

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP2746

Cir. Ct. No. 2011CV1866

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GEORGIA HALL AND HARRY HALL,

PLAINTIFFS-APPELLANTS,

v.

**VILLAGE OF ASHWAUBENON BOARD OF DIRECTORS AND VILLAGE OF
ASHWAUBENON BOARD OF REVIEW,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Brown County:
MARK A. WARPINSKI, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Georgia and Harry Hall, pro se, appeal the dismissal of their lawsuit against the Village of Ashwaubenon Board of Directors and the Village of Ashwaubenon Board of Review (collectively “the Village”) for

lack of personal jurisdiction because the Halls failed to prove adequate service of process. We affirm.

¶2 This matter arises out of property taxes levied on the Halls' residence. The Halls attempted to effectuate service by mailing an authenticated copy of the complaint to the village clerk. Four days after mailing the complaint, the Halls personally hand-delivered an authenticated copy of the summons to an office worker in the village clerk's office.

¶3 The ninety-six paragraph complaint contained various allegations suggesting it could have been intended to be a certiorari action to review the reasonableness of a board of review decision, a mandamus action, an action seeking an injunction or potentially some other type of claim. The Village answered the complaint, and asserted various affirmative defenses, including improper service of process.

¶4 The circuit court held a status conference on October 20, 2011, to clarify the nature of the proceedings. The court found the matter could not constitute a proper writ of certiorari, as the Halls failed to file the action within ninety days of the board of review's decision. The Village orally moved to dismiss the complaint based on improper service of process. The court provided the Halls two weeks to submit legal authority supporting the propriety of service by mail, or personal service by a party to the action.

¶5 The Halls filed a brief in opposition to the motion to dismiss, contending any error in service was "technical," and the Village was not prejudiced. After a hearing, the circuit court concluded the Halls improperly served the Village and dismissed the matter. The Halls now appeal.

¶6 When a challenge is raised to the sufficiency of service of process, the party serving the process has the burden to show that process was sufficient. *Dietrich v. Elliott*, 190 Wis. 2d 816, 826, 528 N.W.2d 17 (Ct. App. 1995). Personal jurisdiction is a question of law that we review independently of the circuit court. *Brown v. LaChance*, 165 Wis. 2d 52, 65-66, 477 N.W.2d 296 (Ct. App. 1991).

¶7 The provisions of WIS. STAT. § 801.11¹ apply to the manner of serving process in this case, and its requirements are set forth in clear and unequivocal terms. WISCONSIN STAT. § 801.11(4) requires personal service upon a village president or clerk. An authenticated copy of the summons may be served by any adult resident of the state where service is made “who is not a party to the action.” WIS. STAT. § 801.10(1). An action such as the present case is not properly commenced until proper service has been accomplished. *See* WIS. STAT. § 801.02(1).

¶8 Here, the Halls are a party to this action. *See* WIS. STAT. § 801.10(1). Georgia Hall conceded at the October 20, 2011 status conference that “I served it myself.”² This was a fundamental defect pertaining to the commencement of an action that deprived the circuit court of personal jurisdiction. *See Dietrich*, 190 Wis. 2d at 827-28. When a statute provides for service that confers jurisdiction over a party, there must be strict compliance with statutory service requirements even though the consequences for failure to do so may appear to be harsh. *Id.* at 827.

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

² We do not construe the Halls’ argument to be that service by mail was proper.

¶9 The Halls rely upon a September 1, 2011 letter from the Village’s attorney notifying the Halls, “[W]e hereby demand that copies ... be served upon us at our offices” The Halls argue this letter “provided the Halls to reasonably induce the belief that the service had been made.” However, the Halls do not provide record citation for the September letter and we will not search the record for documents to support a party’s argument. *See Stuart v. Weisflog’s Showroom Gallery, Inc.*, 2006 WI App 109, ¶36, 293 Wis. 2d 668, 721 N.W.2d 127. In any event, Georgia Hall served the Village office worker on August 16. It is untenable to suggest that a subsequent letter somehow implied the attorney was acting as agent for the client in accepting service of process.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.