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DISTRICT III

July 21, 2026

To:

Hon. Elizabeth L. Rohl
Circuit Court Judge
Electronic Notice

Kerry Feuerhelm
Clerk of Circuit Court
Pierce County Courthouse
Electronic Notice

Halle Elizabeth Hatch
Electronic Notice

Chad William Kessler 659723
Dodge Correctional Institution
P.O. Box 700
Waupun, WI 53963

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

2025AP803

State of Wisconsin v. Chad William Kessler
(L. C. No. 2025CV23)

Before Stark, P.J., Hruz, and Gill, 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).

Chad Kessler, pro se, appeals from a circuit court order granting the State of Wisconsin's motion for default judgment in a civil forfeiture action involving Kessler's vehicle. He also appeals the court's subsequent order denying his motion to dismiss the State's civil forfeiture action for violating his due process rights. 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 reverse and remand for further proceedings consistent with this decision.

Prior to an adjudication of Kessler’s drug-related criminal charges, the State filed a civil action on February 5, 2025, seeking the forfeiture of Kessler’s vehicle pursuant to WIS. STAT. § 973.075. In a signed affidavit of service, a law enforcement officer averred that he personally served Kessler on February 7, 2025, at the Pierce County Courthouse “with a Summons and Criminal Complaint.”

On March 11, 2025, less than 45 days after the State allegedly served Kessler with the summons and complaint, the State filed a motion for summary judgment pursuant to WIS. STAT. § 806.02 and WIS. STAT. § 973.076(1)(b)4. The State argued that it was entitled to a default forfeiture because Kessler had “failed to answer the complaint or file any response.” On March 24, 2025, the circuit court granted the State’s motion after concluding that Kessler failed “to answer the complaint or file any response.”

Thereafter, on April 2, 2025, Kessler filed a motion to dismiss the forfeiture action, arguing that the State violated his due process rights because he was not served with the summons and complaint until after the default judgment was entered, and he was not afforded 45 days within which to file an answer. More specifically, he argued, “On February 5, 2025, the Pierce County Court failed to serve me with a summons regarding the forfeiture of my vehicle, despite having knowledge of my incarceration at the Pierce County Jail.” Kessler further alleged that he was not served with the summons until April 1, 2025, and he noted that the summons

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

informed him that he “had 45 days to respond.” The State opposed Kessler’s motion to dismiss, citing the affidavit of service and arguing that Kessler had “a motive to provide untruthful information to the court because the issue in this case is forfeiture of his vehicle.”

The circuit court denied Kessler’s motion to dismiss without a hearing. The court concluded that “[t]he record indicates that [Kessler] was personally served with notice. The fact that he failed to respond to the pleadings does not mean that he was not afforded due process.” Kessler now appeals.

A forfeiture action is commenced by “filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with [WIS. STAT.] ch. 801 within 90 days after filing upon the person from whom the property was seized.” WIS. STAT. § 973.076(1)(b)1. Pertinent here, “[i]f no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired,” or if a “defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in [WIS. STAT. §] 806.02.” Sec. 973.076(1)(b)4. Before entering a judgment against a defendant, the court shall “require proof of service of the summons in the manner required by [WIS. STAT. §] 801.10.” Sec. 806.02(3).

Kessler does not argue that the officer’s affidavit of service did not meet the statutory criteria to constitute proof of service under WIS. STAT. § 801.10 or that the circuit court otherwise erroneously exercised its discretion by granting the State a default judgment under WIS. STAT. § 806.02. Rather, Kessler renews his argument from his motion to dismiss that he was not, in fact, timely served with the summons and complaint. Kessler clarifies this position

on appeal, stating that the officer *did* serve him on February 7, 2025, but that the service included only the “affidavit of service,” not the summons and complaint. For its part, the State contends that the circuit court did not err by denying Kessler’s motion to dismiss because the personal service of Kessler was “proper.”

