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**DISTRICT I**

May 13, 2025

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

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2023AP1934

Trent Nelson v. Labor and Industry Review Commission  
(L.C. # 2023CV4696)

Before White, C.J., Donald, P.J., and Geenen, 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).**

Trent Nelson, pro se, appeals an order dismissing his complaint seeking judicial review of a worker's compensation decision. The circuit court determined that Nelson failed to serve the summons and complaint on the Labor and Industry Review Commission (LIRC) within the applicable deadline. Based upon a review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

Nelson sought worker’s compensation benefits. LIRC denied his claim in a decision dated May 26, 2023. On June 26, 2023, Nelson filed a summons and complaint in the circuit court requesting judicial review of LIRC’s decision. Nelson mailed the pleadings to LIRC, which received them on June 28, 2023. LIRC moved to dismiss the circuit court case on the ground that Nelson served LIRC after the service deadline had passed. Following briefing and a hearing, the circuit court agreed with LIRC and dismissed the case. Nelson appeals.

A party seeking judicial review of a worker’s compensation decision must comply with WIS. STAT. § 102.23(1)(a), because that statute constitutes “the exclusive statutory scheme” for bringing the action.<sup>2</sup> *Xcel Energy Servs., Inc. v. LIRC*, 2013 WI 64, ¶29, 349 Wis. 2d 234, 833 N.W.2d 665. If the party seeking review fails to comply with § 102.23(1)(a), “the circuit court must dismiss the action with prejudice[.]” *Miller Brewing Co. v. LIRC*, 173 Wis. 2d 700, 706, 495 N.W.2d 660 (1993).

Our analysis of whether Nelson timely served LIRC with his petition for judicial review requires us to construe WIS. STAT. § 102.23 in relation to the facts of this case. “Construction of a statute in relation to a particular set of facts is a question of law” for our independent review. *County of Milwaukee v. LIRC*, 142 Wis. 2d 307, 310, 418 N.W.2d 35 (Ct. App 1987) (citation omitted).

As relevant here, WIS. STAT. § 102.23(1)(a)2. provides: “Within 30 days after the date of an order ... made by the commission, any party aggrieved by the order ... may commence an

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<sup>2</sup> Nelson’s briefs direct our attention to provisions found in WIS. STAT. ch. 227, but WIS. STAT. § 102.23(1)(a)1. states that worker’s compensation decisions are subject to review “only as provided in this section and not under ch. 227[.]”

action in circuit court for review of the order ... by serving a complaint as provided in [§ 102.23(1)](b) and filing the summons and complaint with the clerk of the circuit court.” Section 102.23(1)(b) provides, in pertinent part: “a complaint shall be served with an authenticated copy of the summons.... Service upon a commissioner or agent authorized by [LIRC] to accept service constitutes complete service on all parties[.]” Thus, to obtain judicial review in this case, Nelson was required both to file his summons and complaint in circuit court and to serve those pleadings on LIRC or its authorized agent, all within 30 days of the May 26, 2023 decision. *See* § 102.23(1)(a), (b).

LIRC acknowledges that Nelson filed his summons and complaint by the deadline of June 26, 2023.<sup>3</sup> LIRC argues, however, that Nelson, did not timely complete service. We agree.

Nelson served his summons and complaint on LIRC via United States mail. LIRC accepts service by mail, but service “is effective only if the pleadings are actually received by [LIRC] within the appeal period.” WIS. ADMIN. CODE § LIRC 1.14 (Nov. 2024);<sup>4</sup> *see also Schiller v. DILHR*, 103 Wis. 2d 353, 355-56, 309 N.W.2d 5 (Ct. App. 1981). Here, the record shows that Nelson placed the pleadings in the United States mail on June 27, 2023, and the documents reached LIRC on June 28, 2023, two days after expiration of the deadline for service imposed by WIS. STAT. § 102.23(1)(a). Our supreme court mandates strict compliance with the service deadline imposed by that statute. *Cruz v. DILHR*, 81 Wis. 2d 442, 448, 260 N.W.2d 692

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<sup>3</sup> The thirtieth day after May 26, 2023, fell on June 25, 2023. Because that day was a Sunday, it was excluded from the calculation of the deadline for service pursuant to WIS. STAT. § 990.001(4)(a).

<sup>4</sup> We cite to the version of WIS. ADMIN. CODE ch. LIRC that is currently in effect because that version contains the same text as was in place at the time of the relevant underlying proceedings in 2023. The chapter was republished in November 2024 for technical reasons. *See* Wisconsin Administrative Register, November 2024, No. 827B.

(1978). Because Nelson did not strictly comply with the deadline, the circuit court could not proceed. *Miller Brewing Co.* 173 Wis. 2d at 706.

Nelson nonetheless offers several reasons why the circuit court should not have dismissed his case. Upon consideration of his submissions, we are not persuaded.

First, Nelson asserts that LIRC's office manager sent him a copy of the commission's decision by email on June 1, 2023, and he suggests that the email extended his deadline for seeking judicial review until 30 days after June 1, 2023. In his appellate submissions, Nelson reproduces what appears to be a portion of the alleged email, but that email is not included in the circuit court record. The email therefore is not before us. *See Hauer v. Union State Bank of Wautoma*, 192 Wis. 2d 576, 602, 532 N.W.2d 456 (Ct. App. 1995) (explaining that "we are bound by the record as it comes to us").

