COURT OF APPEALS
DECISION
DATED AND FILED

November 17, 2026

Samuel A. Christensen
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. 2025AP1786 **Cir. Ct. No. 2025CV45**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

WILLIAM C. TORREY,

PETITIONER-APPELLANT,

V.

WISCONSIN DIVISION OF HEARINGS & APPEALS, KRISTINA BOARDMAN AND WISCONSIN DEPARTMENT OF TRANSPORTATION,

RESPONDENTS-RESPONDENTS.

APPEAL from order of the circuit court for Bayfield County: JOHN P. ANDERSON, Judge. *Affirmed*.

Before Stark, P.J, Hruz, and Gill, JJ.

Per curiam opinions 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).

¶1 PER CURIAM. William C. Torrey appeals an order dismissing his action against the Wisconsin Division of Hearing and Appeals ("DHA"), Kristina Boardman, and the Wisconsin Department of Transportation ("DOT") (collectively, "the Agencies").[1] The circuit court dismissed Torrey's petition for review due to insufficiency of service of process in this WIS. STAT. ch. 227 (2023-24)[2] proceeding. We affirm.

BACKGROUND

¶2 This matter began with Torrey's November 5, 2024 conviction for operating a motor vehicle with a prohibited alcohol concentration, contrary to WIS. STAT. § 346.63(1)(b). Torrey had previously been convicted of operating while intoxicated in 2007, 2014, and 2019. As part of his sentence in the 2024 case, the circuit court ordered Torrey's driver's license revoked for a period of 24 months. *See* WIS. STAT. § 343.30(1q)(b)4. (requiring *a court* to revoke a person's operating privileges for not less than two years when a person has been convicted of three or more countable offenses in the person's lifetime).

¶3 The DOT is responsible for administration of the laws regarding driver's licenses. *See* WIS. STAT. § 343.02(1). On November 7, 2024, the DOT issued an order revoking Torrey's operating privileges for life, pursuant to WIS. STAT. § 343.31(1m)(b) (requiring *the DOT* to permanently revoke a person's operating privileges when a person has been convicted of 4 or more countable

[1] We note that the motion to dismiss and the notice of appearance for the DHA and the DOT did not include Boardman. Nevertheless, the circuit court dismissed the entire action. Because neither party discusses the issue in its brief, we do not discuss the issue further and include Boardman when referring to the Agencies below.

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

offenses and the most recent conviction occurred less than 15 years after the next preceding conviction). Pursuant to WIS. STAT. § 227.42(1), Torrey requested a contested case hearing for review of the DOT's revocation order, asserting that the DOT had no authority to permanently revoke his operating privileges when the circuit court ordered only 24 months of revocation.

¶4 An administrative law judge ("ALJ") from the DHA was appointed to preside over the matter. The DOT filed a motion to dismiss, asserting that Torrey did not have a right to a contested case hearing because there was no dispute of material fact. *See* WIS. STAT. § 227.42(1)(d) (stating that one of the requirements for a right to a hearing is that there be a dispute of material fact). The ALJ agreed, finding there was no dispute that Torrey had been convicted of 4 countable offenses and that the fourth countable offense was within 15 years of the previous offense. As such, the ALJ concluded there was no "genuine dispute that revocation was required as a matter of law." Therefore, the ALJ stated that the question before her—whether the DOT had the statutory authority to order a lifetime revocation—was a question of *law*, not of fact. Without a dispute of material fact, the ALJ held that Torrey was not entitled to a contested case hearing, and the ALJ entered an order granting the DOT's motion and dismissing Torrey's request for a contested case hearing.

¶5 Torrey later electronically filed in the circuit court a petition for judicial review of the order dismissing his request for a hearing. Torrey also concurrently filed an affidavit of mailing which stated that each of the Agencies had been served with the petition by first-class mail. Five days later, a DHA employee filed a letter acknowledging receipt of the petition and advising that the DHA would be requesting representation from the Wisconsin Department of Justice ("the DOJ"). Later that same day, an assistant Attorney General from the

DOJ filed a notice of appearance on behalf of the Agencies, "subject to and without waiving any objections to jurisdiction or to the Court's competency to proceed."

¶6 After the 30-day deadline under WIS. STAT. § 227.53(1)(a)2m. for serving the petition for review on the Agencies passed, the Agencies filed a motion to dismiss. The Agencies argued that service of the petition by first-class mail was insufficient under § 227.53(1)(a)1., which requires service "personally or by certified mail." As a result, the Agencies claimed, the circuit court lacked competency to exercise jurisdiction and was compelled to dismiss the petition.

¶7 The circuit court agreed that Torrey's noncompliance with the strict requirements for service stripped the court of competency. The court granted the Agencies' motion to dismiss the petition. Torrey now appeals.

DISCUSSION

¶8 On appeal, Torrey does not dispute that by serving the petition via first-class mail—as opposed to certified mail—he failed to comply with the requirements of WIS. STAT. § 227.53(1)(a)1. However, Torrey makes several arguments as to why the circuit court did not lose competency despite this failure. First, Torrey contends that case law has created exceptions to the statute's methods of service, such that strict compliance is not required when an agency has actual notice of the petition and, therefore, the purpose of the statute is fulfilled. Second, Torrey asserts that because § 227.53(1)(a)1. does not use the term "strict compliance," the legislature did not intend to require the same. Finally, Torrey claims that the DHA waived any argument regarding proper service when it filed its letter with the circuit court, acknowledging receipt of the petition without an objection to the court's competency. We address each argument in turn.

¶9 The Wisconsin Constitution grants circuit courts in Wisconsin subject matter jurisdiction over "all matters civil and criminal within this state." WIS. CONST. art. VII, § 8; *see also* ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶1, 273 Wis. 2d 76, 681 N.W.2d 190. However, a circuit court's competency to exercise its subject matter jurisdiction—and proceed to judgment—in individual cases "may be affected by noncompliance with statutory requirements pertaining to the invocation of that jurisdiction." ***Mikrut***, 273 Wis. 2d 76, ¶2.

¶10 A person aggrieved by a state agency's final decision may seek judicial review of that decision pursuant to WIS. STAT. ch. 227. As relevant here, in order to commence such a proceeding for judicial review of a decision, a petitioner must serve the petition "personally or by certified mail upon the agency or one of its officials." WIS. STAT. § 227.53(1)(a)1. Strict compliance with § 227.53(1) is required. ***Laughing Cow, LP v. DOR***, 2024 WI App 15, ¶16, 411 Wis. 2d 299, 4 N.W.3d 625. "[I]f a petitioner fails to properly effectuate service, the circuit court lacks competency to proceed. If the facts are undisputed, then the issue of whether a petitioner has served its petition in strict compliance with § 227.53(1)(a) presents a question of law that we review de novo." ***Id.*** (footnote omitted; citation omitted).

¶11 Torrey claims that case law has established that strict compliance with WIS. STAT. § 227.53(1)(a)1. is no longer required as long as the purpose of the statute is fulfilled. To that end, Torrey cites two specific cases in which courts have appeared to accept something less than strict compliance with certain statutory service requirements based on the particular circumstances of the case. Both of these cases are materially distinguishable from the facts present here.

¶12 Torrey first points to ***Patterson v. Board of Regents of the University of Wisconsin System***, 103 Wis. 2d 358, 360, 309 N.W.2d 3 (Ct. App. 1981), where this court determined that the use of registered mail—instead of certified mail—fulfilled the purpose of the statute. We noted that the only difference between the two methods was that a receipt of delivery was given for registered mail. ***Id.*** Given that the primary purpose for requiring certified mail was "to ensure delivery and to easily determine the date of delivery," we stated that registered mail "fulfills this purpose to an even greater degree." ***Id.*** In addition, we explained, "Although we agree that strict compliance with the [WIS. STAT.] ch. 227 procedures is required before the circuit court obtains subject matter jurisdiction, we conclude that a stricter compliance than the statute demands is not necessarily a failure to strictly comply." ***Id.*** at 360-61. We specifically stated that ordinary mail was not an acceptable substitute for certified mail because it was not the kind of *stricter* compliance that would not be a failure. ***Id.***

¶13 Next, Torrey relies on ***Hamilton v. DILHR***, 56 Wis. 2d 673, 686-89, 203 N.W.2d 7 (1973), *abrogated on other grounds by*, ***Evans v. Bureau of Local & Regional Planning***, 72 Wis. 2d 593, 241 N.W.2d 603 (1976), where the Wisconsin Supreme Court determined that service by regular mail was sufficient. The petitioner in ***Hamilton*** was misled by a DILHR employee as to the employee's authority to accept service. ***Id.*** at 685-86. The court noted that it was not a case where the petitioner did not seek to comply with the statute and that "except for the department's faulty procedures …, there would have been compliance." ***Id.*** at 688. The court did not hold that less-than-strict compliance with the statutory service requirements was allowed, only that the unique set of

circumstances and specific facts of that particular case led to the holding that compliance with the statute had been achieved. *See* ***id.*** at 688-89.

¶14 While there are a small number of cases where courts have allowed exceptions to strict compliance with the statutory service requirements based on unique circumstances, there are an overwhelming number of cases where the Wisconsin Supreme Court and this court have unequivocally held that strict compliance with WIS. STAT. § 227.53(1)(a)1. is required. In fact, in a recent case involving a failure to comply with the statutory service requirements, this court noted that "exceptions to strict compliance with [§ 227.53(1)(a)1.] 'are few and [are] limited to the facts of'" those specific cases where exceptions have been made. *See* ***Laughing Cow***, 411 Wis. 2d 299, ¶27 (second alteration in original; citation omitted). For statutory prescriptions to be meaningful, they must be "unbending." ***Weisensel v. DHSS***, 179 Wis. 2d 637, 647, 508 N.W.2d 33 (Ct. App. 1993) (citation omitted). "[U]niformity, consistency and compliance with procedural rules are necessary to maintain a simple, orderly and uniform system of conducting business in the courts." ***Id.*** (citation omitted). Otherwise, "the certainty created by the requirement of certified mailing would be replaced by the costly uncertainty of a case-by-case determination of whether a [petition] was in fact sent and received and whether the lack of procedural compliance hindered the purposes of the notice statute." ***Kelly v. Reyes***, 168 Wis. 2d 743, 747, 484 N.W.2d 388 (Ct. App. 1992).

