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DISTRICT IV

August 21, 2025

To:

Hon. Frank D. Remington
Circuit Court Judge
Electronic Notice

Lynn Kristine Lodahl
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Mark A. Stephens
Sturtevant Transitional Facility
P.O. Box 903
Sturtevant, WI 53177-0903

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

2024AP785

Mark A. Stephens v. Kevin A. Carr (L.C. # 2023CV3279)

Before Graham, P.J., Blanchard, and Kloppenburg, 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).

Mark A. Stephens, who is an inmate at a state correctional institution, appeals two circuit court orders: one that dismissed his tort claims against state department of corrections defendants for failure to timely serve them with a summons and complaint, and a second that denied his motion for reconsideration. Stephens argues that service of his complaint should be deemed timely under the prison mailbox rule, which should be extended to this situation. Based on our 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).¹ We summarily affirm because Stephens concedes that he did not serve an authenticated summons along with his complaint, and failure to serve an authenticated summons is an independent ground for dismissal.

Stephens was incarcerated at Jackson Correctional Institution at all times relevant to this appeal. His complaint, which the circuit court clerk accepted for filing on December 14, 2023, alleged that state correctional officials wrongfully withheld money from his prison account. Pursuant to WIS. STAT. § 801.02(1), a party has 90 days after filing a summons and complaint to serve authenticated copies of these documents on the defendants. Here, it is undisputed that Stephens' service deadline was March 13, 2024.

Due to various asserted difficulties and delays, Stephens was unable to send the authenticated copies of his complaint to the sheriff for service until March 3, 2024. Stephens' "Certification of Mailing" states that "the complaint for [his] case was deposited in the institution mail box for the institution to put checks in and mail to the processing part[ie]s" on that date. Sheriff's deputies served the complaint on the defendants on March 19 and 20, 2024.

Shortly thereafter, the circuit court dismissed Stephens' case without prejudice based on his failure to serve an authenticated copy of the summons and complaint on the defendants within the statutory time period. Stephens moved for reconsideration, asserting that he "put everything in the 'Mail Box' for the institution" ten days before the March 13 service deadline, and that service should be deemed timely pursuant to the prison mailbox rule. *See State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, 239 Wis. 2d 327, 620 N.W.2d 409 (establishing the

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

prison mailbox rule). The court denied this motion, explaining that the mailbox rule articulated in *Shimkus* provides that the deadline for filing a petition for certiorari relief may be tolled when an inmate places a certiorari petition in the mailbox, but that this rule does not apply to serving a party with the documents required to commence an action.

Stephens appeals, arguing for an extension of the prison mailbox rule to situations like his. The defendants argue against extension of the rule. They also point out that there is no evidence that Stephens placed all required documents—specifically, an authenticated copy of a summons—in the institution’s mailbox, which is an independent basis for dismissal of the suit. Stephens does not address the summons issue in his reply brief; he apparently concedes that, consistent with his “Certification of Mailing,” he did not include a summons in the documents he mailed to the sheriff for service on the defendants. See *United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant’s failure to respond in reply brief to an argument made in response brief may be taken as a concession).

We need not address Stephens’ argument about extending the prison mailbox rule because his failure to file and serve an authenticated summons is a fundamental defect that deprives the court of personal jurisdiction over the defendants and requires dismissal. *American Fam. Mut. Ins. Co. v. Royal Ins. Co. of Am.*, 167 Wis. 2d 524, 533-34, 481 N.W.2d 629 (1992); see also *Barrows v. American Fam. Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) (an appellate court need not address all issues when one is dispositive). We therefore affirm the orders on appeal.

IT IS ORDERED that the orders of the circuit court are summarily affirmed.

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

Samuel A. Christensen
Clerk of Court of Appeals