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DISTRICT IV

April 19, 2013

To:

Hon. Daniel T. Dillon
Circuit Court Judge
Rock County Courthouse
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Janesville, WI 53545

Eldred Mielke
Clerk of Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2012AP857	Frank Gleichsner v. Office of General Counsel DOT (L.C. #2011CV783)

Before Higginbotham, Sherman and Blanchard, JJ.

Frank Gleichsner, pro se, appeals a circuit court order dismissing his petition for judicial review of a decision made by the Wisconsin Division of Hearings and Appeals ("DHA"). 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 affirm.

Gleichsner owns and operates a used motor vehicle dealership. After Mary Gilbert purchased a van from the dealership, she filed a claim with the Wisconsin Department of Transportation ("DOT") against the dealership, alleging nondisclosure of problems with the

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

vehicle. The claim, along with documents gathered by DOT, was referred to DHA, which issued a final decision. Gleichsner filed a "Motion to Stay Pending Judicial Review" in the circuit court. It is undisputed that the court and parties subsequently treated this motion as including a petition for judicial review of DHA's decision. DOT moved the circuit court to dismiss the petition on the ground that Gleichsner had not served all parties to the administrative proceeding as required by WIS. STAT. § 227.53(1)(c). The court agreed and dismissed Gleichsner's petition, leading to this appeal.

WISCONSIN STAT. § 227.53(1)(c) expressly requires that a petition for judicial review of an administrative decision made under WIS. STAT. § 227.52

> shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, 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.

§ 227.53(1)(c). Courts have repeatedly indicated that "strict compliance" with the service requirements of § 227.53(1)(c) is essential to the "subject matter jurisdiction" of the circuit court. *See* ***Weisensel v. DHSS***, 179 Wis. 2d 637, 643, 508 N.W.2d 33 (Ct. App. 1993); *see also* ***Wisconsin's Envtl. Decade, Inc. v. PSC***, 84 Wis. 2d 504, 515, 267 N.W.2d 609 (1978).

Here, the question is whether Gleichsner properly served Gilbert, who was certified as a party in the final decision made by DHA, pursuant to WIS. STAT. §§ 227.47 and 227.53(1)(c). Party status is significant, because the service process set forth in § 227.53(1)(c) applies to service on parties.

As a threshold matter, we note that Gleichsner's pro se status at the time of the allegedly defective service does not mean that the rule of strict compliance with the service requirement is inapplicable. *See Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (while it is true that a court may give some leeway to pro se parties, such parties must comply with relevant rules of procedure). Therefore, the following discussion of service requirements applies to him regardless of his pro se status.

Gleichsner asserts that he sent Gilbert a copy of his petition by first class mail. Gilbert testified that she did not receive it. However, it does not matter whether Gleichsner sent Gilbert a copy of the petition by first class mail or if he did, whether she received it, because WIS. STAT. § 227.53(1)(c) requires that, unless service is admitted in writing, service shall be made in person or by certified mail. *See* § 227.53(1)(c). Gleichsner points to no evidence in the record showing that Gilbert admitted service in writing, or that Gleichsner served Gilbert in person or by certified mail.

Instead, Gleichsner appears to argue that his failure to properly serve Gilbert should have been excused by the circuit court because the failure was a result of a "misunderstanding." As far as we can discern from Gleichsner's briefing, the "misunderstanding" was his apparent belief, based on a notice accompanying DHA's decision, that DOT would inform Gilbert of any status changes in the case. However, nothing in the notice or any other document Gleichsner cites can reasonably be read to have misled him into believing that he did not need to comply with the service requirement in WIS. STAT. § 227.53(1)(c) based on any obligation of DOT to communicate with anyone. On the contrary, the notice expressly informed Gleichsner that a petition for review must be "in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53."

Gleichsner also seems to argue that his failure to serve Gilbert should be excused because he did not intend to exclude or mislead her in any manner. Assuming without deciding that this representation is sincere, it lacks merit as a legal argument. Gleichsner cites no authority, and we know of none, that would excuse anyone in his position from strict compliance with the applicable service requirement on such a basis.

For all of these reasons, we conclude that the circuit court properly dismissed Gleichsner's petition on the ground that Gleichsner failed to properly serve Gilbert under the unambiguous terms of the statute. We therefore do not consider Gleichsner's other arguments, which relate to the merits of his petition.

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

Diane M. Fremgen
Clerk of Court of Appeals