¶15 This court can neither overrule precedent of the Wisconsin Supreme Court nor this court's own prior published decisions. ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). Even if equity would support an exception in this particular case, we cannot make one given this court's previous holding that "exceptions to strict compliance with the statute 'are few and [are] limited to the

facts of'" those particular cases which have already established exceptions. *See* ***Laughing Cow***, 411 Wis. 2d 299, ¶27 (alteration in original; citation omitted). Well-established precedent requires strict compliance with the service provisions of WIS. STAT. § 227.53(1)(a)1., and the facts present here are materially distinguishable from the limited cases where courts have identified exceptions to the requirement of strict compliance.

¶16 Torrey also argues that comparing the text of WIS. STAT. § 227.53(1)(a)1. to provisions in WIS. STAT. § 893.82 regarding service leads to the conclusion that the legislature did not intend to require petitioners to strictly comply with the service methods identified in § 227.53(1)(a)1. In support of this argument, Torrey relies on the language of § 893.82(2m) regarding claims against state employees, which provides: "No claimant may bring an action against a state officer, employee or agent unless the claimant complies strictly with the requirements of this section." Torrey claims that because § 227.53 does not contain a similar reference to strict compliance, the statute does not require a literal interpretation limiting compliance to only the forms of service noted therein.

¶17 Our goal in interpreting a statute is to ascertain the legislature's intent, which we "assume … is expressed in the statutory language." ***State ex rel. Kalal v. Circuit Ct. for Dane Cnty.***, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. Thus, statutory interpretation "begins with the language of the statute," and "[i]f the meaning of the statute is plain, we ordinarily stop the inquiry." ***Id.***, ¶45 (citation omitted). Torrey has not argued that WIS. STAT. § 227.53(1)(a)1. is ambiguous and it is, in actuality, not. The statute is plain on its face, and ambiguity cannot be created by comparing its language to the language of an unrelated statute. *See* ***Eddings v. Estate of Young***, 2024 WI App 60, ¶22,

414 Wis. 2d 88, 13 N.W.3d 269 (noting that the legislature's choice to take a "belt-and-suspenders" approach in unrelated statutes from a different chapter by including certain language in those statutes did not mean the "belt-alone" approach in the statute at issue "does not accomplish the same end"). Section 227.53(1)(a)1. unambiguously provides that the two methods of acceptable service are personal service and certified mail. The wealth of case law discussed above confirms that strict compliance with the clear provisions of the statute is required. Therefore, we are compelled to conclude that Torrey's failure to serve the petition by certified mail or personal service stripped the circuit court of its competency. Dismissal is a harsh penalty, but it is necessary to maintain the orderly and uniform business of our courts.

¶18 Torrey's final claim is that the DHA waived any argument as to improper service—and, therefore, that the circuit court lacked competency—when its employee filed a letter with the court acknowledging receipt of the petition without any challenge to the court's competency. Torrey is correct that the DHA was required to raise its objection to competency in the circuit court. *See* ***Mikrut***, 273 Wis. 2d 76, ¶27; ***All Star Rent A Car, Inc. v. DOT***, 2006 WI 85, ¶55, 292 Wis. 2d 615, 716 N.W.2d 506. However, the Wisconsin Supreme Court has explicitly rejected a pleading-waiver rule that would require raising an objection to competency in a notice of appearance. *See* ***All Star Rent A Car, Inc.***, 292 Wis. 2d 615, ¶56; ***Mikrut***, 273 Wis. 2d 76, ¶23. "[A] notice of appearance is not a substantive defensive pleading." ***Mikrut***, 273 Wis. 2d 76, ¶23. Though not a notice of appearance, the DHA's letter acknowledging receipt of the petition is similarly not a substantive defensive pleading. Here, the DHA timely raised an objection to the circuit court in its first substantive pleading, which was a motion

to dismiss timely filed in response to Torrey's petition. As a result, the DHA's objection to the court's competency was not waived.[3]

¶19 In summary, we conclude that well-established precedent requires strict compliance with the service provisions of WIS. STAT. § 227.53(1)(a)1. Torrey's service of his petition for judicial review by first-class mail did not strictly comply with the service methods set forth in § 227.53(1)(a)1. In the absence of such strict compliance, or recognized exceptions to the same, the circuit court lacked competency to exercise its subject matter jurisdiction. We also conclude that the DHA did not waive its objection to the court's competency by failing to raise that objection in its acknowledgment letter. Accordingly, we affirm the order that dismissed Torrey's petition.

By the Court.—Order affirmed.

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

[3] Torrey argues only that the DHA—and not Boardman or the DOT—waived its objection to the circuit court's competency when the DHA employee filed the acknowledgment letter with the court. Even if Torrey made this argument with respect to Boardman and the DOT, however, it would fail for the same reasons.