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DISTRICT II

February 11, 2026

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

2024AP408

Nancy Kormanik v. Wisconsin Elections Commission
(L.C. #2022CV1395)

Before Neubauer, P.J., Gundrum, and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Wisconsin Elections Commission (WEC), the Democratic National Committee (DNC), and Rise, Inc. (collectively, appellants) appeal from a judgment of the circuit court in favor of Waukesha County voter Nancy Kormanik. Appellants argue that the court erred in granting

Kormanik summary and declaratory judgment for multiple reasons.¹ 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 (2023-24).² Because the circuit court lacked competency to proceed to the merits of Kormanik’s declaratory judgment action, we summarily reverse.

The parties do not dispute the facts pertinent to this appeal. Shortly before the Fall primary elections in 2022, Kormanik filed the circuit court action underlying this appeal. She sought a declaratory judgment invalidating the WEC’s guidance³ interpreting the election statutes as allowing voters who returned their absentee ballots early to spoil them before election day and cast a new ballot. Both the DNC and Rise, Inc. successfully intervened in the action. The parties fought procedural battles that took issues up to our supreme court, through this court, and back to the circuit court. *See State ex rel. Kormanik v. Brash*, 2022 WI 67, 404 Wis. 2d 568, 980 N.W.2d 948.

Upon the action’s return to the circuit court, the court granted a temporary injunction against the enforcement of the challenged guidance, and the parties filed cross motions for summary judgment. The court held oral argument on the motions and issued a written decision

¹ Although the individual appellants present slightly differing arguments, we treat the appellants collectively for purposes of this summary disposition order. Further, we do not address in this summary disposition order all of the arguments advanced by the parties because we decide this appeal on the narrowest ground possible. *See Village of Slinger v. Polk Properties LLC*, 2021 WI 29, ¶26 n.12, 396 Wis. 2d 342, 957 N.W.2d 229.

² All references to the Wisconsin Statutes are to the 2023-24 version.

³ We use the term “guidance” generally to refer to the memoranda WEC issued instructing how clerks should handle absentee ballots. We do not reach the merits of Kormanik’s argument as to whether these memoranda constituted unpromulgated “rules.”

granting Kormanik's motion. It first rejected the appellants' threshold arguments that (1) the court lacked competency to proceed to the merits because Kormanik had failed to timely serve the pleadings on the joint committee for review of administrative rules (JCRAR) as required by WIS. STAT. § 227.40(1), and (2) Kormanik lacked standing because she was not directly harmed by the challenged administrative guidance. The court then proceeded to the merits. It granted summary judgment in Kormanik's favor, declaring that the challenged guidance violated Wisconsin law. The WEC, the DNC, and Rise, Inc. appeal.

The appellants argue that the circuit court lacked competency to reach the merits of Kormanik's declaratory judgment action. Specifically, citing WIS. STAT. § 227.40(5) and *Richards v. Young*, 150 Wis. 2d 549, 557, 441 N.W.2d 742 (1989), the appellants assert that because Kormanik did not timely serve a copy of her pleadings on the JCRAR, the court did not have competency to proceed to the merits of the declaratory judgment action. Because we are bound by the statute and our supreme court's interpretation of it in *Richards*, we conclude the circuit court's decision must be reversed.

The circuit court lacks competency to proceed when a party fails to properly complete timely service. See *Wisconsin Power and Light Co. v. PSC*, 2006 WI App 221, ¶11, 296 Wis. 2d 705, 725 N.W.2d 423; see also *Weisensel v. Wisconsin DHSS*, 179 Wis. 2d 637, 643, 508 N.W.2d 33 (Ct. App. 1993). Whether a circuit court has lost competency is a question of law that we review de novo. *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶7, 273 Wis. 2d 76, 681 N.W.2d 190.

A plaintiff who files a WIS. STAT. § 227.40(1) action must timely serve a copy of her pleadings upon JCRAR, which enables JCRAR to become a party to the case, if it so chooses.

See § 227.40(5). WISCONSIN STAT. § 13.56(2) requires timely service on “[t]he cochairpersons of [JCRAR] or their designated agents[.]” Our supreme court has held that to properly commence a declaratory judgment action under § 227.40, a plaintiff must serve the JCRAR within the same timeframe as required to serve a defendant. **Richards**, 150 Wis. 2d at 555 (citing WIS. STAT. § 893.02). The JCRAR service requirement is “not permissive,” but rather “mandatory.” **Richards**, 150 Wis. 2d at 555. Failure to serve the JCRAR within the requisite time period deprives the circuit court of competency over the action. **Id.** at 551-54, 558.

As to the circuit court’s competency, Kormanik argues that we should affirm the court. She claims that she served a designated agent of the JCRAR by timely serving a file-stamped copy of the summons and complaint on a private attorney who had been retained as counsel for the Wisconsin State Legislature in a separate case. Kormanik asserts that service on that attorney was within the spirit of the statute, asking us to affirm the court’s conclusion that, although it would have been “preferable” for Kormanik to have served the co-chairs of the JCRAR, service on the attorney of record from a different court case was nonetheless “sufficient” to meet the statutory requirements.

After thorough review and consideration, we conclude that strict compliance with service requirements is mandatory and that Kormanik’s failure to properly serve the JCRAR deprived the circuit court of competency to decide the merits. A failure to comply with WIS. STAT. § 227.40(5)’s service requirement is fatal to a plaintiff’s claim. *See Wisconsin Power and Light Co.*, 296 Wis. 2d 705, ¶11 (holding “[t]he failure to comply with the mandatory time limitation” for “filing and serving a petition for judicial review of an agency decision” “results in the loss of the circuit court’s competency to proceed and the petition must be dismissed.”)

We cannot conclude on the record before us that Kormanik made timely service of the pleadings on the JCRAR because, as we now briefly explain, this record contains no such evidence. We reject Kormanik’s argument that service on a private attorney representing the *legislature* in a separate case in lieu of service on the cochairs of the JCRAR or their designated agents in this case is “sufficient” to confer on the circuit court competency to proceed to the merits of the declaratory judgment action. This argument implies that strict compliance with WIS. STAT. § 227.40 is not required. However, as explained, Wisconsin caselaw has consistently held that strict compliance with service requirements is mandatory for a court to have competency to proceed with judicial review of an agency decision. “Strict compliance” within this context requires timely service on the cochairs of the JCRAR or their designated agent, and we see nothing in the record sufficient to establish that the JCRAR had designated the private attorney for the legislature in a different case as their agent for service of pleadings challenging the ballot-spoliation guidance.⁴

In summary, despite Kormanik’s belief that it would be “sufficient” to serve an attorney who might have a connection to the JCRAR, it remains that strict compliance with service

⁴ Kormanik also argues that she intended to bring this declaratory judgment action under WIS. STAT. § 806.04(11) rather than WIS. STAT. § 227.40(1). However, this distinction does not matter as Kormanik’s argument relies on § 806.04(11), which also says:

In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 227, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the parties, *the joint committee for review of administrative rules shall be served* with a copy of the petition and, with the approval of the joint committee on legislative organization, shall be made a party and be entitled to be heard.

(Emphasis added.)

requirements is mandatory for the circuit court to have competency to reach the merits of Kormanik's petition, and Kormanik failed to meet those requirements. The court did not have competency to proceed to the merits. Accordingly, it should have dismissed Kormanik's action.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily reversed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals