

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 19, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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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. 2025AP1061

Cir. Ct. No. 2024CV323

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

SAMANTHA FREDACH AND JON FREDACH,

PLAINTIFFS-APPELLANTS,

V.

**ILLUME COSMETIC SURGERY & MEDSPA LLC, THOMAS G. KORKOS,
THOMAS G. KORKOS, M.D., S.C., CHRISTOPHER J. HUSSUSSIAN,
C.J. HUSSUSSIAN, M.D., S.C., KENNETH D. DEMBNY, KENNETH D.
DEMBNY, M.D., S.C., INJURED PATIENTS AND FAMILIES COMPENSATION
FUND, ABC CORPORATION, ABC INSURANCE COMPANY,
DEF INSURANCE COMPANY, GHI INSURANCE COMPANY, JKL
INSURANCE COMPANY, MNO INSURANCE COMPANY, PQR INSURANCE
COMPANY, STU INSURANCE COMPANY AND VWX INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Ozaukee County:
STEVEN M. CAIN, Judge. *Affirmed.*

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

¶1 LAZAR, P.J. Samantha¹ and Jon Fredach appeal the circuit court’s order granting summary judgment to all respondents² and dismissing the Fredachs’ complaint based upon a lack of service and the expiration of the statute of limitations. The Fredachs assert that the court erred when it concluded that they did not properly effectuate electronic service of the summons and complaint on Illume and the doctors. In the alternative, they contend the court erred when it ruled that equitable estoppel did not bar Illume and the doctors from asserting the affirmative defense of insufficient process.

¶2 Illume and the doctors assert that the circuit court, applying Wisconsin’s strict adherence to statutory service requirements, appropriately determined that the Fredachs failed to properly serve them by traditional or electronic service. They contend that more had to be done than merely emailing a courtesy copy of the summons and complaint to an attorney who did not have authority to accept service. Something more had to be done; it was not. They further assert that equitable estoppel did not rescue the defective service, and that the court’s order dismissing the complaint and granting summary judgment in their favor was correct. We agree and affirm.

¹ Appellants shall be referred to as the Fredachs except when it is necessary to refer to them individually. Such individual references will, respectfully, be to their first name to avoid confusion.

² The respondents in this appeal include Illume Cosmetic Surgery & Medspa LLC (“Illume”), Dr. Thomas G. Korkos (“Korkos”), his service corporation, Dr. Christopher J. Hussussian (“Hussussian”), his service corporation, Dr. Kenneth D. Dembny (“Dembny”), his service corporation, all of their insurance carriers, and the Wisconsin Injured Patients and Families Compensation Fund (the “Fund”). For ease of reference, Illume and all respondents other than the insurance carriers and the Fund, shall be referred to collectively as “Illume and the doctors” except when it is necessary to refer to them individually.

BACKGROUND³

¶3 On June 1, 2021, Samantha underwent cosmetic surgery performed by Korkos. Samantha’s last appointment for follow-up care with Illume occurred on July 1, 2021. The Fredachs contend that the surgery did not go well and that the follow-up care and treatment were insufficient to correct the errors. On July 7, 2021, Samantha underwent emergency care at a hospital allegedly due to an infection in her surgical wounds. She asserts that, because of the surgery, she sustained extensive and permanent injuries.

¶4 The Fredachs, on September 5, 2024, sued Illume and the doctors for negligence (including failure to adequately provide post-operative follow-up care and, as to Illume, negligent hiring, training, and supervision of the physicians), medical negligence, and loss of consortium, loss of aid, comfort, society, and companionship. Prior to filing the civil lawsuit, the Fredachs participated, without success, in the mandatory Wisconsin Medical Mediations program.⁴

¶5 Pursuant to WIS. STAT. § 801.02(1), service of the summons and complaint had to be accomplished by December 4, 2024.

³ Because the underlying case was dismissed on a motion to dismiss, we take the facts from the complaint. See *Pagoudis v. Keidl*, 2023 WI 27, ¶9, 406 Wis. 2d 542, 988 N.W.2d 606.

⁴ The Fredachs assert that the request for mediation, filed on May 31, 2024, tolled the applicable 3-year statute of limitations for 123 days. See WIS. STAT. §§ 893.55(1m)(a), 655.44(4) (2023-24); *Landis v. Physicians Ins. Co. of Wis.*, 2001 WI 86, ¶5, 245 Wis. 2d 1, 628 N.W.2d 893. With that tolling, they contend that the underlying lawsuit had to be filed by October 5, 2024, or by November 1, 2024. Neither date impacts the outcome of this appeal, so we will reference the latter one.

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

¶6 On September 5, 2024, the Fredachs’ counsel sent an email to counsel for Illume and the doctors advising him of the lawsuit.⁵ It stated, in relevant part:

I wanted to let you know that we filed suit today in this matter and am attaching a courtesy copy of our filed Summons and Complaint.

You had mentioned that you may be able to accept service for your clients, if you can [let] me know, I would appreciate it.

¶7 Counsel for Illume and the doctors emailed back, about 30 minutes later, and responded: “[t]hank you. I will find out about acceptance of service.” Five days later, that counsel advised the Fredachs’ counsel, by email, that “I can accept service for the three doctors, their respective SCs, and Illume.” The Fredachs’ counsel did not respond to the last email. No further action was taken by the Fredachs to serve the summons and complaint upon Illume and the doctors. The parties to this appeal all concede that, as of September 10, 2024, Illume and the doctors’ counsel was authorized to accept service on their behalf.

¶8 Illume and the doctors answered the complaint on September 25, 2024, denying the allegations and putting the Fredachs to their proof. Illume and the doctors’ counsel identified several affirmative defenses, including that “[the Fredachs] failed to properly serve these answering defendants with the Summons and Complaint and the [circuit] court lacks jurisdiction over these answering defendants.” On that same date, Illume and the doctors’ counsel filed a Notice of Retainer that “request[ed that] all documents filed in this action be served upon

⁵ The Fredachs’ counsel avers that he sent authenticated copies of the Summons and Complaint by attaching those copies to the email.

them electronically through the circuit court e-filing system or at the address listed below.”

¶9 Illume and the doctors’ counsel emailed the Fredachs’ counsel on December 9, 2024, five days after service of the summons and complaint had to have been completed, and stated:

[o]n a separate note, I believe we have a service issue that we need to discuss. I do not want to waive my Affirmative Defense of improper service by agreeing to dates in a proposed Scheduling Order.

The Fredachs concede that, by December 9, 2024, the deadlines for both service of the summons and complaint and the statute of limitations had already expired.

¶10 On December 23, 2024, Illume and the doctors filed a motion to dismiss and motion for summary judgment⁶ seeking “an order dismissing this action with prejudice and on the merits due to inadequate and untimely service of the Summons and Complaint, and expiration of [the] statute of limitations.”

¶11 The circuit court heard argument on March 17, 2025, and issued its oral ruling on April 9, 2025, granting the motion for summary judgment. The court, noting that there must be “a strict adherence to the expectations of the statute as it relates to service[,]” held:

as the [c]ourt sees it, the September 5th email to [Illume and the doctors’ counsel] from [the Fredachs’ counsel] it’s clear he had no authority to do anything as it relates to receiving, accepting service on that date. By ... the September 10th email obviously his status as an authorized agent to accept service has changed. But nothing more occurs.

⁶ The Fund, by letter dated January 21, 2025, joined the motions against the Fredachs.

The plaintiffs want to rely on the fact that maybe the authenticated summons and complaint, the fact that it's already in the -- in his email queue or in his -- in his possession in some fashion is enough. And the [c]ourt doesn't find that it is enough. There needed to be some other steps to, and again, speaking to the ***Mared [Indus., Inc. v. Mansfield]***, 2005 WI 5, 277 Wis.2d 350, 690 N.W.2d 835] case, to truly ascertain the agent's authority and to do something to perfect that.

....

I think the record and the case law really does support the defendant's position that service was not properly effectuated here. And jurisdiction wasn't obtained. The case law speaks to really rigidity, unbending, harsh consequences, which is different than we see in other areas of law where, you know, leave to amend should be granted liberally. That the language is really pretty consistent in these cases that have been cited here today. And again, to their own peril, failure to take steps after [Illume and the doctors' counsel] became an authorized agent to accept service was done at their own peril.

¶12 Because the statute of limitations had passed, the circuit court, pursuant to WIS. STAT. § 802.06, also granted the motion to dismiss the complaint on the merits and with prejudice. The court signed an order on April 17, 2025, and the Fredachs timely appeal.

STANDARD OF REVIEW

¶13 “Whether service of a summons is sufficient to obtain personal jurisdiction over a defendant involves the interpretation and application of a statute to undisputed facts and is reviewed as a question of law.” ***Useni v. Boudron***, 2003 WI App 98, ¶8, 264 Wis.2d 783, 662 N.W.2d 672; *see also Dungan v. County of Pierce*, 170 Wis.2d 89, 93, 486 N.W.2d 579 (Ct. App. 1992). We review de novo, without deference to the circuit court, “whether a defect in a summons and complaint is fundamental such that it deprives the circuit

court of personal jurisdiction[.]” *Johnson v. Cintas Corp. No. 2*, 2012 WI 31, ¶22, 339 Wis. 2d 493, 811 N.W.2d 756.

¶14 “A motion to dismiss based on a statute of limitations is treated as a motion for summary judgment.” *Bartels v. Rural Mut. Ins. Co.*, 2004 WI App 166, ¶7, 275 Wis. 2d 730, 687 N.W.2d 84; *see also* WIS. STAT. § 802.06(2)(b). We review a circuit court’s summary judgment decision “de novo, applying the same method employed by the [circuit] court.” *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶2, 275 Wis. 2d 397, 685 N.W.2d 853. “[S]ummary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *M & I First Nat’l Bank v. Episcopal Homes Mgmt., Inc.*, 195 Wis. 2d 485, 497, 536 N.W.2d 175 (Ct. App. 1995); *see also* WIS. STAT. § 802.08(2).

¶15 While the decision to apply estoppel to preclude a party from raising an affirmative defense is within the circuit court’s discretion, *Culbert v. Ciresi*, 2003 WI App 158, ¶16, 266 Wis. 2d 189, 667 N.W.2d 825, our review of equitable estoppel is de novo, *Affordable Erecting, Inc. v. Neosho Trompler, Inc.*, 2006 WI 67, ¶21, 291 Wis. 2d 259, 715 N.W.2d 620. “Generally, when ‘the facts are undisputed ... this court reviews the application of equitable estoppel de novo.’” *Wosinski v. Advance Cast Stone Co.*, 2017 WI App 51, ¶39, 377 Wis. 2d 596, 901 N.W.2d 797 (formatting altered; citation omitted). “We affirm the [circuit] court’s discretionary determinations if it applied the correct law to the record and, through a logical process, reached a result a reasonable judge could reach.” *Culbert*, 266 Wis. 2d 189, ¶16.

DISCUSSION

¶16 The Fredachs assert that the “straightforward question” in this appeal is “whether electronic service of an authenticated summons and complaint is valid under Wisconsin law when the receiving attorney is authorized to accept service on behalf of his clients and responds to the communication attaching the authenticated summons and complaint by stating ‘I can accept service.’” This is a misleading statement that fails to recognize the facts surrounding the emails concerning consent and actually turns the concept of electronic service on its head. Contrary to the Fredachs’ assertions, there was no “clear written consent from an attorney and undisputed authority from his clients to accept service.” Form is *not* being elevated over substance, and the plain language of WIS. STAT. § 801.18(5)(d) is not being ignored. The circuit court did not rely upon a “hyper-technical” ground to dismiss the complaint. Finally, equitable estoppel does not rescue the Fredachs from their failure to properly serve their complaint.

¶17 There are several key facts in this appeal. First, the applicable statute of limitations expired, at the latest, on November 1, 2024. Next, the Fredachs had to serve the authenticated summons and complaint by December 4, 2024. The authenticated summons and complaint were never personally served upon Illume or the doctors, nor was substitute service accomplished. Counsel for Illume and the doctors did not have authority to accept service until September 10, 2024. By December 9, 2024, when counsel for Illume and the doctors advised the Fredachs of the “service issue[,]” both the statute of limitations to file suit and the deadline to serve the summons and complaint had expired.

I. There was insufficient service of process.

¶18 “Personal jurisdiction is not to be taken lightly.” **Lowell Mgmt. Servs., Inc. v. Matthew D. Ruecker and Dawn M. Ruecker Rev. Tr.**, 2026 WI App 20, ¶42, 420 Wis. 2d 340, 35 N.W.3d 236. “Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice. If the statutory prescriptions to obtain jurisdiction are to be meaningful they must be unbending.” **519 Corp. v. DOT**, 92 Wis. 2d 276, 288, 284 N.W.2d 643 (1979).

¶19 Before any action may legally begin, the circuit court must obtain personal jurisdiction over the defendants. Personal jurisdiction is statutorily accomplished by the timely service of an authenticated summons and complaint. **All Star Rent A Car, Inc. v. DOT**, 2006 WI 85, ¶58, 292 Wis. 2d 615, 716 N.W.2d 506; *see also* **Hagen v. City of Milwaukee Employees’ Ret. Sys. Annuity & Pension Bd.**, 2003 WI 56, ¶12, 262 Wis. 2d 113, 663 N.W.2d 268. “[Circuit] courts, under clear constitutional direction, may only exercise jurisdiction over individuals who are properly served and properly appear before that court.” **Lowell**, 420 Wis. 2d 340, ¶43. “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.” **Hagen**, 262 Wis. 2d 113, ¶13. A failure to timely serve a summons and complaint “deprives the circuit court of personal jurisdiction over the defendant and renders the original pleading a legal nullity.” **Bartels**, 275 Wis. 2d 730, ¶16. A circuit court may not take any action against a defendant not properly served; to do so would be “a deprivation of that defendant’s constitutional protection[.]” **Johnson**, 339 Wis. 2d 493, ¶25.

