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DISTRICT II

November 24, 2021

To:

Hon. William Domina
Circuit Court Judge
Electronic Notice

Cindy Gnadinger
100 N. East Ave.
Waukesha, WI 53186

Monica Paz
Clerk of Circuit Court
Waukesha County
Electronic Notice

Timothy L. Hoeller
8735 N. 72nd St., Unit 101
Milwaukee, WI 53223

Denise Greathouse
Electronic Notice

Catherine Jordens JD
100 N. East Ave.
Waukesha, WI 53186

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

2020AP227

Timothy L. Hoeller v. Carroll University (L.C. #2019CV995)

Before Gundrum, P.J., Neubauer and Reilly, 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).

Timothy L. Hoeller appeals a circuit court order dismissing his action against Carroll University and denying his motion for reconsideration. Based upon 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 (2019-20).¹ For the reasons that follow, we affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

On June 4, 2019, Hoeller filed a complaint against Carroll. The next day, the circuit court dismissed the complaint without prejudice because Hoeller did not include a summons as contemplated under WIS. STAT. §§ 801.02 and 801.095. In its dismissal order, the court provided Hoeller with instructions, including legal citations, on how to commence a lawsuit.

Hoeller did not follow the circuit court's instructions. Instead, over two months later, on August 26, 2019, Hoeller filed a "Notice of Filing & Service of Plaintiff's Amended Summons." Attached to that filing was an untitled document purporting to be an amended summons. Hoeller did not file a complaint with this submission. Hoeller then attempted to serve Attorney Denise Greathouse with the dismissed June 4 complaint and the untitled document purporting to be an amended summons. Attorney Greathouse was not yet an attorney of record and never agreed to accept service on Carroll's behalf.

Carroll moved to dismiss the action on multiple independent grounds, including that (1) the circuit court lacked personal jurisdiction under WIS. STAT. § 802.06(2)(a)3.-4.; (2) the action was never commenced under WIS. STAT. § 801.02; and (3) Hoeller's filings failed to state a claim upon which relief may be granted. Carroll also sought an order restricting Hoeller's access to the Wisconsin Courts.

After a hearing, the circuit court dismissed the action for lack of personal jurisdiction, determining that despite its instructions to Hoeller, he never properly commenced the lawsuit against Carroll. In particular, the court found that Hoeller "failed to properly serve [Carroll] with an authenticated service of summons that met Wisconsin law requirements within 90 days of the filing of the above-captioned action." The court ordered that the dismissal be with prejudice "[d]ue to the passage of more than 300 days since determination by the relevant administrative

agency” Finally, the court denied Carroll’s motion to restrict Hoeller’s access to the Wisconsin Courts but stated that if Hoeller “continues to file complaints/documents in a stream of consciousness and/or in nonsensical diatribes against” Carroll, it would allow Carroll to renew its motion and “to seek an order of contempt.” Hoeller appeals.

We conclude that the circuit court properly dismissed Hoeller’s lawsuit for lack of personal jurisdiction. To commence a lawsuit, a plaintiff must simultaneously file a summons and complaint with the court, and then serve an authenticated copy on the defendant within 90 days of filing. WIS. STAT. § 801.02. The failure to strictly comply with the requirements of § 801.02 constitutes a fundamental defect depriving the circuit court of jurisdiction. *See American Family Mut. Ins. Co. v. Royal Ins. Co. of Am.*, 167 Wis. 2d 524, 533-34, 481 N.W.2d 629 (1992).

Here, the untitled document purporting to be an amended summons did not conform to the basic requirements set forth in WIS. STAT. § 801.09. *See also* WIS. STAT. § 801.095. Among other deficiencies, the untitled document failed to contain the names and addresses of any of the parties to the action, and did not inform Carroll that Hoeller had filed a new lawsuit against it or that it was required to respond with a written demand for a copy of the complaint.

More significantly, Hoeller never served the summons and complaint on Carroll as required by WIS. STAT. § 801.11(5) (setting forth permissible methods of service upon a domestic corporation). Hoeller served Attorney Greathouse, who was not “an officer, director or managing agent of” Carroll, did not even work at Carroll, and never agreed to accept service of the untitled document on Carroll’s behalf. *See* § 801.11(5). “The service of a summons in a

manner prescribed by statute is a condition precedent to a valid exercise of personal jurisdiction ...” *Danielson v. Brody Seating Co.*, 71 Wis. 2d 424, 429, 238 N.W.2d 531 (1976).

Accordingly, the circuit court properly determined that Hoeller’s failure to serve Carroll within ninety days constituted a fundamental defect depriving it of jurisdiction, and correctly dismissed the action.²

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals

² Carroll makes a number of arguments in support of the circuit court’s discretionary determination to dismiss the case “with prejudice.” We observe that Hoeller fails to develop any coherent argument to the contrary. In other words, Hoeller does not suggest that if dismissal was proper, then the dismissal should have been without prejudice. Therefore, we affirm the court’s order of dismissal in its entirety, including its provision for dismissal “with prejudice.”

