

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 2012

Diane M. Fremgen
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. 2011AP2086

Cir. Ct. No. 2010CV16326

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

CLEVELAND LEE, SR.,

PETITIONER-APPELLANT,

CAROLYN LEE,

PETITIONER,

v.

WISCONSIN DEPARTMENT OF REVENUE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
DENNIS P. MORONEY, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Cleveland Lee, Sr., *pro se*, appeals an order dismissing his actions against the Wisconsin Department of Revenue. The issue is

whether Lee complied with the service requirements of WIS. STAT. § 227.53(1) (2009-10).¹ We affirm.

¶2 On November 23, 2009, the Wisconsin Tax Appeals Commission granted summary judgment to the Wisconsin Department of Revenue on a tax assessment against Cleveland and Carolyn Lee. On December 17, 2009, Cleveland and Carolyn Lee submitted to the circuit court a petition for judicial review of the Commission's decision. The clerk of the circuit court did not file the petition because the Lees did not pay the filing fee. The Lees eventually paid the fee in August 2010. The clerk of circuit court filed the petition on September 27, 2010. On the same date, Cleveland Lee filed a second petition for review of the Commission's decision. His wife Carolyn Lee was not a party to the second petition. The circuit court dismissed both petitions.

¶3 Lee argues that the circuit court erred in ruling that he did not comply with the service requirements of WIS. STAT. § 227.53(1).² That statute required Lee to serve his petition for judicial review on both the Tax Appeals Commission and the Department of Revenue personally or by certified mail within thirty days of the Commission's decision. *See* § 227.53(1)(a)1.-2. The undisputed evidence in the record shows that Lee properly served the first petition for judicial review on the Commission by certified mail on December 17, 2009, but he did not properly serve the Department of Revenue because he sent the petition by regular

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² Although Carolyn Lee, Cleveland Lee's wife, was a party to the first of the two petitions filed in the circuit court, she did not appeal the circuit court's decision. She is not a party to this appeal.

mail, rather than personally or by certified mail as required by § 227.53(1)(a)1. A litigant must strictly comply with the service requirements of § 227.53(1)(c) in order for the circuit court to have competency to proceed. *County of Milwaukee v. LIRC*, 142 Wis. 2d 307, 312, 418 N.W.2d 35 (Ct. App. 1987). Because Lee did not serve his first petition for judicial review on the Department of Revenue personally or by certified mail within thirty days of the Commission's decision, the circuit court did not have competency to proceed.³

¶4 Lee filed a second petition for judicial review on September 27, 2010, over ten months after the Commission's decision. The second petition was also properly dismissed because it was not filed and served within thirty days of the Commission's November 2009 decision.

¶5 Lee has raised other issues, but we do not address them because the service issue is dispositive. *See Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (if a decision on one point disposes of an appeal, we will not usually decide the other issues raised).

By the Court.—Order affirmed.

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

³ Lee eventually effectuated proper service on the Department of Revenue a year after the Tax Appeals Commission made its decision, but that service was well beyond the thirty-day time allowed by statute.