“In the face of a challenge to the sufficiency of service of process, the party serving the process has the burden to show that process was sufficient.” *Dietrich v. Elliott*, 190 Wis. 2d 816, 826, 528 N.W.2d 17 (Ct. App. 1995). “Generally, an officer’s uncontradicted certificate of service is adequate proof of service. However, a defendant may overcome such evidence with ‘clear and satisfactory proofs’ to the contrary.” *Id.* (citation omitted). “In other words, an affidavit of service is entitled to a presumption of correctness. If the affidavit sets forth prima facie evidence of proper service, the defendant must provide proof that clearly and satisfactorily disputes the facts set forth.” *Culver v. Kaza*, 2021 WI App 57, ¶15, 399 Wis. 2d 131, 963 N.W.2d 865.

We previously addressed a substantially similar issue to the one presented here in *Honeycrest Farms, Inc. v. A.O. Smith Corp.*, 169 Wis. 2d 596, 486 N.W.2d 539 (Ct. App. 1992). In *Honeycrest Farms*, the plaintiff provided a certificate of service at a default judgment hearing. *Id.* at 600. The certificate stated that a sheriff’s deputy served a summons and complaint on the defendant, and the plaintiff also read into the record part of a deposition of the deputy who issued the certificate of service wherein the deputy confirmed that she had served the summons and complaint. *Id.* Over the defendant’s objection, the circuit court refused to consider evidence—namely, an affidavit by an employee of the defendant—that the defendant was only served a “request for production of documents,” not a copy of the summons and complaint, and the court granted the plaintiff default judgment. *Id.* at 600 & n.1. We reversed

and remanded for further proceedings to permit the defendant “to challenge the proof of service of process.” *Id.* at 603. We explained that due process required “nothing more than a hearing that is appropriate to the nature of the case.” *Id.* at 604.

Consistent with *Honeycrest Farms*, we conclude that Kessler is entitled to a hearing on his motion to dismiss wherein he challenged the fact of the service of the summons and complaint. Accordingly, we reverse the circuit court’s orders and remand for a hearing to address Kessler’s challenge. At this hearing, the circuit court must permit Kessler the opportunity to “provide proof that clearly and satisfactorily disputes the facts set forth” in the affidavit of service.² See *Culver*, 399 Wis. 2d 131, ¶15.

The parties do not address whether an evidentiary hearing with live testimony is required to address the service of process issue in this case, and, therefore, we do not answer this issue on appeal. However, we emphasize that on remand, the circuit court retains “broad discretion as to the nature of proof it may consider when resolving [the] sufficiency of process question,”

² We pause to note that the summons contained a defect by including two deadlines for Kessler to respond to the State’s complaint. First, the summons stated that “[w]ithin twenty (20) days from receiving this Summons, you must respond with a written answer to the complaint, as that term is used in Chapter 802 of the Wisconsin Statutes.” Second, the summons stated that “[i]f you do not provide a proper answer within forty-five days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint.” The 20-day deadline was correct, and the 45-day deadline was incorrect. See WIS. STAT. § 802.06(1)(a) (stating that, generally, “a defendant shall serve an answer within 20 days after the service of the complaint upon the defendant”); see also WIS. STAT. § 801.09(2)(a)1. However, this defect was technical in nature, as opposed to fundamental. See *Flanagan v. Stumble Inn LLC*, 2023 WI App 31, ¶¶1, 3-9, 408 Wis. 2d 532, 992 N.W.2d 867.

Furthermore, the State filed its motion for summary judgment prior to the 45-day deadline described in the summons, but the circuit court withheld a decision on that motion until 45 days after Kessler was allegedly served with the summons and complaint. If, on remand, the circuit court determines that Kessler was timely served with the summons and complaint, then that means Kessler failed to file an answer within 45 days. Therefore, subject to that determination, we hold that Kessler was not otherwise prejudiced by the technical defect. See *id.*, ¶10.

Dietrich, 190 Wis. 2d at 826, and due process does not compel “the use of witnesses on issues regarding service of process in every case,” ***Honeycrest Farms, Inc.***, 169 Wis. 2d at 604; *see also Culver*, 399 Wis. 2d 131, ¶25. That said, “[w]here the issue of service is largely a matter of credibility because the evidence is irreconcilably in conflict, it would seem that courtroom testimony is preferable.” ***Honeycrest Farms, Inc.***, 169 Wis. 2d at 604.

Therefore,

IT IS ORDERED that the orders are summarily reversed and the cause is remanded for further proceedings. WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals