



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

May 24, 2023

To:

Hon. Kristine A. Snow
Circuit Court Judge
Electronic Notice

Charles J. Hertel
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Lynn Kristine Lodahl
Electronic Notice

Beauregard William Patterson
Electronic Notice

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

2022AP20

Dawn Degner v. State of Wisconsin DOC (L.C. #2020CV341)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Dawn Degner appeals an order dismissing her petition for review of an administrative decision by the Wisconsin Employment Relations Commission (Commission). The court dismissed her petition because Degner failed to name the Commission as respondent and serve it with a copy of the petition within thirty days as required by WIS. STAT. § 227.53(1)(a)1.-2. (2021-22).¹ Degner argues the statutory requirement is ambiguous and the directions Degner received from the Commission were confusing. Based upon our review of the briefs and record,

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

The Wisconsin Department of Corrections (DOC) terminated Degner from her position as a correctional officer. Degner appealed her termination to the Commission, alleging the DOC lacked just cause for her discharge.

Following a hearing, the Commission issued a written decision that determined there was just cause to terminate Degner and affirmed her discharge from the DOC. The Commission sent its decision to Degner via email and certified mail. Along with its decision, the Commission notified Degner that if she wanted to seek judicial review, “a petition for judicial review naming the Commission as Respondent may be filed by following the procedures set forth in [WIS. STAT.] § 227.53.” The notice quoted pertinent portions of § 227.53, including the statutory provision that a judicial proceeding for review “shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials,” § 227.53(1)(a)1., and that a petition for review shall be served and filed “within 30 days after the service of the decision of the agency upon all parties,” § 227.53(1)(a)2. At the end of the notice, the Commission advised:

For purposes of the above-noted statutory time limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing on page 1 of this letter); ... and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

(Bolding omitted).

Despite these instructions and statutory references, Degner did not name the Commission as the respondent, and she did not serve the Commission with a copy of her petition for judicial

review. Instead, Degner named her former employer—the DOC, as the respondent and served the DOC with a copy of her petition. The DOC moved to dismiss on the basis that the Commission was neither timely named in, nor served with, the petition and as a result the circuit court lacked competency. The circuit court agreed and dismissed the petition.

On appeal, Degner argues the circuit court erred by dismissing her petition because the statutory requirements are ambiguous and the directions Degner received from the Commission were confusing. We disagree. The notice Degner received from the Commission unambiguously directed Degner to “nam[e] the Commission as Respondent” and explained service is accomplished by filing with the court “and placement in the mail to the Commission.” WISCONSIN STAT. § 227.53(1)(a)1. similarly, and unambiguously, directs that “[p]roceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of circuit court for the county where the judicial review proceedings are to be held.” Degner neither named the Commission as the respondent nor served the Commission within the thirty-day deadline. *See* § 227.53(1)(a)1.-2. Where a petitioner fails to serve the decision-making agency within the 30-day deadline, the circuit court lacks competency to exercise jurisdiction and must dismiss the petition for review. *See Currier v. DOR*, 2006 WI App 12, ¶23, 288 Wis. 2d 693, 706, 709 N.W.2d 520. These statutory time limits are unbending. *Ryan v. DOR*, 68 Wis. 2d 467, 472, 228 N.W.2d 357 (1975); *Currier*, 288 Wis. 2d 693, ¶23.

Degner also argues that the circuit court erred by failing to grant a default judgment against the DOC or otherwise sanction it for not timely appearing or filing a response to her petition. However, when the court lacks competence, it has an “inability to adjudicate the specific case before it.” *See Miller Brewing Co. v. LIRC*, 173 Wis. 2d 700, 705 n.1, 495

N.W.2d 660 (1993). Because the circuit court lacked competency to exercise jurisdiction over Degner's petition, it had no authority to act.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed. *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