A. The applicable methods of service.

¶20 Wisconsin statutes clearly provide that service of an authenticated summons and complaint must be made upon the defendants within 90 days after those documents are filed with the circuit court. *See* WIS. STAT. § 801.02(1) (requiring service of an authenticated summons and complaint on defendants within 90 days after filing). Service upon natural persons, like the doctors here, may be made personally, by substitute service, by publication, or upon an “agent authorized ... by law to accept service of the summons for the defendant.” WIS. STAT. § 801.11(1). Service upon the service corporations and Illume may be made personally upon an officer, director, or managing agent; by publication; or upon an agent similar to the requirements for a natural person. Sec. 801.11(5).

¶21 In addition to the statutory requirements for service made personally, by substitute service, publication, or agent, and of relevance to this appeal, Wisconsin now permits electronic service.⁷ WISCONSIN STAT. § 801.18 provides, in relevant part:

801.18. Electronic filing

(1) DEFINITIONS. In this section:

....

(j) “Initiating document” means a summons and complaint, ... or any other document filed to commence a court action or proceeding.

....

⁷ The Fredachs contend that WIS. STAT. § 801.18(5)(d) only comes into effect under WIS. STAT. § 801.11(1)(d) and (5)(c), which allow plaintiffs to complete service “in a manner specified by *any other statute* ... upon an agent authorized by appointment or by law to accept service of the summons for the defendant[s].” To the contrary, § 801.18 is a stand-alone statute concerning electronic filing that allows for non-traditional, electronic service. *See* § 801.18(5)(d).

(5) COMMENCEMENT OF ACTION OR PROCEEDING; FILING OF INITIATING DOCUMENTS.

....

(d) Initiating documents shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

¶22 The Fredachs have the burden of proof to establish that they served the defendants and that there were no defects in that service. ***American Fam. Mut. Ins. Co. v. Royal Ins. Co. of America***, 167 Wis. 2d 524, 533, 481 N.W.2d 629 (1992); ***Johnson***, 339 Wis. 2d 493, ¶26. The Fredachs do not allege they personally served the doctors, Illume, or the other corporate entities. They did not use substitute service upon the doctors. They did not publish after reasonable diligence to personally serve these defendants. The only other means by which the Fredachs could have served Illume and the doctors was by service upon an authorized agent and/or through electronic service. Each method is discussed below.

B. The Fredachs never served Illume and the doctors.

¶23 The Fredachs assert service upon Illume and the doctors was accomplished by the combination of two means: (1) upon an agent authorized by law to accept service; and (2) by electronic service. The Fredachs rely upon the email thread that began on September 5, 2024. They contend that because Illume and the doctors’ counsel was authorized to accept service on September 10th, the Fredachs’ earlier email that had the “courtesy copy” of an authenticated summons and complaint attached to it constituted “valid service[.]” The Fredachs argue “[u]nder these circumstances, there is no reasonable interpretation of [Illume and the doctors’ counsel]’s September 10[th] email *other than* express written consent

to accept service of the electronic authenticated summons and complaint that were already in his inbox, having been sent to him on September 5[th].” They argue no other acts were necessary to “perfect” service. We disagree.

¶24 As with appeals that involve the interpretation of written words, this court looks to the actual words at play. *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. A close examination of the September email chain does not support the conclusion that Illume and the doctors’ counsel had “accepted” service as an agent. First, the initial email inquiry asks “if” counsel *can* accept service. It does not ask counsel if he *will* accept service or further request that he accepts service. The immediate response is that counsel “will find out about acceptance of service.” That in no way constitutes an acceptance of service on September 5, 2024. It indicates that, as of that date, Illume and the doctors’ counsel did *not* have authority to accept service. It also, contrary to the Fredachs’ assertions, indicates that no service was accomplished on September 5th.⁸

¶25 Second, when Illume and the doctors’ counsel responded in five days, all he says is that he *can* accept service. He does not say that he *has*

⁸ The Fredachs rely upon *Fontaine v. Milwaukee County Expressway Commission*, 31 Wis. 2d 275, 279, 143 N.W.2d 3 (1966), for the proposition that “written acknowledgment of receipt could be presumed to reflect authority to accept service in the absence of opposing evidence.” The *Fontaine* concept is inapplicable here for several reasons. First, there was no “formal” acknowledgment of receipt of the authenticated summons and complaint. See *id.* Illume and the doctors’ counsel never “acknowledged” receiving the documents; he merely said, “Thank you. I will find out about acceptance of service.” See *id.* at 276, 279. Next, *Fontaine* holds that such acknowledgment is just a presumption—and is only applicable “in the absence of contradiction[.]” *Id.* at 279. Here, there were contradictions: (1) the affirmative defense, and (2) the December 9th email that referenced a problem with service. Finally, *Fontaine* centered upon whether and when an agent *has* authority to accept service, *id.* at 278; here, that authority was indisputably in place only after the September 10th email. Thus, *Fontaine* is inapt.

