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**DISTRICT III**

October 29, 2024

To:

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Electronic Notice

Jason Krautkramer  
Electronic Notice

Kelly Schremp  
Clerk of Circuit Court  
Marathon County Courthouse  
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Jeffrey J. Shampo  
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Joanne Gallo  
Electronic Notice

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

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2023AP665

Joanne Gallo v. Labor and Industry Review Commission  
(L. C. No. 2023CV68)

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).**

Joanne Gallo, pro se, appeals from an order dismissing her action for judicial review of an unemployment insurance decision made by the Labor and Industry Review Commission (the Commission). 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 (2021-22).<sup>1</sup> We affirm on the ground that Gallo's service errors deprived the circuit court of competence to proceed.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The Commission issued a decision denying Gallo's claim for unemployment insurance benefits on January 13, 2023. On January 31, 2023, Gallo filed a document that could be construed as a complaint in the circuit court, seeking judicial review of that decision. The complaint named the Commission and Gallo's former employer, Marathon Residential Counseling Services, as respondents. The Commission received two authenticated copies of the complaint by first class mail on February 6, 2023—one sent to its post office box and the other sent to its street address. The following day, the Dane County Sheriff served an additional authenticated copy of the complaint upon the Commission. Gallo neither filed, nor served, a summons.

The Commission moved to dismiss the action on February 20, 2023, alleging that Gallo had failed to comply with the service requirements set forth in WIS. STAT. § 108.09(7)(c)1. and 3. Those provisions require that a person seeking judicial review of an unemployment insurance decision must name the Department of Workforce Development as a defendant and must serve authenticated copies of both the summons and complaint upon the defendants within thirty days after the date of the challenged decision by the Commission. *Id.* In response, on March 6, 2023, Gallo filed what could be construed as an amended complaint naming "Workforce Development" as an additional defendant. The Dane County Sheriff served an authenticated copy of the amended complaint upon the Commission on March 10, 2023. The circuit court granted the Commission's motion to dismiss, and Gallo appeals that determination.

On appeal, Gallo does not dispute that she failed to comply with WIS. STAT. § 108.09(7)(c)1. and 3. by not naming the Department of Workforce Development in her original complaint and by not serving the Commission with an authenticated summons. Instead, Gallo argues that her noncompliance should be excused because: (1) the Commission provided unclear

instructions regarding how to appeal its decision; (2) Gallo made a good faith effort to “cure” the service errors; and (3) it is unjust not to address the merits of her unemployment insurance claim. Unfortunately for Gallo, this court does not have the authority to excuse her noncompliance with the statute based upon such equitable considerations.

The statute setting forth the method for obtaining judicial review of an unemployment insurance decision is what is known as a “strict compliance” statute. *See Schiller v. DILHR*, 103 Wis. 2d 353, 355, 309 N.W.2d 5 (Ct. App. 1981). That means adherence to all of the fundamental requirements of the statute is necessary to provide a court with the authority to review the claim. *Id.* A failure to name a necessary party to a judicial review action is a fundamental defect that deprives a court of competence to hear the matter. *Brandt v. LIRC*, 166 Wis. 2d 623, 627, 634, 480 N.W.2d 494 (1992). Here, while Gallo attempted to amend her complaint to add the Department as an additional defendant, she did not do so within the thirty-day period. Once the court lost competency, it could not regain it.

The failure to serve an authenticated summons upon a party also constitutes a fundamental defect depriving a court of competency. *See DWD v. LIRC*, 2016 WI App 21, ¶¶10-11, 367 Wis. 2d 609, 877 N.W.2d 620 (analogizing the strict compliance analysis for judicial review to that of the fundamental defect analysis for personal jurisdiction); *American Fam. Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis. 2d 524, 534-45, 481 N.W.2d 629 (1992) (holding that the failure to serve an authenticated summons and complaint is a fundamental defect). Gallo never even attempted to cure her failure to file and serve a summons. In short, the circuit court correctly determined that Gallo’s service errors were fatal to her action and properly dismissed the action for lack of competency.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. 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*