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DISTRICT II

February 28, 2018

To:

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

2017AP882

Department of Justice, Office of Crime Victim Services v.
Waukesha County Clerk of Circuit Court (L.C. #2014CF1166)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

The Wisconsin Department of Justice, Office of Crime Victim Services (the Department) appeals an order denying its motion for relief from a previous order requiring it to pay \$5000 to the Waukesha County Clerk of Circuit Court. 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 (2015-16).¹ We conclude that the circuit court lacked personal jurisdiction over the

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

Department to issue its original order. Accordingly, we reverse the order denying the motion for relief and remand with directions.

This appeal arises from a criminal action involving Carol Weggen. Weggen was accused of committing several offenses in Waukesha County relating to driving her car under the influence of alcohol and a controlled substance. During the prosecution, Weggen's son posted \$5000 cash bail on her behalf. After the conviction, the circuit court directed the clerk of circuit court to transfer the cash bail to the Department as partial satisfaction of restitution, which totaled \$7740.73. The Department had previously paid that amount to a victim named A.S. to cover his lost wages.

The clerk of circuit court subsequently transferred the \$5000 to the Department. At nearly the same time, the Department was compensated in full as part of a settlement by Weggen's insurer. After learning of her insurer's compensation, Weggen asked the circuit court to vacate the restitution order. The court granted the request. It also ordered the Department to remit the \$5000 to the clerk of circuit court. By then, the Department no longer had the money, as it had erroneously forwarded it to A.S.

The Department filed a motion for relief from the circuit court order. Among other things, it asserted that the court lacked personal jurisdiction to issue the order. After a hearing on the matter, the court denied the Department's motion. This appeal follows.

On appeal, the Department renews its argument that the circuit court lacked personal jurisdiction to issue its original order. Personal jurisdiction refers to a court's power to exercise jurisdiction over a given party. *Rasmussen v. General Motors Corp.*, 2011 WI 52, ¶15 n.19, 335 Wis. 2d 1, 803 N.W.2d 623.

“A Wisconsin court obtains personal jurisdiction over a defendant by proper service of a summons upon the defendant.” *Johnson v. Cintas Corp. No. 2*, 2012 WI 31, ¶23, 339 Wis. 2d 493, 811 N.W.2d 756. A court may also obtain personal jurisdiction over a defendant that appears in the action and waives the defense of lack of personal jurisdiction. WIS. STAT. § 801.06. Whether personal jurisdiction exists in a case is a question of law that we review independently. *See Rasmussen*, 335 Wis. 2d 1, ¶14.

Here, we are not persuaded that the circuit court had personal jurisdiction over the Department when it ordered it to remit \$5000 to the clerk of circuit court. The Department was not a party to the criminal action, as the district attorney was the prosecuting plaintiff. Moreover, the Department was never served with a summons and did not appear in the action and waive the defense of lack of personal jurisdiction.² Because the circuit court did not have personal jurisdiction over the Department to issue its original order, it erred in denying the Department’s motion for relief. Accordingly, we reverse the order denying the motion for relief. On remand, the circuit court shall vacate the original order requiring the Department to remit \$5000 to the clerk of circuit court.

Upon the foregoing reasons,

² At the restitution hearing, the assistant district attorney alluded to the presence of a Department employee “from crime victim compensation” and a conversation between the two regarding what was paid out. The employee did not address the circuit court. We are not convinced that the mere presence of an employee in court constitutes an “appearance” for purposes of WIS. STAT. § 801.06. *See Artis-Wergin v. Artis-Wergin*, 151 Wis. 2d 445, 452, 444 N.W.2d 750 (Ct. App. 1989) (“The term ‘appearance’ is generally used to signify an overt act by which one against whom a suit has been commenced submits himself to the court’s jurisdiction.” (citation omitted)). Even if it did, there is no indication that the Department waived the defense of lack of personal jurisdiction.

IT IS ORDERED that the order of the circuit court is summarily reversed and the cause is remanded with directions, pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals