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**DISTRICT I**

October 25, 2016

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

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2015AP1798

Martin J. Zielinski v. LIRC, Wisconsin Power and Light Co., et al.  
(L.C. #2015CV2525)

Before Kessler, Brennan and Brash, JJ.

Martin J. Zielinski, *pro se*, appeals from a circuit court order dismissing with prejudice his judicial review action challenging a Labor and Industry Review Commission (LIRC) decision and dismissing without prejudice his claims against several other defendants. We conclude at

conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2013-14).<sup>1</sup> We summarily affirm the order.

In 2001, Zielinski was injured at work when a steel bar hit his head. He sought worker's compensation benefits with the assistance of counsel, and in October 2010, he settled his claim for \$190,000. Zielinski, now acting *pro se*, subsequently petitioned the Department of Workforce Development to review the settlement, asking that it be reopened and set aside. Zielinski's request was based in part on allegations that he was not properly represented by his attorneys during the settlement discussions. An administrative law judge conducted a hearing and denied Zielinski's request in September 2014. Zielinski appealed to LIRC.

On February 23, 2015, LIRC issued a written decision affirming the administrative law judge's decision. LIRC's decision also contained written instructions on how to appeal. Those instructions, which referenced WIS. STAT. § 102.23(1)(a) and included language found in WIS. ADMIN. CODE § LIRC 3.05 (Sept. 2009),<sup>2</sup> stated in relevant part:

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

<sup>2</sup> WIS. STAT. § 102.23(1) provides in relevant part:

**[(a)] 2.** Within 30 days after the date of an order or award made by the commission, any party aggrieved by the order or award may commence an action in circuit court for review of the order or award by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court....

**(b)** In such an action a complaint shall be served with an authenticated copy of the summons.... Service upon a commissioner or agent authorized by the commission to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission shall mail one copy to each other defendant.

(continued)

Any party aggrieved by the commission decision may commence a legal action for review of the commission decision in circuit court. The action must be commenced within 30 calendar days from the date of the commission decision. Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and of the complaint upon the commission, all within 30 calendar days from the date of the commission decision.

- Service must be made upon a commissioner of the Labor and Industry Review Commission or an agent authorized by the commission to accept service.
- The commissioners and authorized agents are located only in Madison.... Service upon the commission shall be deemed complete service on all parties but there shall be left with the commissioner or authorized agent so served as many copies of the summons and complaint as there are defendants. [WIS. STAT.] § 102.23(1)(a). The pleadings may be mailed to the commission, but the service will only be effective if the pleadings are actually received by the commission within the appeal period.

On March 25, 2015, Zielinski filed a summons and numerous complaints in the circuit court, seeking judicial review of LIRC's decision and also seeking relief from his former employer, his employer's insurance company, the company that owns the facility where he was

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WIS. ADMIN. CODE § LIRC 3.05 provides in relevant part:

The action must be commenced within 30 days from the date of the decision. Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission, all within 30 days. Service must be made upon a commissioner of the labor and industry review commission or an agent authorized by the commission to accept service only at the commission's office in Madison. Such service shall be deemed complete service on all parties but there shall be left with the person so served as many copies of the summons and complaint as there are defendants. Service made by mail is effective only if the pleadings are actually received by the commission within the appeal period.

injured, his former attorneys, and a doctor who treated him. Some of those defendants were also defendants in the original worker's compensation case, while others were not.

Also on March 25, 2015, Zielinski mailed authenticated copies of the summons and complaints to LIRC. Those documents arrived on March 27, 2015, which was two days after the thirty-day deadline imposed by WIS. STAT. § 102.23(1)(a). Some defendants moved to dismiss the complaints because Zielinski failed to serve LIRC within thirty days, while others moved to dismiss the complaints because they were not defendants in the worker's compensation case and they were not personally served by Zielinski.

