, 531, 481 N.W.2d 629 (1992).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and remanded with directions to dismiss the case as to the appellant. *See* 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