

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 23, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 97-0573**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**KATHY D. WILLIS-FULANI,**

**PLAINTIFF-APPELLANT,**

**ARDIE L. PEARSON,**

**PLAINTIFF,**

**v.**

**JAMES SINGER AND  
ALLSTATE INSURANCE COMPANY,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Milwaukee County:  
JOHN J. DiMOTTO, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Kathy D. Willis-Fulani appeals *pro se* from a trial court order dismissing, for lack of personal jurisdiction, her personal injury

complaint against James Singer and Allstate Insurance Company. Willis-Fulani claims (1) the trial court should not have dismissed the complaint because she was incarcerated at the time and the reason she did not timely serve the authenticated summons and complaint is because the clerk of courts failed to return the summons and complaint to her until the time deadlines for service had expired; (2) the trial court should have granted her request for counsel; and (3) the trial court should have heard and ruled on her motion to extend the service time deadline. Because § 801.15, STATS., plainly states that the sixty-day service deadline in § 801.02, STATS., cannot be extended, and because Willis-Fulani was not entitled to appointed counsel, we affirm.<sup>1</sup>

## I. BACKGROUND

Willis-Fulani alleges that on April 26, 1993, she was involved in a pedestrian-automobile accident with Singer, who was insured by Allstate. She alleges that she suffered serious injury. Sometime in 1994, she was incarcerated at Taycheedah Correctional Institute. On January 8, 1996, she mailed a summons and complaint to the Milwaukee clerk of courts to commence a personal injury action against Singer and Allstate. The clerk of courts filed and authenticated these documents on January 16, 1996.

On April 5, 1996, Singer and Allstate received copies of the authenticated documents, which Willis-Fulani mailed via certified mail. Singer and Allstate filed an answer and motion to dismiss for failure to comply with proper service procedures. On April 11, 1996, Willis-Fulani filed a motion to

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<sup>1</sup> Willis-Fulani does not argue, and we do not decide, whether she may pursue other legal remedies arising from the allegations she raises or pursuant to § 893.16, STATS.

extend the service deadline. In May 1996, Singer and Allstate were both personally served with an authenticated summons and complaint. They filed an answer with a motion to dismiss for lack of personal jurisdiction based on untimely service.

The trial court heard the motion to dismiss on November 25, 1996. The motion was granted. Willis-Fulani now appeals.

## II. DISCUSSION

### A. *Motion to Dismiss.*

Willis-Fulani claims the trial court should not have dismissed her complaint even though she failed to comply with the sixty-day service deadline set forth in § 801.02, STATS. She complains that she was unable to comply with the deadline because the clerk of courts did not return authenticated copies of her summons and complaint until this deadline had already expired. The trial court dismissed the complaint, reasoning that the statute does not provide for any extensions of this deadline, noting that there is no evidence in the record documenting the date on which the clerk of courts mailed Willis-Fulani the authenticated summons and complaint. We affirm the trial court's decision.

Section 801.02(1), STATS., provides:

A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 60 days after filing.

Willis-Fulani admits that she did not comply with this sixty-day time deadline. The summons and complaint were filed on January 16, 1996, and thus should have been served no later than March 17, 1996. She argues that because she was incarcerated, and because the clerk of courts did not return authenticated copies of the summons and complaint to her until after the sixty-day time deadline had expired,<sup>2</sup> she should be granted an exception to the rule.

Whether or not this contention is true, we are not at liberty to exempt Willis-Fulani from the rules of civil procedure to which every other litigant is bound. Section 801.15(2)(a), STATS., specifically states that “The 60 day period under s. 801.02 may not be enlarged.” The statute makes no exception for prisoners.

Although adherence to this rule may appear harsh if Willis-Fulani’s contention that the clerk of courts delayed in returning her summons and complaint is true, we note, as did the trial court, there is nothing in the record documenting on what day the clerk mailed the authenticated summons and complaint to Willis-Fulani. Moreover, the burden to establish personal jurisdiction rests with the plaintiff who brings the lawsuit. *See Laska v. House*, 169 Wis.2d 510, 512, 485 N.W.2d 439, 440 (Ct. App. 1992). Thus, it was Willis-Fulani’s responsibility to ensure that personal jurisdiction was conferred. If the clerk of courts delayed in returning her filing, she should have taken action before the sixty-day time deadline expired.

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<sup>2</sup> She alleges that these documents were not returned until April 27, 1996. This assertion is refuted by the defendants, however, who admit receiving authenticated copies from Willis-Fulani via certified mail on April 5, 1996.

Because Willis-Fulani failed to timely serve an authenticated copy of the summons and complaint upon the defendants, the trial court did not have personal jurisdiction and, therefore, dismissal was appropriate.<sup>3</sup>

*B. Right to Counsel.*

Willis-Fulani also claims the trial court erred in denying her request to appoint counsel to represent her. We are not persuaded.

An indigent can be provided with counsel in a criminal matter or in a civil commitment proceeding, or in any other situation where it has been determined that the indigent is entitled to counsel pursuant to the United States Constitution or the laws of the United States or of this state. *See* § 967.06, STATS. This statute does not provide that an indigent is entitled to appointed counsel when pursuing a civil claim for personal injury. Civil actions fall outside the scope of the statute. *See State v. Hildebrand*, 48 Wis.2d 73, 81-82, 179 N.W.2d 892, 896 (1970).

Willis-Fulani is not entitled to appointed counsel to pursue this civil personal injury action. Accordingly, the trial court did not err in denying her request.

*By the Court.*—Order affirmed.

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

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<sup>3</sup> Willis-Fulani also alleges that the trial court failed to hear and rule on her motion filed April 11, 1996, to extend the 60-day service deadline. The record reflects, however, that the trial court ruled in its motion to dismiss that the 60-day service deadline could not be extended. Thus, in effect, this motion was denied.



