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**DISTRICT IV**

March 18, 2021

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

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2020AP871

Jose Gonzalez v. Stacy Hoem (L.C. # 2019CV314)

Before Fitzpatrick, PJ, Kloppenburg, 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).**

Jose Gonzalez appeals a circuit court order that dismissed, for lack of personal jurisdiction, Gonzalez's action under 42 U.S.C. § 1983. Gonzalez argues that the circuit court erred by dismissing his complaint because: (1) Gonzalez was unable to serve the authenticated summons and complaint because the circuit court failed to return the summons and complaint to him; and

(2) the circuit court was responsible for serving the summons and complaint under federal rules. 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 (2019-20).<sup>1</sup> We summarily affirm.

On July 24, 2019, Gonzalez filed a complaint in the circuit court under 42 U.S.C. § 1983, challenging the conditions of his confinement at the Wisconsin Secure Program Facility. On February 6, 2020, the circuit court issued an order that Gonzalez’s case would be dismissed in twenty days based on Gonzalez’s failure to serve the defendants unless Gonzalez showed cause why the order should not take effect. Gonzalez filed a response asserting his belief that it was the court’s responsibility to serve the defendants according to the federal rules. On February 25, 2020, the circuit court dismissed the complaint without prejudice because Gonzalez had not timely served the defendants, depriving the circuit court of personal jurisdiction over them, and the time to do so could not be extended. Gonzalez moved for reconsideration, reiterating his belief that the federal rules of procedure applied, and also moved to amend his complaint, asserting that he had been unable to serve the defendants because the circuit court failed to return authenticated copies of the summons and complaint. The circuit court denied both motions.

Under WIS. STAT. § 801.02(1), an authentic copy of the summons and complaint must be served on a defendant within ninety days after filing. Proper service is required for the circuit court to obtain personal jurisdiction over a defendant. *Hagen v. City of Milwaukee Emp.s’ Ret. Sys. Annuity and Pension Bd.*, 2003 WI 56, ¶¶12-13, 262 Wis. 2d 113, 663 N.W.2d 268. The

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

ninety days to serve the defendant may not be extended, even upon a showing of good cause. WIS. STAT. § 801.15(2)(a).

Gonzalez does not contend that he timely served the defendants under WIS. STAT. § 801.02(1). Instead, he argues that the circuit court erred by dismissing his case because: (1) he was unable to serve the defendants because the court did not return authenticated copies of the summons and complaint; and (2) he was not required to serve the defendants under the federal rules. We reject both contentions.

First, Gonzalez contends that he showed good cause for his failure to serve the defendants by asserting that the circuit court failed to return authenticated copies of the summons and complaint to him. He argues that he could not have properly served the defendants without the authenticated copies. However, assuming the circuit court failed to return authenticated copies of the summons and complaint to Gonzalez, it remains that the time to properly serve the defendants cannot be extended. *See* WIS. STAT. § 801.15(2)(a). There is no exception under the statutes for good cause for failing to accomplish timely service. Moreover, the burden to establish personal jurisdiction rests with the plaintiff who brings the lawsuit. *See Laska v. House*, 169 Wis. 2d 510, 512, 485 N.W.2d 439 (Ct. App. 1992). Thus, it was Gonzalez's responsibility to ensure that personal jurisdiction was conferred. If the circuit court delayed in returning authenticated copies, he was required to take action before the ninety-day deadline expired.

Second, Gonzalez contends that the supremacy clause required the circuit court to apply federal procedure to Gonzalez's 42 U.S.C. § 1983 claim in state court. *See Howlett v. Rose*, 496 U.S. 356, 367 (1990) ("The Supremacy Clause makes [federal] laws 'the supreme Law of the Land,' and charges state courts with a coordinate responsibility to enforce that law according to

their regular modes of procedure.”). He contends that, under federal procedure, the circuit court had the responsibility to serve the defendants, and that its failure to do so deprived Gonzalez of his right to enforcement of federal law in state court. *See* 28 U.S.C. § 1915(d); FED. RULE CIV. PRO. 4(c)(3). However, as the State points out, the federal procedural rules apply only in federal courts. *See* FED. RULE CIV. PRO. 1; *Rader v. Baltimore & O.R. Co.*, 108 F.2d 980, 986 (7<sup>th</sup> Cir. 1940). Any civil claim pursued in a Wisconsin state court is governed by Wisconsin procedural laws. *See* WIS. STAT. § 801.01(2). Here, that law required Gonzalez to serve the defendants within ninety days of filing his complaint. *See* WIS. STAT. § 801.02(1).

Because Gonzalez failed to timely serve an authenticated copy of the summons and complaint upon the defendants, the circuit court did not have personal jurisdiction over the defendants. Accordingly, the court properly dismissed this case.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to 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*