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DISTRICT IV

March 27, 2013

To:

Hon. James P. Czajkowski
Circuit Court Judge
220 N. Beaumont Street
Prairie du Chien, WI 53821

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

2012AP296

Danelle Young v. Catharine L. Persinger (L.C. # 2011CV78)

Before Lundsten, P.J., Higginbotham and Blanchard, JJ.

Danelle Young appeals the circuit court's order dismissing her complaint for failure to properly serve the defendant. 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(1) (2011-12).¹ We summarily affirm.

Young was injured in an automobile accident. Young filed a complaint alleging that her injuries were caused by the negligence of Catharine Persinger, the driver of the other vehicle involved in the accident. Young's counsel served Persinger's daughter with a photocopy of the authenticated summons and complaint. On the same day Persinger's daughter was served,

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Young's counsel also located Persinger at a gas station and served her with a photocopy of the authenticated summons and complaint.

Persinger moved to dismiss the complaint, arguing that the action was not properly commenced because the defendant was not served with an authenticated copy of the summons and complaint, but was served only with a photocopy of an authenticated copy. *See* WIS. STAT. §§ 801.02(1) and 802.06(2). The circuit court granted Persinger's motion to dismiss, relying on *American Family Mutual Insurance Co. v. Royal Insurance Co. of America*, 167 Wis. 2d 524, 481 N.W.2d 629 (1992). In *American Family*, 167 Wis. 2d at 535, our supreme court held that service of an unauthenticated photocopy of an authenticated summons and complaint was not sufficient to meet the requirement under § 801.02(1) that service of an authenticated copy of the summons and of the complaint be made upon the defendant for commencement of an action that seeks a personal judgment.

On appeal, Young asserts that the holding of *American Family* should be modified to permit service of either an authenticated copy or a copy of the authenticated document upon the defendant. This court does not have the authority to make such a modification. Only our supreme court has the power to overrule, modify, or withdraw language from a previous supreme court opinion. *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). Accordingly, we are bound to follow the holding of *American Family* and, applying it here, we agree with the circuit court that service upon the defendant of a photocopy of the authenticated summons and complaint was insufficient for commencement of an action under WIS. STAT. §§ 801.02(1) and 801.11(1)(a).

Young also asserts that service of a photocopy of the authenticated summons and complaint upon Persinger's daughter at Persinger's home was sufficient to comply with the requirements for substituted service under WIS. STAT. § 801.11(1)(b). Young argues that the language in § 801.11(1)(b) provides for "leaving a copy of the summons at the defendant's usual place of abode" and that, if the legislature had intended to require an authenticated copy of the summons, it would have specified that requirement in that statute. Persinger argues that Young's position interprets § 801.11(1)(b) in isolation, rather than within the context of WIS. STAT. § 801.02(1), which requires service of an authenticated copy of the summons and complaint "under this chapter" in order to commence an action in which a personal judgment is sought. In addition, Persinger points out that WIS. STAT. § 801.09(4), which explains the authentication process, states that "[t]here may be as many authenticated copies of the summons and the complaint issued to the plaintiff or counsel as are needed for the purpose of effecting service on the defendant." Persinger asserts that § 801.11(1)(b), when read within the context of surrounding statutes rather than in isolation, should be construed as requiring that the "copy of the summons" left at the defendant's usual place of abode be an authenticated copy. Young has not filed a reply brief and, thus, does not respond to Persinger's argument.

Persinger correctly asserts that our rules of statutory construction require that we read the text of a statute not in isolation, but rather as part of a whole, in relation to the language of surrounding or closely related statutes. *See State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110. We agree with Persinger's position that, when read in the context of WIS. STAT. §§ 801.02(1) and 801.09(4), WIS. STAT. § 801.11(1)(b) must be construed as requiring that the "copy of the summons" left at a defendant's usual place of abode be an authenticated copy.

IT IS ORDERED that the order is summarily affirmed under Wis. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals