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DISTRICT II

March 25, 2026

To:

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

2024AP2036

Patrick Fagan v. The City of Racine (L.C. #2024CV223)

Before Gundrum, Grogan, and Lazar, 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).

Patrick Fagan, pro se, appeals from a circuit court order dismissing, with prejudice, his action against the City of Racine and other related defendants. Fagan argues that the court erred in dismissing the complaint he filed on behalf of himself and several entities of which he appears to be the sole member or owner. 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).¹ We summarily affirm.

The limited facts relevant to this appeal are undisputed. Fagan commenced this action by filing a complaint on February 16, 2024, and an amended complaint three days later. The summons and amended complaint served on each of the defendants were plain, unmarked versions of the filings, which lacked a file stamp. Fagan did not dispute that authenticated copies of the summons and amended complaint were not served on the defendants, “acknowledg[ing] the service error.” However, he asked the court to find that the service defect was “non-prejudicial.”

Fagan alleged causes of action for declaratory relief, injunction relief, inverse condemnation, violation of due process, breach of contract, trespass, and health and emotional stress. Pertinent to the circuit court’s decision, the amended complaint alleged that a “notice of claim for inverse condemnation was made in 2023 for a TAKING that occurred in 2015.” After the defendants filed a motion to dismiss, the court dismissed the amended complaint with prejudice because, in addition to having other fatal defects, it was time-barred under all the applicable statutes of limitations. Fagan appeals.

A motion to dismiss “presents a question of law we review independently.” *Doe 56 v. Mayo Clinic Health Sys.—Eau Claire Clinic, Inc.*, 2016 WI 48, ¶14, 369 Wis. 2d 351, 880 N.W.2d 681. “A motion to dismiss tests the sufficiency of a complaint and will be upheld only when there are no conditions under which a plaintiff may recover.” *Id.* “Whether a plaintiff’s

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

complaint fails to state a claim is a question of law we review de novo.” *Id.* The circuit court’s decision to dismiss Fagan’s amended complaint depended on whether Fagan timely filed it under the applicable statute of limitations. This issue also “involves the interpretation and application of a statute to an undisputed set of facts, which also presents a question of law we review de novo.” *See id.* “If a complaint is not timely filed, the claim is time-barred and dismissal will be upheld.” *Id.*

Fagan alleges that his leasehold interests were improperly taken in 2015. He does not allege that any of the defendants did anything after 2015 which gave rise to new claims. As such, all of the claims advanced in the amended complaint accrued in 2015, more than eight years before Fagan commenced this action. As the State observes, the longest statute of limitations applicable to his amended complaint is six years. *See, e.g.*, WIS. STAT. § 893.43(1) (providing six-year statute of limitations for breach of contract actions). Therefore, accepting all factual allegations in the amended complaint as true, all of the applicable statutes of limitations for each cause of action lapsed no later than the end of 2021.

Fagan concedes that the statute of limitations “is 6 years from 2015, and ... would expire in 2021.” He argues, however, that “an exception under WIS. STAT. § 893.93(1m)(b) [for fraud] triggered tolling” of the time period in which to file, extending it, according to Fagan, to 2027. Our supreme court has long held that for a complaint to include sufficient allegations of “fraud” to trigger the tolling period, “[f]raud must be the gravamen of the action.” *Speth v. City of Madison*, 248 Wis. 492, 496, 22 N.W.2d 501 (1946). In fact, fraud “must be the principal ground on which relief is asked if the [usual] statute of limitations is not to apply.” *Id.*

We conclude that the references to “fraud” in the amended complaint here are not the “gravamen of the action.” *See id.* Instead, the gravamen of the amended complaint is the alleged taking of Fagan’s leasehold interests in 2015. Accordingly, WIS. STAT. § 893.93(1m)’s statute of limitations for fraud does not apply, nor does its tolling provision. The statute of limitations expired, at the absolute latest, in 2021.

Before the circuit court, the defense relied on *Giese v. Giese*, 43 Wis. 2d 456, 464, 168 N.W.2d 832 (1969), in support of its motion to dismiss. Fagan argues on appeal that *Giese* is inapposite and the court should have, at a minimum, dismissed the action without prejudice. We disagree, and conclude that the court properly dismissed Fagan’s amended complaint with prejudice. *See id.* In *Giese*, the Wisconsin Supreme Court affirmed dismissal of a complaint with prejudice, despite the presence of a service defect, because the statute of limitations had run. *Id.* The court concluded that no useful purpose would be served to dismiss that action without prejudice in view of the available absolute defense set forth by the defendants. *Id.* Similarly, here, dismissal without prejudice would have been a pointless exercise because Fagan’s amended complaint both suffers from a service defect and is time-barred under the relevant statutes of limitations.

In summary, we conclude that the pleading errors in this case cannot be corrected.² Accordingly, the circuit court properly dismissed the amended complaint with prejudice.

² Because our conclusions that the amended complaint was time-barred and suffered from a service defect are dispositive of this appeal, we decline to address the additional issues and arguments Fagan raises. *See Village of Slinger v. Polk Properties LLC*, 2021 WI 29, ¶26 n.12, 396 Wis. 2d 342, 957 N.W.2d 229 (we decide cases “on the narrowest possible ground” and do not reach issues we need not reach).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *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