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July 9, 2020

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

2018AP2271 Suzanne M. Weber v. LIRC (L.C. # 2018CV33)
2018AP2272 Suzanne M. Weber v. LIRC (L.C. # 2018CV185)

Before Fitzpatrick, 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).

Suzanne Weber appeals circuit court orders that dismissed Weber's petitions for judicial review of decisions by the Labor and Industry Review Commission. Weber contends that the circuit court erred by dismissing the petitions based on the court's finding that Weber failed to strictly comply with the service requirements under WIS. STAT. § 227.53(1)(c) (2017-18).[1]

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

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. We summarily affirm.

In February and June 2018, Weber filed petitions for judicial review of two Commission decisions that denied Weber's fair employment complaints against her former employer, the Department of Workforce Development (DWD). The Commission moved to dismiss the petitions on grounds that Weber failed to strictly comply with the service requirements under WIS. STAT. § 227.53(1)(c) because she served the petition on DWD by first class mail but DWD did not admit service in writing. The circuit court found that Weber had failed to comply with the statutory service requirements, depriving the circuit court of competency to proceed. The court therefore dismissed both petitions.

Under WIS. STAT. § 227.53(1)(c), a petition for judicial review of an agency's decision must be served "upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record." Service must be accomplished personally, by certified mail, "or, when service is timely admitted in writing, by first class mail." Section 227.53(1)(c). Whichever mode of service is used, service must be accomplished "not later than 30 days after the institution of the proceeding." ***Id.*** A court may not dismiss for failure to serve a party unless "the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under [WIS. STAT. §] 227.47 or the person's attorney of record." ***Id.***

The circuit court lacks competency to proceed when a party fails to properly complete timely service. *See* ***Wisconsin Power and Light Co. v. PSC***, 2006 WI App 221, ¶11, 296 Wis. 2d 705, 725 N.W.2d 423; *see also* ***Weisensel v. Wisconsin DHSS***, 179 Wis. 2d 637, 643,

508 N.W.2d 33 (Ct. App. 1993). Whether a circuit court has lost competency is a question of law that we review de novo. ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶7, 273 Wis. 2d 76, 681 N.W.2d 190.

Weber argues first that DWD is not a "person" under WIS. STAT. § 227.53(1)(c), and that the court therefore could not dismiss the petitions for service defects. Weber points out that, under § 227.53(1)(c), "[a] court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party," except when "the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision." Weber argues that the statute uses the terms "person" and "agency" to denote different types of parties. She contends that the statute specifies that only failure to serve a "person," as opposed to failure to serve an "agency," may result in dismissal of the petition. Thus, Weber asserts, any defect in Weber's service of the petitions on DWD could not result in dismissal, because DWD is an "agency," not a "person."

The Commission responds that when WIS. STAT. § 227.53(1)(c) is read as a whole, "person" as used in the phrase "person listed as a party" in the statute is interchangeable with "party." *See* ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (statutory language must be interpreted in context). It contends that the distinction the statute makes as to dismissal is the following. Only failure to serve a party that was "listed as a party for purposes of review in the agency's decision," as opposed to a party *not* listed in the agency's decision, permits dismissal of the petition. It contends that the only reasonable reading of the statute is that failure to serve a party listed in the agency's decision permits dismissal. Under this view, it would be unreasonable to interpret the statute as Weber suggests, because it would frustrate the purpose of the statute to require service on parties,

regardless of the type of party, who are listed in an agency's decision. Thus, it contends, the circuit court properly dismissed Weber's petition because it is undisputed that Weber served DWD by first class mail and DWD did not admit service in writing. In reply, Weber reiterates her position that "person" and "party" have different meanings under the statute.

We agree with the Commission's interpretation of WIS. STAT. § 227.53(1)(c). The statute plainly states that a petition may not be dismissed for failure to serve a party "unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under [WIS. STAT. §] 227.47 or the person's attorney of record." Thus, the statute distinguishes between parties who are not listed as a party for purposes of review in the agency's decision, and those who are listed as a party for purposes of review in the agency's decision. We do not agree with Weber's reading of the statute as drawing a distinction between a "person" and an "agency" as to service requirements. Contrary to Weber's reading, the statute does not state that failure to serve a person, *but not failure to serve an agency*, authorizes a circuit court to dismiss the petition. Rather, the statute states broadly that dismissal is authorized where "the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision." We therefore conclude that the plain meaning of the statute is that "a person listed as a party for purposes of review in the agency's decision" includes all parties listed for purposes of review in the agency's decision.

Next, Weber contends that the Commission did not list any party in its decision, and therefore there was no one "listed as a party for purposes of review in the agency's decision." In response, the Commission contends that it listed DWD as a party in the caption of its decision and provided DWD's address in the attached copy of the administrative law judge's decision. Thus, the Commission argues, it complied with the requirement under WIS. STAT. § 227.47(1)

that it include in its decision "a list of the names and addresses of all persons who appeared before the agency in the proceeding who are considered parties for purposes of review under s. 227.53." In reply, Weber again asserts that the Commission failed to provide a list of parties with its decision.

