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DISTRICT IV

October 1, 2026

To:

Hon. Diane Schlipper
Circuit Court Judge
Electronic Notice

Karla Z. Keckhaver
Electronic Notice

Hon. Stephen E. Ehlke
Circuit Court Judge
Electronic Notice

Jeffrey G. MacMillan 286461
Racine Correctional Institution
2019 Wisconsin St.
Sturtevant, WI 53177-1829

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

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

2023AP1212
2023AP2234

Jeffrey G. MacMillan v. Kevin A. Carr (L.C. # 2022CV2457)
Jeffrey G. MacMillan v. Wisconsin DOC (L.C. # 2023CV1170)

Before Blanchard, Kloppenburg, and Nashold, 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).

In these consolidated cases, Jeffrey MacMillan appeals circuit court orders dismissing his petitions for certiorari review and denying his motion for reconsideration. After reviewing the briefs and record, we conclude at conference that these cases are appropriate for summary

disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We summarily affirm the orders of the circuit court.

Background

MacMillan filed petitions in the circuit court for certiorari review of administrative decisions dismissing his inmate complaints. The circuit court issued a writ of certiorari in each case, ordering the respondent to file the certified record. In each case, the circuit court clerk mailed an authenticated copy of the writ to MacMillan along with a letter containing instructions about service of process. MacMillan filed a document entitled “Proof of Service” in each case, attesting that he had mailed an authenticated copy of the pleadings to the respondent by certified mail.

In each case the respondent moved to quash the writ and dismiss the petition for lack of jurisdiction because MacMillan had not personally served the writ on the respondent. The circuit court ruled that MacMillan had failed to properly serve the writ in each case, as required under WIS. STAT. § 801.11(1)(a), and dismissed the petition in each case. MacMillan filed a reconsideration motion as to both cases, which the circuit court denied. MacMillan appeals the dismissal of his petitions and the denial of his reconsideration motion.

Discussion

MacMillan makes three arguments on appeal.

First, MacMillan acknowledges that he did not personally serve the respondents, but he argues that personal service was not required because WIS. STAT. § 227.53(1) permits service by

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

certified mail for judicial review actions. We reject this argument because WIS. STAT. § 227.03(4) explicitly states that the provisions of chapter 227 do not apply to prisoner-related proceedings “involving the revocation of community supervision or aftercare supervision [...], the revocation of parole, extended supervision, or probation, the grant of probation, prison discipline, mandatory release under [WIS. STAT. §] 302.11, or any other proceeding involving the care and treatment of a resident or an inmate of a correctional institution.”

The administrative decisions that MacMillan seeks to challenge in these cases involve inmate complaints about legal mail, law library access, withholding money from his account, his custody classification, and other matters related to the “care and treatment” of a prisoner. WIS. STAT. § 227.03(4). These types of decisions are exempt from judicial review under WIS. STAT. ch. 227 and, instead, must be reviewed by common law certiorari. See *State ex rel. Staples v. DHSS*, 136 Wis. 2d 487, 492-93, 402 N.W.2d 369 (Ct. App. 1987) (review of prison grievance decision); *Richards v. Graham*, 2011 WI App 100, ¶¶5, 22, 336 Wis. 2d 175, 801 N.W.2d 821 (review of custody classification decision). Because the prison grievance and classification decisions at issue in these cases are exempt from chapter 227 review, service by certified mail under WIS. STAT. § 227.53(1) was not a valid means of service.

Second, MacMillan argues that WIS. STAT. ch. 227 is unconstitutional. We need not decide this issue because MacMillan did not raise it in the circuit court and, therefore, he forfeited the issue. See *State v. Kaczmariski*, 2009 WI App 117, ¶7, 320 Wis. 2d 811, 772 N.W.2d 702 (generally this court will not consider arguments raised for the first time on appeal and not presented to the circuit court). Further, we do not decide the issue because MacMillan does not persuade us that we should overlook the general forfeiture rule under these circumstances.

Third, MacMillan asserts that the doctrine of equitable estoppel should be applied in these cases to bar the respondents from arguing that certified mail is not a valid means of service. MacMillan asserts that, when he filed the writs in these cases, he relied on the advice of “a state-contracted attorney” who provided “legal consultation to residents” of the facility where MacMillan was then housed. MacMillan asserts that the attorney advised him that service by certified mail was an option available to him under WIS. STAT. § 227.53(1).

The State responds that MacMillan forfeited this argument by not raising it in the circuit court. But the record reflects that MacMillan did raise the estoppel issue in the circuit court. We reject the argument on a different ground. Assuming without deciding that MacMillan received contrary advice from an attorney at the time he filed his writ petitions, the record shows that MacMillan subsequently received a letter from the circuit court clerk in each case, with unambiguous instructions regarding personal service. The clerk’s letter informed MacMillan that it was his responsibility to obtain service on the appropriate parties through the sheriff’s department in the county where the parties were located. It is undisputed that MacMillan did not obtain personal service despite the clerk’s explicit instructions. Application of the doctrine of equitable estoppel is not warranted under these circumstances.

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.83(2).

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

Samuel A. Christensen
Clerk of Court of Appeals