accepted service. He does not say that he *is* accepting service, or even that he *will* accept service. This is clear from his comment; all that the September 10th email establishes is that the counsel is now an agent authorized to accept service. Nothing more. Finally, the Fredachs’ counsel did not follow up after receiving the September 10th email. The Fredachs’ counsel did not send an email asking for confirmation that Illume and the doctors’ counsel *had*, in fact, accepted service. Nor did he ask if Illume and the doctors’ counsel *will be* accepting service via the emailed summons and complaint, or even whether counsel was able to access the attached documents. An admission of service form was not sent to Illume and the doctors’ counsel. Quite simply, *nothing more* was done.

¶26 “Simply knowing that the ... complaint has been filed ‘is not equivalent to service.’” **Lowell**, 420 Wis. 2d 340, ¶46 (quoting **Heaston v. Austin**, 47 Wis. 2d 67, 71, 176 N.W.2d 309 (1970)). “Wisconsin requires strict compliance with [the] rules of statutory service, even though the consequences may appear to be harsh.” **Johnson**, 339 Wis. 2d 493, ¶25 (citation omitted); see also **Dietrich v. Elliott**, 190 Wis. 2d 816, 827, 528 N.W.2d 17 (Ct. App. 1995).

¶27 We do agree with the Fredachs that, as of September 10, 2024, Illume and the doctors’ counsel had express authority⁹ to accept service on their behalf. *But cf.* **Mared**, 277 Wis. 2d 350, ¶36. But that alone does not establish that service was accepted by the agent. Something more had to be done. We do

⁹ That being the case, we need not address whether Illume and the doctors’ counsel had apparent authority to accept service. See **Patrick Fur Farm, Inc. v. United Vaccines, Inc.**, 2005 WI App 190, ¶8 n.1, 286 Wis. 2d 774, 703 N.W.2d 707 (stating that appellate courts decide appeals on the narrowest possible grounds); **Sweet v. Berge**, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (stating that when one issue is dispositive of an appeal, we need not discuss other issues).

not agree, however, that a formal admission or acceptance of service form is the only means to establish that an agent has accepted service.¹⁰ It would have been sufficient to have sought and received an email acknowledgement that service had been made on or after September 10, 2024. All that was necessary was an email response on September 10th asking, “can you confirm service on behalf of your clients?” or even just three simple words: “is service accepted?”

¶28 While we undoubtedly question the wisdom of not taking further actions after the September 10th email—and even assuming that the Fredachs’ counsel believed that service had been accepted by an agent authorized by law—there is no question that that belief was no longer even tenable after the answer was filed and the lack-of-service affirmative defense was clearly stated. At that point, the Fredachs’ counsel still had time to follow up on that September 10th email and ask why that affirmative defense was included. There was even time to send another email, to send an admission of service form, or to effect personal or corporate service if Illume and the doctors’ counsel did not satisfactorily respond. Instead, again, the Fredachs’ counsel did nothing. “Because the consequences for failing to strictly comply with the statutory rules of service are harsh, plaintiffs should err on the side of caution by utilizing the more certain means for effectuating service under” the statutes. **Mared**, 277 Wis. 2d 350, ¶38 (citation omitted). Not only should the more certain means be used, but plaintiffs should make certain that they have service buttoned down with no room for dispute. A

¹⁰ In its oral ruling, the circuit court aptly notes that “[t]here was no effort to have [Illume and the doctors’ counsel] sign some acceptance of service or *something documenting* the service that occurred.” (Emphasis added.) We agree that form should not be elevated over substance, and that a formal admission of service form need not be used in every case. Even the Fredachs correctly explained that an admission of service form is a precaution, not a requirement.

civil action rises and falls upon the issue of service: without it, the action cannot survive.

¶29 Accordingly, we conclude that the Fredachs did not serve their summons and complaint upon Illume and the doctors via service upon an agent authorized by law to accept such service, pursuant to WIS. STAT. § 801.11(1) and (5). One of the other means by which they could have effectuated service upon the agent was by electronic service. That statute, too, has clear parameters that have to be met; they were not met here.

