COURT OF APPEALS
DECISION
DATED AND FILED

June 26, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP1670 **Cir. Ct. No. 2017CV61**

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

GREGORY A. ANDERSON,

PETITIONER-APPELLANT,

V.

WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Manitowoc County: MARK ROHRER, Judge. *Reversed and cause remanded with directions*.

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

¶1 HAGEDORN, J. The constitution limits the power of the state to take someone's property. At a minimum, constitutional due process requires the state to provide notice and an opportunity to be heard. This case concerns whether sufficient notice was provided when the Wisconsin Department of Financial Institutions (DFI) notified Gregory A. Anderson that he was liable for more than

three million dollars due to his alleged involvement in unlawful securities transactions.

¶2 In its notice, DFI informed Anderson that he had thirty days to "request a hearing" or its allegations would be deemed proven and the threatened punishment would become fixed. Anderson—on day number thirty—mailed a certified letter requesting a hearing. DFI denied Anderson's request for a hearing on the grounds that DFI needed to *receive* the request by the thirtieth day. No grace, no exceptions.

¶3 The notice Anderson received tracks the language of WIS. STAT. § 551.604(2) (2017-18).[1] However, this recently modified statute (and hence, the notice) is less than clear on precisely what Anderson was supposed to do by the thirtieth day. While DFI offers a plausible reading in defense of its position, we conclude that the notice Anderson received was inadequate. If the state is going to take Anderson's property, it must tell him with reasonable clarity what he needs to do and by when. The notice failed in this basic task and therefore violated Anderson's due process protections. Accordingly, we reverse and remand.

BACKGROUND

¶4 On October 24, 2016, DFI issued a summary order alleging that Anderson participated in the offer and sale of unregistered securities and directing

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

him to cease and desist from engaging in unlawful activities of this kind.[2] The order further proposed the entry of a final order requiring Anderson to pay restitution in excess of three million dollars and a civil penalty of twenty-five thousand dollars.

¶5 Regarding what Anderson needed to do to challenge this and by when, the order stated as follows:

> **D. Notice of Hearing Rights**
>
> (a.) PLEASE TAKE NOTICE that you have the right to request a hearing. Every request for a hearing shall be in the form of a petition filed with the Division, pursuant to Wis. Admin. Code § DFI-Sec 8.01. A petition for a hearing to review an order shall:
>
> > (1) Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient knowledge or information to permit an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; and
> >
> > (2) State all affirmative defenses. Affirmative defenses not raised in the request for hearing may be deemed waived.
>
> (b.) PLEASE TAKE FURTHER NOTICE that, within 15 days after receipt of a request in a record from you, the matter will be scheduled for a hearing, pursuant to Wis. Stats. §§ 551.604(2) and (3).
>
> (c.) PLEASE TAKE FURTHER NOTICE that if you do not request a hearing and none is ordered by the Administrator within 30 days after the date of service of this order, the findings of fact, conclusions of law, and summary and proposed orders, including the imposition of

[2] Among its specific allegations, the order, which also named James Nickels, The Fiscal Concierge, LLC, and The Fiscon Manager, Inc., as liable parties, charged that Anderson participated in transactions that collectively constituted a Ponzi scheme. The merits of the order's allegations are not a subject of this appeal.

> a civil penalty or requirement for payment of restitution, disgorgement, interest, or the costs of investigation sought in a statement in the order, becomes final by operation of law, pursuant to Wis. Stat. § 551.604(2).

¶6 On the thirtieth day—November 23, 2016—Anderson requested a hearing in a letter sent to DFI through certified mail, in part apologizing "for the late reply on this matter" and noting that he had been dealing with a major family health issue.[3] DFI received the request on November 28, 2016. Thereafter, DFI notified Anderson that his request was denied as untimely because it was received after the thirty-day period had expired. DFI then entered a final order adopting the factual and legal allegations that were set forth in the summary order, including the restitution and civil penalty obligations. Anderson sought a rehearing, which DFI denied. Anderson then sought judicial review, which the circuit court denied. He now appeals.

STANDARD OF REVIEW

¶7 On appeal from administrative review, we consider the agency's decision, not that of the circuit court. ***Zimbrick v. LIRC***, 2000 WI App 106, ¶9, 235 Wis. 2d 132, 613 N.W.2d 198. "Whether a notice is sufficient to provide due process presents a question of law, and our review is therefore de novo." ***Homeward Bound Servs., Inc. v. OIC***, 2006 WI App 208, ¶39, 296 Wis. 2d 481, 724 N.W.2d 380.

[3] In his letter, Anderson did not specifically "request a hearing" but instead stated that he was "formally appealing" the summary order. DFI nonetheless treated Anderson's letter as a request for a hearing, and the parties have continued under this premise through this appeal. Thus, we will do the same.

DISCUSSION

¶8 Anderson asserts that his request for a hearing was timely. But, he adds, even if it was not, DFI failed to provide him with constitutionally adequate notice.[4] DFI responds that Anderson's request was untimely and that its notice comported with due process because it informed Anderson what he had to do to request a hearing and preserve his rights.

¶9 No one disputes that Anderson was sufficiently apprised of the fact that he had until November 23, 2016, to request a hearing.[5] What is less clear from the language of the notice is when a request for a hearing would be considered effective. Anderson contends that, absent specific instructions to the contrary, he complied by sending his request via certified mail on the thirtieth day. DFI argues that the notice clearly provided that a request would only become effective when it was received by DFI. From the perspective of a reasonable person in Anderson's position, however, DFI's conclusion is far from obvious.

¶10 DFI's argument rests on a multiple-step analysis involving the language of WIS. STAT. § 551.604(2) and WIS. ADMIN. CODE § DFI-Sec 8.01 (Sept. 2010)[6], the two provisions cited in the notice. These provisions read:

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[4] Anderson also challenges the imposition of joint and several liability against him and contends that the allegations against him in the summary order were either incorrect or insufficient to amount to a statutory violation. Because we conclude that Anderson was provided inadequate notice and remand the case for further proceedings, we need not reach these issues.

[5] The notice stated that, pursuant to WIS. STAT. § 551.604(2), Anderson had the ability to request a hearing within thirty days of the summary order's date of service. Elsewhere in the order, Anderson was informed that the order was considered served on the date it was placed in the mail, i.e., October 24, 2016. Thus, Anderson had until November 23, 2016, to request a hearing.

[6] Unless otherwise noted, all references to WIS. ADMIN. CODE ch. DFI-Sec 8 are to the September 2010 version, which is the current version of that chapter.

> An order under sub. (1) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty, restitution, disgorgement, interest, or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within 15 days after *receipt of a request* in a record from the person, the matter will be scheduled for a hearing. *If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of restitution, disgorgement, interest, or the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law.* If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

Sec. 551.604(2) (emphasis added).

> *Every request for a hearing shall be in the form of a petition filed with the division.* A petition for a hearing to review an order shall:
>
> **(1)** Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient knowledge or information to permit an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; and
>
> **(2)** State all affirmative defenses. Affirmative defenses not raised in the request for hearing may be deemed waived.

Sec. DFI-Sec 8.01 (emphasis added).

¶11 To construct its case, DFI first incorporates "does not request a hearing" under WIS. STAT. § 551.604(2) with the requirement under WIS. ADMIN. CODE § DFI-Sec 8.01 that any "request for a hearing" must be made "in the form of a petition filed" with DFI. From there, DFI cites WIS. STAT. § 551.102(8)—a statute not cited in the notice—which states that "filing" means "receipt" under

WIS. STAT. ch. 551. Distilling this analysis to its core, DFI's argument is as follows: A request for a hearing must be filed. And filing means receipt. Therefore, a request for a hearing is not effective unless it is actually received. At oral argument and in supplemental briefing, DFI contended this conclusion is necessarily implied by the language of § 551.604(2). And, for purposes of the due process claim in this case, DFI contends that all of this was sufficiently communicated to Anderson to inform him what he had to do and by when: that is, DFI needed to receive his request for a hearing by November 23 for it to be timely.