After reviewing briefing by the parties, the circuit court issued a thorough written decision that dismissed with prejudice the judicial review action because it was not timely filed. *See* WIS. STAT. § 102.23(1) and WIS. ADMIN. CODE § LIRC 3.05. The circuit court also dismissed without prejudice the other claims against the defendants who were not involved in the LIRC proceedings because they were not personally served. *See* WIS. STAT. § 801.11. This appeal follows.

On appeal, Zielinski presents numerous challenges to the dismissal of his request for judicial review of LIRC's decision, some of which relate to the timeliness of his filings and some of which relate to the merits of his allegations that numerous people acted fraudulently or ineffectively during the course of pursuing Zielinski's worker's compensation claim and after he asked to reopen the settlement. The issue before this court, however, is simple: whether the circuit court had competence to proceed with a judicial review of the LIRC decision where it is undisputed that Zielinski did not serve an authenticated summons and complaint on LIRC within thirty days of the issuance of LIRC's decision.

Our supreme court has provided clear guidance on a circuit court's competence to proceed in these situations:

[WIS. STAT. §] 102.23(1)(a) requires that an action be brought and the adverse parties be made defendants within the statutory 30-day period. If an appellant does not comply with [§] 102.23(1)(a) the circuit court cannot proceed with the case; the circuit court must dismiss the action with prejudice and the appellant loses the right to judicial review of LIRC's decision.

*Miller Brewing Co. v. LIRC*, 173 Wis. 2d 700, 706, 495 N.W.2d 660 (1993) (footnotes omitted).

Applying case law, § 102.23(1), and WIS. ADMIN. CODE § LIRC 3.05, we agree with the circuit court that it was required to dismiss the action with prejudice because Zielinski failed to properly serve LIRC with an authenticated summons and complaint within thirty days. *See Miller Brewing Co.*, 173 Wis. 2d at 706, § 102.23(1), and § LIRC 3.05.

In his circuit court brief opposing the motions to dismiss, Zielinski admitted that he did not provide authenticated copies of the summons and complaint to LIRC within thirty days, but he argued that his failure to do so should be excused because of his disability and because when he called LIRC to make sure he was doing things correctly, the person answering his questions told him he could mail the summons and complaints but did not tell him that those documents must first be filed and authenticated in the circuit court. However, the applicable case law, statutes, and administrative code provisions do not provide exceptions for *pro se* individuals or suggest that substantial compliance with the rules is sufficient. Further, as the circuit court noted in its decision, LIRC provided Zielinski with written instructions concerning the deadlines and processes for appealing a decision. The circuit court correctly dismissed Zielinski's judicial review action with prejudice. *See id.*

The circuit court also dismissed without prejudice Zielinski's malpractice and negligence claims against individuals who were not parties to the worker's compensation proceedings. Zielinski takes issue with the argument that he failed to serve the defendants properly, but it is not clear if Zielinski is referring to service on LIRC or if he is attempting to contest the circuit court's conclusion that Zielinski failed to personally serve certain defendants consistent with WIS. STAT. § 801.11. In any event, it is undisputed that Zielinski did not personally serve Defendants-Respondents Tierney S. Christenson, Shawn K. Stevens, Wisconsin Power and Light Co., and Bob Menard within ninety days of the filing of the lawsuit as required by WIS. STAT. § 801.02(1).<sup>3</sup> Therefore, the circuit court properly dismissed those defendants without prejudice.<sup>4</sup> See *Hagen v. City of Milwaukee Employes' Ret. Sys. Annuity & Pension Bd.*, 2003 WI 56, ¶¶12-13, 262 Wis. 2d 113, 663 N.W.2d 268 ("A circuit court obtains personal jurisdiction over a defendant when the defendant is served with a summons in the manner prescribed by the statutes.... Failure to obtain personal jurisdiction over the defendant by statutorily proper service of process is a fundamental defect fatal to the action, regardless of prejudice.").

For the foregoing reasons,

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<sup>3</sup> WISCONSIN STAT. § 801.02(1) provides:

A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.

<sup>4</sup> The defendants do not argue that the malpractice and negligence cases should have been dismissed with prejudice.

IT IS ORDERED that the circuit court order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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