¶30 Pursuant to WIS. STAT. § 801.18(5)(d), to commence a civil action, the authenticated summons and complaint “shall be served by traditional methods unless the responding party *has consented in writing to accept electronic service[.]*” (Emphasis added.) For the Fredachs to have electronically served Illume and the doctors, they (or their authorized agent) must have consented in writing to that type of service. The Fredachs assert that either the September 10th email or the September 25, 2024 Notice of Retainer constituted a written consent to electronic service. They are incorrect.¹¹

¶31 No matter how far the September 10th email can realistically be stretched, there is no possible way that it can constitute a written consent to accept electronic service. The initial September 5th email from the Fredachs’ counsel does not ask for or even mention consent for electronic service. The September 10th response, likewise, does not mention electronic service. The

¹¹ We do agree with the Fredachs that email (or electronic mail) falls within the parameters of electronic service. Current statutes allow transmittal by electronic mail. See WIS. STAT. §§ 801.14(2), 801.15(5)(b). So, a defendant, or his or her attorney, may consent in writing to electronic service that may be accomplished by email. See § 801.14(2).

statute clearly states that written consent *to electronic service* is necessary. There can be no such consent here when the term “electronic service” is neither requested by plaintiffs’ counsel nor agreed to by defendants’ counsel. Again, nothing in the law mandates that there be an official written form indicating that electronic service has been agreed to, but it does require that electronic service be mentioned in a writing that can be filed with the circuit court if any dispute arises. That did not happen here.

¶32 The Notice of Retainer argument fares no better. The Notice “request[ed that] all documents filed in this action be served upon them electronically through the circuit court e-filing system or at the address listed below.” The Notice was filed on September 25th, which was 20 days after the summons and complaint were electronically filed. The Notice cannot be retroactively applied to electronic documents filed *before* it was filed. See *Retroactive*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/retroactive> (last visited July 21, 2026) (defining “retroactive” as “extending in scope or effect to a prior time or to conditions that existed or originated in the past”).

¶33 The Fredachs also complain that they are the victims of gamesmanship, but the commencement of a civil action is not a game. Our legislature has clearly delineated how our circuit courts obtain personal jurisdiction over defendants such that the defendants’ constitutional rights are protected. Our appellate courts have just as clearly explained that statutory service is not a game; it is important, critical, and necessary. See **Hagen**, 262 Wis. 2d 113, ¶13; **Bartels**, 275 Wis. 2d 730, ¶16; **Johnson**, 339 Wis. 2d 493, ¶25. An opposing attorney is to act as a zealous advocate for his clients. **Abdella v. Catlin**, 79 Wis. 2d 270, 274-75, 255 N.W.2d 516 (1997). “Attorneys owe a fiduciary duty

of loyalty to *their* clients.” *Sands v. Menard, Inc.*, 2010 WI 96, ¶53, 328 Wis. 2d 647, 787 N.W.2d 384 (emphasis added). “A fundamental principle in an attorney-client relationship is that the lawyer owes duties to a client[.]” *Foley-Ciccantelli v. Bishop’s Grove Condo. Ass’n*, 2011 WI 36, ¶85, 333 Wis. 2d 402, 797 N.W.2d 789. There is no corresponding duty owed to the opposing party. *See Culbert*, 266 Wis. 2d 189, ¶20 (stating that, other than filing an affirmative defense alleging ineffective service of process, “[a] defendant need not alert [the plaintiff] and spell out a defect in a case, especially when the defect is dispositive”).

¶34 As a final argument, Illume and the doctors focus upon the fact that the Fredachs’ counsel called the attached authenticated summons and complaint a “courtesy copy[.]” While that phrase lends further support to the conclusion that proper service was not accomplished because it implies a lack of authenticity of the documents, we need not—and do not—address the “courtesy copy” argument.¹²

II. The statute of limitations had expired, so the complaint was appropriately dismissed.

¶35 The applicable statute of limitations for the Fredachs’ causes of action expired, at the latest, on November 1, 2024. Having concluded that Illume and the doctors were never served with the authenticated summons and complaint, the circuit court dismissed the complaint as to all defendants with prejudice.

¶36 “For the purposes of a statute of limitations, an action must be commenced before a particular time, meaning a summons and complaint naming a

¹² See *Sweet*, 113 Wis. 2d at 67 (stating that when one issue is dispositive of an appeal, we need not discuss other issues).

defendant must be filed with the court before that time expires.” **Dakin v. Marciniak**, 2005 WI App 67, ¶12, 280 Wis. 2d 491, 695 N.W.2d 867; *see* WIS. STAT. § 801.02. Statutes of limitation are based on two public policies: “discouraging stale and fraudulent claims and allowing diligent meritorious claimants to seek redress for injuries sustained.” **Sopha v. Owens-Corning Fiberglas Corp.**, 230 Wis. 2d 212, ¶36, 601 N.W.2d 627 (1999). Here, even assuming *arguendo* that the Fredachs have meritorious claims, they did not act diligently, and those claims are now stale. Because the statute of limitations has passed with respect to the conduct in 2021, the Fredachs could not even re-file and properly serve another summons and complaint. **Giese v. Giese**, 43 Wis. 2d 456, 464, 168 N.W.2d 832 (Ct. App. 1969) (stating “[n]o useful purpose would be served to dismiss th[e] action without prejudice in view of the available absolute defense [of an expired statute of limitations] set forth by the defendants”). We conclude that the circuit court did not erroneously dismiss the complaint with prejudice because the statute of limitations had long since expired. *See* WIS. STAT. § 802.06(2)(a)9.; **Lord v. Hubbell, Inc.**, 210 Wis. 2d 150, 154-55, 563 N.W.2d 913 (Ct. App. 1997) (dismissing a claim with prejudice because the statute of limitations had expired).

III. Equitable estoppel does not overcome the lack of service.

¶37 As their alternative argument, the Fredachs place the remainder of their eggs in the basket of anti-gamesmanship. They contend the circuit court erred by relying upon **Culbert** when it rejected their equitable estoppel argument because they had a “reasonable basis to believe service *was* adequate” and that counsel for Illume and the doctors “knew or should have known that accepting these *authenticated* documents constituted service[.]” This, the Fredachs argue, “rebalances the equities of the estoppel analysis in **Culbert**.” Finally, the Fredachs

assert counsel for Illume and the doctors “misled” them and provided assurances that carry more weight than those in *Culbert*. In effect, they contend that these defendants in this appeal played games and laid “in the weeds until the statute of limitations ran,” in a manner prohibited in *Ocasio v. Froedtert Memorial Lutheran Hospital*, 2002 WI 89, ¶¶22, 24, 254 Wis. 2d 367, 646 N.W.2d 381. For the reasons set out below, we disagree.

¶38 The court in *Hester v. Williams*, 117 Wis. 2d 634, 644, 345 N.W.2d 426 (1984), recognized that in some circumstances, defendants “may be estopped from asserting the statute of limitations.” The court quoted *State ex rel. Susedik v. Knutson*, 52 Wis. 2d 593, 191 N.W.2d 23 (1971), for the six rules that must be met when considering whether to apply estoppel:

- (1) The doctrine may be applied to preclude a defendant who has been guilty of fraudulent or inequitable conduct from asserting the statute of limitations;
- (2) The aggrieved party must have failed to commence an action within the statutory period because of his or her reliance on the defendant’s representations or act;
- (3) The acts, promises or representations must have occurred before the expiration of the limitation period;
- (4) After the inducement for delay has ceased to operate, the aggrieved party may not unreasonably delay;
- (5) Affirmative conduct of the defendant may be equivalent to a representation upon which the plaintiff may rely to his or her disadvantage; and
- (6) Actual fraud, in a technical sense, is not required.

Hester, 117 Wis. 2d at 644-45 (citing *Knutson*, 52 Wis. 2d at 596-97).

¶39 In short, the test is “whether the conduct and representations of [the defendants] were so unfair and misleading as to outbalance the public’s interest in

setting a limitation on bringing actions.” **Hester**, 117 Wis. 2d at 645 (quoting **Knutson**, 52 Wis. 2d at 598); see also **Wosinski**, 377 Wis. 2d 596, ¶40; **Culbert**, 266 Wis. 2d 189, ¶24. Illume and the doctors correctly assert that there is no evidence they or their counsel engaged in “fraudulent or inequitable” conduct, and thus, the other factors are irrelevant.

¶40 The Fredachs rely upon **Culbert** to show equitable estoppel is appropriate here, but the facts set out in that case actually weigh against them.¹³ For instance, in **Culbert**, the appellant also claimed that opposing counsel had led them to believe service was valid.¹⁴ 266 Wis. 2d 189, ¶19. Culbert asserted engaging in 17 months of discovery was tantamount to “lying in the weeds, waiting for the statute of limitations to run.” **Id.** The **Culbert** court disagreed for several reasons: (1) Culbert had notice of procedural defects based on the “affirmative defenses of insufficient process and lack of personal jurisdiction[,]” and (2) Culbert “never attempted to determine what that defect was.” **Id.**, ¶20. Accordingly, the **Culbert** court held:

[w]hile the defendants were required to plead their affirmative defenses, they were not required to do more. A defendant need not alert and spell out a defect in a case, especially when the defect is dispositive. In fact, to do so would conflict with the defense attorney’s duty to zealously represent the client.