¶12 Problems with this theory start with the fact that neither the definition of "filing" (i.e., receipt) nor WIS. STAT. § 551.102(8)—the glue holding DFI's argument together—are found in the notice to Anderson.[7] Instead, the word "filing" only appears in the notice's recitation of WIS. ADMIN. CODE § DFI-Sec 8.01, which itself does not have a definition, address the timing of an effective request, or cross-reference the thirty-day limit for requests under WIS. STAT. § 551.604(2).

¶13 This raises the question of why we have an administrative rule referencing "filing" and a statute that does not. A brief dive into the statutory history helps explain why these provisions appear to be parallel lines that never quite meet. Prior to 2009, the operative statute for requesting a hearing read:

[7] DFI acknowledges this absence on appeal but states that, given the "very high" stakes of this case, it would have "behooved [Anderson] to research the matter or retain counsel to do so for him." Even if such measures can be required under the reasonableness standard we apply here, as we explain below, this court is not sure a good lawyer would find the answer as obvious as DFI thinks it is.

> Within 30 days after the division has issued an order summarily, an interested party may *file* a written request with the division for a hearing in respect to any matters determined by the order, except a party may *file* a request for a hearing regarding an order issued under [WIS. STAT. § 551.60(3)] at any time. Within 10 days after an interested person *files* a written request with the division for a hearing, the matter shall be noticed for hearing, and a hearing shall be held within 60 days after notice, unless extended by the division for good cause. During the pendency of any hearing requested under this subsection, the order issued summarily shall remain in effect unless vacated or modified by the division.

WIS. STAT. § 551.61(2) (2005-06) (emphasis added). This iteration of the statute clearly corresponds to the language of WIS. ADMIN. CODE § DFI-Sec 8.01: namely, the former statute dictated that a written request needed to be filed within thirty days and § DFI-Sec 8.01 instructed as to the specific form and contents such a request must carry.

¶14 Even so, the prior iteration of the statute and its express instruction that a party shall "*file* a written request with the division for a hearing" are no longer. WISCONSIN STAT. § 551.61(2) (2005-06) was repealed during the legislature's creation of a new chapter for securities law based on the Uniform Securities Act of 2002. 2007 Wis. Act 196, § 16; *see also* WIS. STAT. § 551.615. Notwithstanding that statutory overhaul, WIS. ADMIN. CODE § DFI-Sec 8.01 has remained substantively unchanged since its promulgation in 1977.[8]

¶15 The semantic link that once existed is lost in the present version of the operative statute. Rather, WIS. STAT. § 551.604(2) simply states that a party may "request a hearing" within thirty days following service of the order. This

[8] WIS. ADMIN. CODE § DFI-Sec 8.01 (Oct. 1977), http://docs.legis.wisconsin.gov/code/register/1977/264b/rules/sec_1_to_9.pdf.

language, which was adopted verbatim from the Uniform Securities Act, provides no hint that a request must be filed or received to be considered effective. *Cf., e.g.*, N.M. STAT. ANN. § 58-13C-604B(2) (2019) (modifying the Act with instruction that notice "shall state that the parties have fifteen days from receipt of the notice to *file* with the director a request in a record for a hearing" (emphasis added)).

¶16 In fact, inferring as much would create a seeming incongruity elsewhere in WIS. STAT. § 551.604(2). Notably, the statute provides that a hearing will be scheduled "within 15 days after *receipt* of a request in a record from the person." ***Id.*** (emphasis added). The same language is found in DFI's notice to Anderson. Under DFI's approach to "request" a hearing implicitly incorporates its receipt. But read plainly, the phrase "receipt of a request" implies the existence of daylight between a request and its receipt, suggesting they are not the same thing.[9]

[9] The dissent argues the word "request" necessarily implies "receipt." Dissent, ¶7. But the statutory language "receipt of a request" necessarily implies that a request need not be simultaneous with receipt to constitute a valid request. The dissent never grapples with this language.

Rather, the dissent (along with DFI) makes much of the language in WIS. STAT. § 551.604(2) specifying that "[i]f a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days," the order becomes final "by operation of law." Dissent, ¶10. DFI suggests that reading the language to allow for some time period between a request and its receipt renders the statute unworkable, leading to cases that will need to be reopened after day thirty upon the postal arrival of newly received requests. But some administrative time between day thirty and a final order would be ordinary anyway. For example, if someone physically files a request for a hearing at the close of business on day thirty, it would no doubt take at least another business day or more to process that request (to say nothing of staff vacations and routine administrative delay). The fact that DFI might need to wait a few extra days under Anderson's reading of the statute is by no means the administrative catastrophe DFI portends. Some administrative lag time seems inevitable.

To that point, we have also not found other jurisdictions following DFI's approach to this same language from the Uniform Securities Act.[10]

¶17 However, we need not resolve the apparent obscurity in the statutory use of "request." Even if we were persuaded that the better reading of the statute is the one DFI promotes—such that a request is only effective and timely upon DFI's receipt within thirty days—we conclude that DFI's notice failed to provide Anderson with due process.

¶18 The right to due process is protected by the United States and Wisconsin Constitutions. U.S. CONST. amend. XIV; WIS. CONST. art. I, § 1. Prior to depriving a person of a property interest, due process requires the state to provide notice that is "sufficient to enable the recipient to determine what he must do to prevent the deprivation of his interest." ***Estate of Wolff v. Town Bd. of Weston***, 156 Wis. 2d 588, 596, 457 N.W.2d 510 (Ct. App. 1990). "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." ***Id.*** at 592 (quoting ***Cafeteria & Rest. Workers Union, Local 473 v. McElroy***, 367 U.S. 886, 895 (1961)). Instead, "[t]he degree of procedural rigor required in a proceeding varies from one case to another and depends upon the particular facts and upon the weight to be afforded to private interests as contrasted to governmental interests in the circumstances." ***State ex rel. Messner v. Milwaukee Cty. Civil Serv. Comm'n***, 56 Wis. 2d 438, 444, 202 N.W.2d 13 (1972).

[10] Though not a clear statement of law interpreting the same language, it appears an Iowa trial court overturned an administrative denial because the appellants' request had been placed in the mail within thirty days, adding at least some support to Anderson's reading. *See* ***Renewable Fuels, Inc. v. Iowa Ins. Comm'r***, 752 N.W.2d 441, 444 (Iowa Ct. App. 2008).

¶19 To determine whether notice was constitutionally sufficient, we look to its reasonableness. ***Id.***; ***Wolff***, 156 Wis. 2d at 592 ("[T]he focus of due process is the 'reasonableness' of the means of notice chosen by the government."). Reasonable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." ***Messner***, 56 Wis. 2d at 444 (quoting ***Mullane v. Central Hanover Bank & Trust Co.***, 339 U.S. 306, 314 (1950)). We assess reasonableness from the perspective of the notice's recipient. *See* ***Wolff***, 156 Wis. 2d at 596 ("A notice must be sufficient to enable the *recipient* to determine what he must do to prevent the deprivation of his interest." (emphasis added) (citing ***Goldberg v. Kelly***, 397 U.S. 254, 267-68 (1970))). Said another way, Anderson needed to be able to determine what he needed to do to contest the proposed findings and punishments and by when.

¶20 The notice here did not accomplish that. The notice itself—while only indicating the form of a "request for a hearing" and the fact that a "request" needed to be made within thirty days—left unsaid how DFI determines the timeliness of a "request." As Anderson points out, the summary order informed him that DFI considered *its* order effective on the date of its mailing. Given that this information was provided in the section of the order immediately preceding that which set forth the notice of his rights to a hearing, it stands to reason that a person in Anderson's position could logically conclude that he or she would be subject to the same timing rules in response. At the very least, nothing in the notice told him otherwise or clearly indicated a request needed to be received within thirty days. We find it reasonable that a layman like Anderson could interpret the notice as instructing that a request would be timely when mailed within thirty days. While DFI's reading of the less-than-clear statutes and

administrative rule is not without merit, it is also not obvious or apparent to this court. How much more confusing to a citizen with no legal training. ***Wolff***, 156 Wis. 2d at 596 (explaining that reasonableness depends on the recipient).

¶21 The gaps in the current statutory language appear to be a result of legislative oversight following the statutory revisions. That said, the state's due process obligations are not lessened by legislative mis-marksmanship. The notice did not tell Anderson what he needed to do by when, and was therefore insufficient.[11]

CONCLUSION

¶22 Because DFI's inadequate notice deprived Anderson of his constitutional right to due process, we remand this case to the circuit court for entry of an order directing DFI to reverse the denial of his request for a hearing. WIS. STAT. § 227.57(8).[12]

By the Court.—Order reversed and cause remanded with directions.

Recommended for publication in the official reports.

[11] Inadequate notice notwithstanding, an aggrieved party must prove he has been prejudiced as a result of inadequate notice. ***Zimbrick v. LIRC***, 2000 WI App 106, ¶12, 235 Wis. 2d 132, 613 N.W.2d 198 (quoting ***Weibel v. Clark***, 87 Wis. 2d 696, 704, 275 N.W.2d 686 (1979)). Anderson easily met this standard here. DFI denied his request for a hearing because, according to DFI, he missed the deadline imposed by WIS. STAT. § 551.604(2). Without a request, DFI entered its final order, indebting Anderson for more than three million dollars by operation of law. This constitutes prejudice.

[12] We emphasize that this decision is based solely on due process grounds and reserves judgment on the best reading of WIS. STAT. § 551.604(2).

¶23 GUNDRUM, J. (*dissenting*). I dissent because Anderson did not "request a hearing … within 30 days after the date of service of the order" as required by WIS. STAT. § 551.604(2) (2017-18),[1] and this statutory provision and the order DFI served Anderson with on October 24, 2016, sufficiently informed him that he needed to do so to prevent the order from becoming "final" as to him "by operation of law."

Background

¶24 On October 21, 2016, DFI issued a "Summary Order to Cease and Desist Including Restitution and Civil Penalties" against Anderson, The Fiscal Concierge, LLC, The Fiscon Manager, Inc., and James Nickels imposing joint and several liability on Anderson and the others as a result of various violations of Wisconsin's security statutes. On October 24, 2016, DFI mailed the order to Anderson by certified mail. The order informed Anderson inter alia that "[t]he date of the service of this order is the date it is placed in the mail, pursuant to WIS. STAT. § 891.46,"[2] and

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[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

[2] WISCONSIN STAT. § 891.46 provides that

> [u]nless otherwise specifically provided by state or rule adopted under [WIS. STAT. §] 751.12, … notices, … and other papers required or authorized to be served by mail in … administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.

> if you do not request a hearing and none is ordered by the Administrator within 30 days after the date of service of this order, the findings of fact, conclusions of law, and summary and proposed orders, including the imposition of a civil penalty or requirement for payment of restitution, disgorgement, interest, or the costs of investigation sought in a statement in the order, becomes final by operation of law, pursuant to WIS. STAT. § 551.604(2).

On November 23, 2016, Anderson sent a response by certified mail in which he "formally appeal[ed]" the order. This response was received by DFI on November 28, 2016. At the end of it, Anderson wrote, "I apologize for the late reply on this matter," explaining that he had been dealing with health issues of a family member.

¶25 DFI subsequently notified Anderson that his response, which DFI interpreted as a "request for [a] hearing," was denied because it was "received after the 30 day period had expired," and that DFI had issued the order as a final order. Anderson sought reconsideration, which was denied. He filed a petition for review in circuit court, and the court denied the petition on the basis that DFI correctly determined that Anderson's request for a hearing was untimely. Anderson appeals.

Discussion

¶26 Anderson argues DFI and the circuit court erred in determining that his request for a hearing was untimely. Alternatively, he asserts that if his request was not timely, it was only so because DFI's notice denied him procedural due process by failing to sufficiently notify him that his request had to be *received* by DFI within thirty days of the October 24, 2016 service of the order. I believe Anderson is incorrect on both points.

¶27 WISCONSIN STAT. § 551.604(2) provides in relevant part:

> If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of restitution, disgorgement, interest, or the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law.

Anderson does not dispute that this statute required him to "request a hearing" "within 30 days after the date of service of the order," that the date of service of the order was October 24, 2016, or that, based on that date of service, the last date upon which he could request a hearing was November 23, 2016. His contention is that by placing his response to the order *in the mail* on November 23, 2016, he satisfied the requirement of "request[ing] a hearing" by that date. I am not persuaded.

¶28 Anderson states, "The ordinary meaning of 'request' is 'ask.'" He then cites the following:

> *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 1929 (1981) (defining "request" as "to ask (as a person or an organization) to do something"); THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1482 (4th ed. 2006) (defining "request" as "[t]o express a desire for; ask for" or "[t]o ask (a person) to do something"); THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1219 (1966) (defining "request" as "to ask for, esp[ecially] politely or formally").

Inherent in the term "request," or "ask," is that something is requested/asked *of someone*. This is either explicit or implicit in each of the dictionary definitions Anderson cites.

¶29 Anderson conceded at oral argument that a request is not made unless it is received by the person to whom one is making the request, in this case DFI. I agree. Following this logic, the obvious conclusion is that a person does not "request a hearing" unless and until the entity from whom the hearing is sought receives the request, in this case that would be DFI receiving Anderson's petition. Anderson would have never "requested" a hearing of DFI if his response had never made it to DFI, whether due to him mistakenly mailing it to an incorrect address or because it simply had gotten lost in the mail. An attempt to request a hearing is not the same as requesting a hearing, and the statute requires that the latter, not just the former, be done within thirty days. Here, Anderson did not "request a hearing" of DFI until his response was received by DFI on November 28, 2016, which was five days beyond the statute's thirty-day time limit, of which he was informed in the order.

¶30 The administrative code provides additional support for my conclusion that a person does not "request a hearing" of DFI until DFI receives the petition seeking a hearing. WISCONSIN ADMIN. CODE § DFI-Sec 8.01 (Sept. 2010) mandates that "[e]very request for a hearing shall be in the form of a petition *filed* with the division [of securities]."[3] (Emphasis added.) "Filing," in turn, is defined by WIS. STAT. § 551.102(8) as "the *receipt* under this chapter of a record by the administrator or a designee of the administrator." (Emphasis added.)

¶31 Anderson asserts, without support of any authority, that WIS. ADMIN. CODE § DFI-Sec 8.01 "speaks only to the *form* of a request and does not

[3] WISCONSIN STAT. § 551.605(1) provides that the administrator may "[b]y rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter."

purport to define the *timeliness* of that request." I do not read § DFI-Sec 8.01 as he does. The code provision indicates there is no "request for a hearing" unless a response to a summary order, such as Anderson's response, is "in the form of a petition" and "filed with the division." I see no basis for concluding that "in the form of a petition" is a necessary requirement for a "request for a hearing" to have been made but "filed with the division" is not. Simply put, if the response is in the form of a petition but is mistakenly filed with the Department of Public Instruction instead of DFI, the person has not "request[ed] a hearing" of DFI. Pursuant to the statutes and the code then, DFI must receive a petition seeking a hearing within thirty days of service of the order. Merely placing the petition in the mail, or sending it by some other form of courier, within that thirty-day time period does not suffice. DFI and the circuit court did not err in concluding that Anderson's petition requesting a hearing was untimely.

¶32 In its supplemental response brief, DFI writes:

> [I]f simply launching a request within 30 days would be enough to make it "timely," [WIS. STAT. §] 551.604(2) would be at worst absurd and at best unworkable. The provision reads: "If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order ... becomes final as to that person by operation of law." [Sec.] 551.604(2). If a hearing request could be "timely" as long as it was placed in the mail on the 30th day—but not received until several days later, when the order was already finalized—the administrator would be required to reopen the legally finalized order upon receiving the request. If this were the rule, every order, once finalized, could not become truly final until enough time had passed to guarantee that no request had been "made" within 30 days. The Legislature could not have intended to create such an unworkable and absurd procedure.

I agree. The plain language of § 551.604(2) indicates that the order becomes final "by operation of law" following the thirtieth day after service of it if by that thirtieth day: (1) "a person subject to the order does not request a hearing" or (2) a hearing has not been ordered by the administrator. There is no indication in the statutory language that the legislature intended to create an open-ended time frame for an order to become final "by operation of law" and for the matter to be left unresolved until a petition for a hearing is received on the thirty-second, thirty-fourth or thirty-ninth day after service of the order, if received at all. The legislature provided for a clear and certain deadline following which the order would become final if neither of the above two events occurred.

¶33 Anderson also contends his due process rights were violated because he did not receive adequate notice as to when his response needed to be received by DFI. I disagree. In all relevant respects, the order Anderson received tracked the language of WIS. ADMIN. CODE § DFI-Sec 8.01 and WIS. STAT. § 551.604(2) nearly word for word:

> **D. Notice of Hearing Rights**
>
> (a.) PLEASE TAKE NOTICE that you have the right to request a hearing. Every request for a hearing shall be in the form of a petition filed with the Division, pursuant to WIS. ADMIN. CODE § DFI-Sec 8.01….
>
> ….
>
> (c.) PLEASE TAKE FURTHER NOTICE that if you do not request a hearing and none is ordered by the Administrator within 30 days after the date of service of this order, the findings of fact, conclusions of law, and summary and proposed orders, including the imposition of a civil penalty or requirement for payment of restitution, disgorgement, interest, or the costs of investigation sought in a statement in the order, becomes final by operation of law, pursuant to WIS. STAT. § 551.604(2).

Like § 551.604(2) and § DFI-Sec 8.01, this language notified Anderson that if he wanted to exercise his right to have a hearing, he had to file a petition requesting one with the division within thirty days following service of the order. As indicated, this necessarily meant that a request for a hearing had to be received, not just mailed, within that thirty-day time frame. The language further informed Anderson that if he failed to request a hearing within that time frame, the order and all requirements and effects therein would become final "by operation of law" and it identified the precise administrative code provision and statutory provision from which the authority came. The information provided by the order adequately notified Anderson of what he must do if he wanted a hearing and thus satisfied his due process rights. *See* ***Estate of Wolff v. Town Bd. of Weston***, 156 Wis. 2d 588, 592, 457 N.W.2d 510 (Ct. App. 1990) ("A notice must be sufficient to enable the recipient to determine what he must do to prevent the deprivation of his interest.").

¶34 Anderson asserts that he in part had the "impression" that his request for a hearing was timely because the summary order informed him that the "date of service" of the order by DFI was the date DFI placed it in the mail to Anderson. He contends "[a] reasonable person would conclude that, in making his request for a hearing, he or she was entitled to the same timing rules as was DFI." I am not persuaded. The language of the order to which Anderson refers addresses "service" of the order, and the statute to which the order cited, WIS. STAT. § 891.46, also refers to "service." But when addressing Anderson's opportunity to request a hearing, no mention of "service" is made. Rather, the order, as well as the statute and administrative code to which it refers with regard to actions *Anderson* must take, spoke only to Anderson "request[ing] a hearing," and informed him that to make such a request, he had to file a petition with DFI.

¶35 Although not determinative of my view of this case, the sufficiency of the notice to Anderson is underscored by the fact that Anderson himself appeared to have understood that his petition seeking a hearing needed to be received by DFI within the thirty-day time period following DFI's service of the order. As the circuit court noted, in his petition—again, which Anderson placed in the mail on the thirtieth day, November 23, 2016—Anderson states, "I apologize for the late reply on this matter," adding that he was dealing with health issues related to a family member. It would indeed be odd for a person to admit to the relevant enforcement agency that his/her reply was "late" if he/she in fact believed it was timely, as Anderson now argues.