Moreover, the office manager's email would not change the outcome here, even were we to consider such an email. Nelson alleged in his summons and complaint that LIRC decided his case on May 26, 2023. His circuit court filings included a copy of LIRC's decision, which reflected that the decision was dated and mailed to him on May 26, 2023. The circuit court's finding that LIRC resolved Nelson's claim on May 26, 2023, is thus supported by the record and is not clearly erroneous. According, we will not disturb that finding. *See* WIS. STAT. § 805.17(2).

WISCONSIN STAT. § 102.23(1)(a)2. makes clear that the deadline for service runs from the date of the decision, not the date on which the claimant receives the decision. *See id.* The statute

thus dictated that Nelson’s 30-day period for filing and serving a petition for judicial review began to run on May 26, 2023, the date of the decision, and ended on June 26, 2023.<sup>5</sup> *See Schiller*, 103 Wis. 2d at 356-57. Moreover, the decision itself contained information regarding “judicial review of this decision” and directed Nelson’s attention to LIRC’s website. That website provides instructions in bold type that an appeal “is commenced only by filing a summons and complaint with the circuit court *and* serving an authenticated copy of the summons and of the complaint upon the commission, all within 30 calendar days from the date of the commission decision.”<sup>6</sup>

Untimely service of process is “irremediable,” and LIRC’s instructions for service may not be “ignored.” *Gomez v. LIRC*, 153 Wis. 2d 686, 691, 692, 451 N.W.2d 475 (Ct. App. 1989). These rules govern even when the actions of third parties contribute to a litigant’s delay in completing service. *See id.* at 688-90. Accordingly, the LIRC office manager’s actions in sending a copy of LIRC’s decision to Nelson by email, assuming the office manager sent such an email, did not extend Nelson’s statutory service deadline beyond June 26, 2023.

Second, Nelson suggests that the circuit court’s electronic filing system served LIRC on his behalf and relieved him of the obligation to serve LIRC himself. We recognize that licensed Wisconsin attorneys, including the attorneys who represent LIRC, are mandatory users of the

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<sup>5</sup> We observe that a circuit court may extend the deadline for commencing an action for judicial review if the circuit court “is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order.” WIS. STAT. § 102.23(1)(a)2. Nelson did not allege or show that any delay in his receipt of the commission’s decision was “exceptional,” *see id.*, and he similarly did not allege or show that he was prejudiced by any delay.

<sup>6</sup> *See* <https://lirc.wisconsin.gov/pdf/LIR5394-P%20WC%20Appeal%20Rights%2007-16.pdf#zoom=100> (last visited May 9, 2025).

circuit court’s electronic filing system. *See* WIS. STAT. § 801.18(1)(k), (3)(a). We also recognize that when the system’s users receive notice of a filing through the system, the notice constitutes service pursuant to § 801.18(6)(a). However, § 801.18(6)(a) applies to service of documents that are filed after an action is commenced, not to the initiating documents.<sup>7</sup> A different provision, § 801.18(5)(d), governs service of initiating documents and mandates that “initiating documents shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.”<sup>8</sup> *Id.*

The record in this case does not include anything in writing showing that LIRC agreed to accept service of initiating documents by notice to counsel through the electronic filing system. Moreover, “[a]n attorney ... is not authorized by general principles of agency to accept, on behalf of a client, service of process commencing an action.” *County of Milwaukee*, 142 Wis. 2d at 313. Nelson therefore does not show that the circuit court’s electronic filing system operated to relieve him of his obligation to serve LIRC with initiating documents by traditional methods.

Finally, Nelson suggests that dismissal was improper here because the clerk of circuit court file-stamped the authenticated copies of his summons and complaint with an incorrect case number. Specifically, it appears that the clerk stamped at least one copy of the summons and complaint with the case number 23FA004696 instead of the case number 23CV004696. We see no reason, however, that this would excuse Nelson from his service obligation under WIS. STAT.

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<sup>7</sup> Petitioning for judicial review of an administrative decision commences rather than continues an action because the previous proceedings between the parties were administrative, not judicial. *County of Milwaukee v. LIRC*, 142 Wis. 2d 307, 313 n.2, 418 N.W.2d 35 (Ct. App. 1987); *Gibson v. City of Racine Police and Fire Comm’n*, 123 Wis. 2d 150, 152, 366 N.W.2d 144 (Ct. App. 1985).

<sup>8</sup> Pursuant to WIS. STAT. § 801.18(1)(m), “[t]raditional methods’ means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.”

§ 102.23. An erroneous case number stamped on a summons and complaint by the clerk is merely a technical error, not a fundamental one. *American Fam. Mut. Ins. Co. v. Royal Ins. Co. of Am.*, 167 Wis. 2d 524, 534, 481 N.W.2d 629 (1992). Therefore, the governing rule is set forth in WIS. STAT. § 805.18(1), which provides: “[t]he court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.”

Here, nothing in the record suggests that the clerk’s file-stamp error affected any party’s rights. To the contrary, the clerk stamped the original summons and complaint with the correct case number, the matter was docketed under the correct case number, and the documents that the parties subsequently submitted to the circuit court were properly received for filing in the instant case. Accordingly, the clerk’s technical error had no effect on the litigation. We therefore disregard the error. *Id.*

We conclude that the circuit court properly dismissed this case because Nelson did not timely serve LIRC with his summons and complaint. We recognize that dismissal denies Nelson the opportunity for judicial review and therefore leads to a harsh result. The court does not welcome that result. “The cases are clear, however, that the statutory procedures must be strictly followed.... ‘Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice.’” *Gomez* 153 Wis. 2d at 693 (citations omitted). For all the foregoing reasons, we affirm.

Therefore,

IT IS ORDERED that the circuit court’s 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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*Samuel A. Christensen*  
*Clerk of Court of Appeals*