¹³ The Fredachs also rely upon **Royal Credit Union v. Neiss**, No. 25-CV-13-WMC, 2025 WL 2331337 (W.D. Wis. Aug. 13, 2025), a *judicial* estoppel opinion, to support their estoppel argument. That case, however, is a nonbinding, unpublished federal opinion that has no precedential value in this appeal. See **Lomax v. Fiedler**, 204 Wis. 2d 196, 217, 554 N.W.2d 841 (Ct. App. 1996) (explaining that federal district and appellate court decisions are not binding on state courts).

¹⁴ In **Culbert v. Ciresi**, 2003 WI App 158, ¶22, 266 Wis. 2d 189, 667 N.W.2d 825, the defendants’ counsel actually accepted service of a defective summons and complaint and never advised plaintiffs that there was a defect in the pleadings.

Id.

¶41 The circumstances here almost precisely mirror those in ***Culbert***. Illume and the doctors’ counsel clearly listed the appropriate affirmative defense in their answer. He was required to do so, but as in ***Culbert***, he was not required to shine a spotlight on the service defect, nor even required to hint at the same. The conduct by defense counsel in ***Culbert***—actually accepting service of a defective summons and complaint and then engaging in 17 months of discovery until the time to sue had expired—did not estop the defendants from asserting and relying upon the statute of limitations as a defense. ***Id.***, ¶23. That conduct was not declared fraudulent or inequitable.

¶42 The conduct here is even further afield from fraudulent or inequitable conduct than that in ***Culbert***. Here, Illume and the doctors’ counsel did not formally accept service, and he did not engage in multiple months of discovery. Only approximately two months passed before the statute of limitations had expired, and Fredachs’ counsel was again told there was a service problem. We conclude Illume and the doctors’ counsel did not engage in fraudulent or inequitable conduct sufficient to estop them from asserting a statute of limitations defense due to a failure to properly and timely serve the summons and complaint.

¶43 The rules of civil procedure “establish a level playing field to afford no advantage to either party.” ***Lowell***, 420 Wis. 2d 340, ¶40. “These rules were designed in large part to get away from some of the old procedural booby traps which common-law pleaders could set to prevent unsophisticated litigants from ever having their day in court.” ***Surowitz v. Hilton Hotels Corp.***, 383 U.S. 363, 373 (1966). “The rules of civil procedure were ‘written to further, not defeat the

ends of justice.’” **Lowell**, 420 Wis. 2d 340, ¶40 (quoting **Surowitz**, 383 U.S. at 373). Here, however, justice is encapsulated in the rules which both sides must follow and in the public policy that favors finality in litigation. As explained in **Culbert**, “[t]he first thing that must be shown under the **Hester** factors is that the defendants are guilty of fraudulent or inequitable conduct.” **Culbert**, 266 Wis. 2d 189, ¶24. If there is no evidence of such conduct in the Record, it is reasonable for the circuit court to determine equitable estoppel does not apply. **Id.** The Fredachs failed to establish the first factor for equitable estoppel to overcome the lack of service, and it was reasonable for the court to decline to apply the doctrine of equitable estoppel here. Accordingly, this court concludes the Fredachs have failed to establish that equitable estoppel is applicable in this matter.

CONCLUSION

¶44 Plaintiffs have certain obligations when they commence a civil lawsuit. In addition to setting out sufficient facts and stating how those facts satisfy the elements of each cause of action, an authenticated summons and complaint must be statutorily served upon all defendants. **American Family**, 167 Wis. 2d at 529; WIS. STAT. § 801.02(1). Our state supreme court has “warned” plaintiffs for decades “that ‘[s]lipshod and haphazard attempts to serve are not sufficient.’” **Burnett v. Hill**, 207 Wis. 2d 110, 128, 557 N.W.2d 800 (1997) (alteration in original; quoting **Howard v. Preston**, 30 Wis. 2d 663, 669, 142 N.W.2d 178 (1966)). Without that proper service of process, the defendants do not fall under the jurisdiction of the circuit court, and no actions taken against those defendants can be legally and constitutionally valid. **Johnson**, 339 Wis. 2d 493, ¶25; **Bartels**, 275 Wis. 2d 730, ¶16.

¶45 In this case, the Fredachs failed to properly and timely serve Illume and the doctors. While those defendants’ counsel was eventually authorized to accept service on their behalf, he was never served. He never consented in writing to accept electronic service, nor did he ever accept electronic service of the summons and complaint. We, therefore, conclude that the circuit court did not err when it granted summary judgment against the Fredachs.

¶46 The time for serving Illume and the doctors and the time to bring this action at all have both long since passed. Moreover, the doctrine of equitable estoppel does not overcome the lack of service to extend the statute of limitations. Accordingly, we also conclude that the circuit court did not err in granting the defendants’ motion to dismiss the complaint on the merits and with prejudice. We therefore affirm.

By the Court.—Order affirmed.

Recommended for publication in the official reports.