We conclude that the Commission complied with its obligation to include with its decision "a list of the names and addresses of all persons who appeared before the agency in the proceeding who are considered parties for purposes of review under [WIS. STAT. §] 227.53." *See* WIS. STAT. § 224.47(1). Weber and DWD are listed in the caption of the Commission's decisions as the parties, and their addresses are listed in the caption of the attached ALJ decisions. Weber has not persuaded us that more was required.

Next, Weber argues that her petitions should not have been dismissed because DWD was not prejudiced by any defect in service. She argues that DWD received actual notice of the petitions, and that counsel for the Commission represented DWD in separate proceedings, such that the Commission's counsel's acknowledgement of receiving the petition should be imputed to DWD. She also argues that, under the factors set forth in ***Karow v. Milwaukee Cty. Civil Ser. Comm'n***, 82 Wis. 2d 565, 570-71, 263 N.W.2d 214 (1978), the service required under WIS. STAT. § 227.53(1)(c) should be construed as directory rather than mandatory. She argues that, under ***Hamilton v. DILHR***, 56 Wis. 2d 673, 203 N.W.2d 7 (1973), failure to strictly comply with service requirements does not deprive the circuit court of competency to reach the merits of the petition.

The Commission responds that strict compliance with service requirements is required, regardless of prejudice. *See* ***Weisensel*** 179 Wis. 2d at 644 ("[T]he test is not whether the method

of service was reasonable or whether the agency was prejudiced, but whether the service strictly complied with statutory requirements."). Weber replies that none of the cases that the Commission cites establish that dismissal is warranted on the specific facts of this case.

We conclude that strict compliance with service requirements is required and that Weber's failure to properly serve DWD deprived the circuit court of competence to proceed. The right to judicial review of agency decisions depends on strict compliance with WIS. STAT. § 227.53(1)(c). *See* ***Cudahy v. DOR***, 66 Wis. 2d 253, 259, 224 N.W.2d 570 (1974). "The failure to comply with the mandatory time limitation" for "filing and serving a petition for judicial review of an agency decision" "results in the loss of the circuit court's competency to proceed and the petition must be dismissed." ***Wisconsin Power and Light Co.***, 296 Wis. 2d 705, ¶11.

Weber's reliance on ***Karow*** and ***Hamilton*** for the proposition that strict compliance is not required is misplaced. In ***Evans v. Bureau of Local and Reg'l Planning***, 72 Wis. 2d 593, 241 N.W.2d 603 (1976), the supreme court explained that the issue in ***Hamilton*** was that Hamilton had presented the petition to the clerk before the thirty-day deadline had expired, and "the county clerk had failed to accept the petition for judicial review for filing, or to promptly notify the appellant of such nonacceptance, which resulted in the expiration of the 30-day period and the frustration of what otherwise would have been a timely filing of the petition for review." ***Evans***, 72 Wis. 2d at 596. ***Evans*** distinguished ***Hamilton*** on that basis, noting that requiring strict compliance with statutory requirements for WIS. STAT. ch. 227 review "is consistent with earlier opinions of [the supreme] court." ***Id.*** at 597. As the ***Evans*** court explained, ***Hamilton*** does not stand for the proposition that service requirements are not mandatory. Rather, Wisconsin courts have consistently held that strict compliance with service requirements is necessary for the circuit court to reach the merits of a petition for judicial review of an agency decision. *See*

Evans, 72 Wis. 2d at 599; *see also* ***Currier v. DOR***, 2006 WI App 12, ¶23, 288 Wis. 2d 693, 709 N.W.2d 520 (citing cases holding that "timely service is indispensable to trigger judicial review of the Commission's decision" and that "failure to comply with mandatory time limits results in loss of circuit court's competency to proceed" (citations omitted)). Thus, because it is well-settled that the service requirements are mandatory, we need not address whether the factors set forth in ***Karow*** support Weber's interpretation of the service requirements as directory rather than mandatory.

We reject Weber's arguments that factual differences between cases holding that strict compliance is required and this case renders those cases inapposite. As explained, Wisconsin case law has consistently held that strict compliance with service requirements is required for a court to have competency to proceed with judicial review of an agency decision. Despite the different facts in this case, it remains that strict compliance with service requirements is required for the circuit court to have competency to reach the merits of Weber's petition, and that Weber failed to meet those requirements.

Finally, Weber argues that the circuit court made various procedural errors and that those errors require reversal. However, Weber has not sufficiently developed her arguments as to why any of the claimed procedural errors require reversal. We therefore decline to address those arguments further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). We affirm.

IT IS ORDERED that the orders are 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