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**DISTRICT I**

May 2, 2023

To:

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

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2022AP1140

Pablito Vega v. LIRC (L.C. # 2021CV7866)

Before Brash, C.J., Donald, P.J., and Dugan, J.

**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).**

Pablito Vega, *pro se*, appeals from an order of the circuit court dismissing his complaint seeking judicial review of a decision by the Labor and Industry Review Commission (LIRC), which affirmed the decision by the Department of Workforce Development (DWD) denying Vega Pandemic Unemployment Assistance (PUA) benefits. The matter was dismissed on the grounds that Vega failed to timely serve LIRC with the summons and complaint. Based upon

our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. § 809.21(1) (2021-22).<sup>1</sup> We summarily affirm.

Vega applied for PUA benefits that were available for independent contractors whose ability to work was negatively impacted by the COVID-19 pandemic. The DWD found that Vega was ineligible for the benefits. Vega appealed that decision to LIRC, which affirmed the decision on December 10, 2021.

Vega sought judicial review of that decision. Pursuant to WIS. STAT. § 108.09(7)(c), an action for judicial review must be commenced within thirty days of the date of LIRC’s order by filing and serving a summons and complaint. Vega filed a summons and complaint with the circuit court on December 30, 2021; however, he did not serve LIRC until January 13, 2022—thirty-four days after LIRC issued its decision. Therefore, LIRC filed a motion to dismiss Vega’s complaint on the grounds that it had not been timely served. The circuit court agreed and dismissed the complaint.<sup>2</sup> Vega appeals.

Our review requires us to construe WIS. STAT. § 108.09(7), which provides for judicial review of LIRC decisions. “Construction of a statute in relation to a particular set of facts is a question of law” that we review *de novo*. *See Milwaukee Cnty. v. LIRC*, 142 Wis. 2d 307, 310, 418 N.W.2d 35 (Ct. App. 1987) (citation omitted).

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

<sup>2</sup> With this action, Vega also filed a petition for writ of mandamus in the circuit court seeking records from the DWD; that petition was also dismissed. Vega does not challenge that dismissal on appeal, and we do not address it. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 493, 588 N.W.2d 285 (Ct. App. 1998) (“when a party fails to argue an issue in its main appeal brief, the appellate court may treat the issue as having been abandoned, even though the issue was presented to the [circuit] court”).

WISCONSIN STAT. § 108.09(7)(c)1. states that a party may “commence an action against [LIRC] for judicial review” of an order by filing a summons and complaint with the circuit court and serving that complaint “[w]ithin 30 days after the date of [the] order made by [LIRC].” Put another way, this section provides for the competency of the circuit court to review an order issued by LIRC. See *Vidal v. LIRC*, 2002 WI 72, ¶15, 253 Wis. 2d 426, 645 N.W.2d 870.

The thirty-day time requirement for service is pivotal here, because unless the matter is commenced “within the time and in the manner prescribed” by the statute, the circuit court does not have competency to proceed. *Id.* (citation omitted); see also *Schiller v. DILHR*, 103 Wis. 2d 353, 355, 309 N.W.2d 5 (Ct. App. 1981) (“[s]trict adherence to the statutory requirements is necessary” for the circuit court to have competency to review LIRC’s decision).

In other words, the failure to comply with the statutory timeline must result in the dismissal of an action for a lack of competency of the circuit court. See *Schiller*, 103 Wis. 2d. at 354. In fact, this court has recognized that “[t]o dismiss an appeal because it comes one day late may seem harsh. However, if statutory time limits to obtain appellate jurisdiction are to be meaningful they must be unbending.” *Currier v. DOR*, 2006 WI App 12, ¶23, 288 Wis. 2d 693, 709 N.W.2d 520 (citation omitted).

As noted above, Vega concedes that he did not comply with the statutory timeframe for serving his complaint on LIRC. As a result, the circuit court did not have competency to proceed in this matter. See *Vidal*, 253 Wis. 2d 426, ¶15. We therefore affirm its order dismissing Vega’s complaint.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*