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**DISTRICT IV**

May 30, 2025

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

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2024AP236

State of Wisconsin ex rel. Phil Hawley v. Daisy Chase  
(L.C. # 2023CV50)

Before Graham, Nashold, and Taylor, 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).**

Phil Hawley, pro se, appeals a circuit court order dismissing his certiorari action. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2023-24).<sup>1</sup> We affirm the dismissal

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

order because Hawley has not established that he served any of the respondents named in his action.

On February 6, 2023, Hawley filed a petition for a writ of certiorari in the circuit court that named multiple respondents, including the secretary of the department of corrections and the warden of Redgranite Correctional Institution.<sup>2</sup> The court issued a writ of certiorari on June 14, 2023. The writ included a provision requiring the respondents to file a return within thirty days after service of the writ upon them.

After a few months passed without a return, the circuit court wrote to some of the respondents asking for a status update. The respondents moved to quash the writ and to dismiss Hawley's certiorari action on multiple grounds, including the failure to timely serve the respondents. The respondents argued that the court lacked personal jurisdiction over them and that the court must dismiss Hawley's action. The court agreed and granted their motion. The court determined that the time for service had passed, and the court found that Hawley had not served any of the respondents with the writ.

Before we turn to the parties' arguments, we summarize the three methods for commencing an action for certiorari review under WIS. STAT. § 801.02(5). The service requirements vary by method.

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<sup>2</sup> As ordered below, this court's case caption will be amended to reflect the names of the officials who currently hold these offices. *See* WIS. STAT. § 803.10(4)(a) ("When a public officer ... is a party to an action in an official capacity and during its pendency ... ceases to hold office, the action does not abate and the successor is automatically substituted as a party.").

The first method is to commence an action “under sub. (1)” of the statute. *See* WIS. STAT. § 801.02(5); ***Tobler v. Door County***, 158 Wis. 2d 19, 25, 461 N.W.2d 775 (1990).<sup>3</sup> This method requires the filing of a summons and complaint with the circuit court and service upon the defendant of an authenticated copy of the summons and complaint within ninety days of filing. Sec. 801.02(1); *see also* ***Tobler***, 158 Wis. 2d at 25.

The second method is “by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith.” WIS. STAT. § 801.02(5); *see also* ***Tobler***, 158 Wis. 2d at 25.

The third method is “by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order.” WIS. STAT. § 801.02(5); *see also* ***Tobler***, 158 Wis. 2d at 25.

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<sup>3</sup> WISCONSIN STAT. § 801.02(5) reads, in relevant part, as follows:

An action seeking a remedy available by certiorari, quo warranto, habeas corpus, mandamus or prohibition may be commenced under sub. (1), by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith, or by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order.

Section 801.02(1) reads as follows:

A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.

Here, there is ambiguity regarding which method Hawley used or attempted to use, and Hawley does not develop any clear argument on this point. The respondents argue that Hawley used the second method. They also argue that the second method requires service of the writ within ninety days of the writ’s issuance. According to the respondents, this ninety-day deadline applies under this method because subsection (5) of the statute refers back to subsection (1), which includes a ninety-day service requirement.

However, the respondents do not cite any case law for the proposition that the ninety-day service requirement applies under the second method. It appears at least arguable that the statutory language governing the second method specifies no service deadline. The pertinent language provides only that a certiorari action may be commenced “by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith.” WIS. STAT. § 801.02(5); *see also Koenig v. Pierce Cnty. DHS*, 2016 WI App 23, ¶19, 367 Wis. 2d 633, 647, 877 N.W.2d 632 (stating that under the second method, “the action may be commenced ‘by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith[.]’” (quoting § 801.02(5))).<sup>4</sup>

We conclude that we need not decide which method Hawley used and which service deadline, if any, applies because, as the circuit court concluded, Hawley has not shown that he *ever* served any of the respondents with either one of the two possible documents that he would

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<sup>4</sup> We note that even if there is no specified deadline for service, this does not mean that there is no time limitation for commencing a certiorari action under the second method. Other applicable time limits would still apply. *See, e.g.*, WIS. STAT. § 893.735(2) (“An action seeking a remedy available by certiorari made on behalf of a prisoner is barred unless commenced within 45 days after the cause of action accrues.”).

have needed to serve, namely, his certiorari petition filed in February 2023 or the writ issued by the circuit court in June 2023.

“The plaintiff has the burden to prove compliance with statutory service requirements, that is, to establish that the defendant was properly served and is therefore subject to the court’s jurisdiction.” *Hagen v. City of Milwaukee Employees’ Ret. Sys. Annuity & Pension Bd.*, 2003 WI 56, ¶12, 262 Wis. 2d 113, 663 N.W.2d 268. Here, Hawley has not met this burden.

Hawley argues that he has shown service on one or more respondents based on multiple documents that he filed in the circuit court. The documents include his sworn affidavit, letters that he sent to the court and the sheriff, and prison forms reflecting the disbursement of funds for copies or postage. However, none of these documents establishes that Hawley served any of the respondents with his certiorari petition or the writ. At most, these documents establish that Hawley took steps to serve one or more respondents.

For instance, Hawley averred in his affidavit that he placed a petition for a writ of certiorari in the warden’s mailbox on June 25, 2023. However, Hawley does not explain how his act of placing the petition in the warden’s mailbox could constitute proper service. He provides no meaningful reply to the respondents’ argument that this was not a proper method of service because service by mail is not authorized and because Hawley, as a party, could not be the one to personally serve respondents. *See* WIS. STAT. § 801.11(1)(a) & (b) (specifying that service on a natural person shall be effected by personally serving a summons on the person, or if that is not feasible using reasonable diligence, by leaving a copy of the summons at the person’s “usual

place of abode”); WIS. STAT. § 801.10(1) (specifying that service must be made by someone who is not a party to the action).<sup>5</sup>

As another example, Hawley points to a letter addressed to the sheriff in which he requested that the sheriff serve a copy of his certiorari petition on the secretary of the department of corrections and then send Hawley an affidavit of service. But Hawley does not point to any affidavit of service by the sheriff showing that service occurred.<sup>6</sup>

To the extent that Hawley makes other arguments that we have not expressly addressed, they are rejected as insufficiently developed. While this court makes some allowances for pro se litigants, “[w]e cannot serve as both advocate and judge” by developing arguments for a litigant. *See State ex rel. Harris v. Smith*, 220 Wis. 2d 158, 164-65, 582 N.W.2d 131 (Ct. App. 1998); *see also State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining that the court of appeals may decline to review issues that are inadequately briefed).

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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<sup>5</sup> WISCONSIN STAT. § 801.10(1) reads as follows: “WHO MAY SERVE. An authenticated copy of the summons may be served by any adult resident of the state where service is made who is not a party to the action.”

<sup>6</sup> After this case was submitted to the court for a decision on the parties’ briefs, Hawley filed a document containing additional arguments. Nothing in this document adds anything of substance to the arguments that Hawley made in his briefing. We address the document no further.

IT IS FURTHER ORDERED that this court's case caption is amended to substitute Jared Hoy for Kevin Carr as department of corrections secretary, and Daisy Chase for Dan Cromwell as warden.

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*