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**DISTRICT IV**

September 10, 2015

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

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2014AP1800

Norman D. Stapleton v. James J. Dickman, M.D. and Black River Memorial Hospital, Inc. (L.C. # 2013CV166)

Before Lundsten, Sherman and Blanchard, JJ.

Norman Stapleton, pro se, appeals circuit court judgments dismissing Stapleton's complaint against Dr. James Dickman and Black River Memorial Hospital, Inc. 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 (2013-14).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Stapleton filed this action against Black River Memorial Hospital and Dr. Dickman, claiming damages for medical malpractice and lack of informed consent. Black River and Dr. Dickman answered the complaint, raising lack of personal jurisdiction due to improper service of process as an affirmative defense. The defendants then moved for summary judgment, asserting that the court lacked personal jurisdiction over them because Stapleton had not properly served them with the summons under WIS. STAT. § 801.11(1) and (5). Based on the undisputed fact that the only attempted service on the defendants was by mail, the circuit court dismissed the complaint based on lack of personal jurisdiction.

Stapleton contends that he properly served the defendants by mailing the summons to each of them. Stapleton points out that the summons may be served on the defendant “in a manner specified by any other statute.” *See* WIS. STAT. § 801.11(1)(d) and (5)(c). Stapleton cites WIS. STAT. § 801.10(1) for the proposition that service may be accomplished “by any adult resident of the state where service is made who is not a party to the action,” and contends that an employee of the United States Post Office is qualified to serve the summons under that statute. Stapleton also argues that the defendants’ timely answers to the complaint are proof of proper service. Thus, Stapleton argues, service was properly accomplished by mailing and the circuit court erred by dismissing the complaint for lack of personal jurisdiction. We disagree.

Under WIS. STAT. § 801.11(1) and (5), a circuit court acquires personal jurisdiction over a defendant who is a natural person or a corporation through proper service of the summons. Service may be accomplished, first, by personal service. WIS. STAT. § 801.11(1)(a) and (5)(a). If, after reasonable diligence, personal service cannot be accomplished on a defendant who is a natural person, service may be through substituted service. WIS. STAT. § 801.11(1)(b). If, after reasonable diligence, personal or substituted service cannot be accomplished, service may be

accomplished by mailing and publication as to a natural person or a corporation. WIS. STAT. § 801.11(1)(c) and (5)(b).

Our supreme court has interpreted WIS. STAT. § 801.11(5) as excluding service by mail as a means of personal service because § 801.11(5)(b) “provides that, if with reasonable diligence the defendant cannot be personally served, service can be made by publication and mailing.” *Sacotte v. Ideal-Werk Krug & Priester Maschinen-Fabrik*, 121 Wis. 2d 401, 406, 359 N.W.2d 393 (1984). The court held that, based on the plain language of the statute, “our legislature did not intend to include service by mail as a method of personal service.” *Id.* Further, the court explained, § 801.11(5)(b) “does allow service upon a defendant by mail if the party attempting service has with reasonable diligence attempted and failed to personally serve the defendant *and if the mailing is accompanied by publication.*” *Sacotte*, 121 Wis. 2d at 407 (emphasis added). Thus, service may be accomplished by mailing only if the mailing is accompanied by publication. It is undisputed that service was attempted in this case by mailing alone; because mailing alone is not a proper means of service, service was improper as to both defendants.<sup>2</sup>

Stapleton also contends that: (1) the defendants did not sufficiently argue lack of proper service and the circuit court failed to make specific findings as to whether service was proper in this case; (2) Stapleton timely served the defendants under WIS. STAT. § 801.02(1); (3) the only method of service available to Stapleton as an indigent inmate was service by mail, and thus any failure in service must be viewed as a technical error to preserve Stapleton’s due process rights;

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<sup>2</sup> In *Sacotte v. Ideal-Werk Krug & Priester Maschinen-Fabrik*, 121 Wis. 2d 401, 359 N.W.2d 393 (1984), the supreme court interpreted WIS. STAT. § 801.11(5), which applies to corporate defendants, because the defendant was a corporation. Because the relevant language in § 801.11(5) for corporations parallels language in § 801.11(1) for natural persons, we apply the holding in *Sacotte* to both the natural person and corporate defendant in this case.

and (4) the circuit court erred by failing to consider that special circumstances existed for Stapleton to accomplish service by mailing based on Stapleton's status as an indigent inmate and that Stapleton acted in good faith, and that this court should now find that those special circumstances exist. We reject these contentions.<sup>3</sup>

First, as set forth above, the defendants raised lack of proper service in their answers and on summary judgment, and the circuit court expressly found that Stapleton failed to properly serve the defendants. Moreover, we independently review whether a party is entitled to summary judgment on the facts of a case. See *Raymaker v. American Fam. Mut. Ins. Co.*, 2006 WI App 117, ¶10, 293 Wis. 2d 392, 718 N.W.2d 154. On our review of the undisputed facts, we conclude that the defendants were entitled to summary judgment based on lack of personal jurisdiction.

Based on our conclusion that the defendants were never served by one of the methods allowed by statute, we reject Stapleton's argument that *timely* service of the summons resulted in personal jurisdiction over the defendants.

As to Stapleton's contention that any error in the method of service was a technical error, that contention is inconsistent with case law on this topic. See *O'Donnell v. Kaye*, 2015 WI App 7, ¶14, 359 Wis. 2d 511, 859 N.W.2d 441 (WI App 2014) ("Where the plaintiff failed to successfully complete one of the strict statutory requirements for alternative service, the defect is fundamental, and the action was properly dismissed for lack of personal jurisdiction.").

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<sup>3</sup> To the extent Stapleton makes any other arguments not specifically addressed in this decision, we deem those arguments insufficiently developed to warrant a response.

To the extent Stapleton argues that the statutes are unconstitutional as applied to him as an indigent inmate because the statutes deny him a means to commence a lawsuit, we reject that contention. First, Stapleton has not sufficiently developed a constitutional argument. And, Stapleton does not explain why indigent inmates would be generally unable to commence lawsuits by personally serving defendants through “any adult resident of the state where service is made who is not a party to the action.” *See* WIS. STAT. § 801.10(1).

Finally, we reject Stapleton’s argument that personal jurisdiction over the defendants exists based on Stapleton’s special circumstances and the fact that Stapleton acted in good faith. “It is by complying with the legislatively mandated requirements of service that the plaintiff is able to confer the court’s personal jurisdiction over the defendant, so failure to carry out ‘statutorily proper service of process’ will be ‘fatal’ to jurisdiction.” *O’Donnell* 359 Wis. 2d 511, ¶10 (quoted source omitted). Strict compliance is required, *see id.*, ¶11, and thus courts do not have discretion to waive those requirements based on extraordinary circumstances or the good faith of parties.

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*