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DISTRICT I

January 22, 2025

To:

Hon. William Sosnay
Circuit Court Judge
Electronic Notice

Carlos R. Pastrana
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals Processing
Division
Electronic Notice

Dennis Eborka
620 E. 2nd Street
Flint, MI 48503

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

2023AP2075

Dennis Eborka v. Medical College of Wisconsin
(L.C. # 2023CV6362)

Before White, C.J., Donald, P.J., and Colón, J.

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).

Dennis Eborka, *pro se*, appeals a circuit court order dismissing his case against the Medical College of Wisconsin (the Medical College). The circuit court determined that it lacked personal jurisdiction over the Medical College because Eborka failed to accomplish service of the summons and complaint. Upon consideration of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We summarily affirm.

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

Eborka filed a summons and complaint on August 23, 2023, alleging that the Medical College wrongly denied his application for admission to medical school. The next substantive activity in the case was on September 29, 2023, when he moved for default judgment on the ground that the Medical College had failed to answer his complaint. The Medical College then moved to dismiss the case on the grounds that Eborka had not served the Medical College properly with the summons and complaint, and therefore the circuit court never acquired personal jurisdiction. Eborka opposed dismissal, arguing that he had accomplished service by mail. In support, he relied on an affidavit of mailing, which showed that he had mailed the summons and complaint to the Medical College on August 24, 2023; and he also filed a United States Postal Service certified mail receipt for that date. The circuit court held a hearing and determined that Eborka had failed to serve the Medical College in any of the ways permitted to accomplish service on a corporate entity. The circuit court therefore denied Eborka's motion for default judgment and dismissed the case for lack of personal jurisdiction. Eborka appeals.

Our supreme court has explained that WIS. STAT. § 801.11(5) sets forth three methods by which a plaintiff can serve a summons on a corporation.² *Sacotte v. Ideal-Werk Krug & Priester Maschinen-Fabrik*, 121 Wis. 2d 401, 404-05, 359 N.W.2d 393 (1984). Those methods are:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation ... either within or without this state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

² Pursuant to WIS. STAT. § 902.01(3), and *Schoenburg v. Klapperich*, 239 Wis. 144, 150, 300 N.W. 237 (1941), we take judicial notice of government records reflecting that the Medical College is a corporation. See apps.dfi.wi.gov/apps/corpSearch/Search.aspx.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then the summons may be served upon an officer, director or managing agent of the corporation ... by publication and mailing as provided in sub. (1).^{3]}

(c) By serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

Sec. 801.11(5).⁴ The record shows, and the circuit court found, that Eborka did not serve the Medical College in any of the three ways that the statute allows.

Eborka failed to accomplish service under WIS. STAT. § 801.11(5)(a) because he did not serve an entity described in that subsection either personally or by leaving the summons and complaint with a person apparently in charge of the entity's office. Eborka failed to accomplish service under § 801.11(5)(b) because he neither demonstrated that he made reasonable efforts to complete service under § 801.11(5)(a), nor showed that he published the summons when he mailed it.

Eborka argued, however, that WIS. STAT. § 801.11(5)(c) authorized service of process solely by mail because that statute should be read in conjunction with WIS. STAT. § 801.14(2). Our supreme court rejected a similar argument in *Sacotte*, and the circuit court properly rejected the argument here.

³ WISCONSIN STAT. § 801.11(1)(c) provides that if, despite reasonable diligence, a natural person cannot be served personally, then “service may be made by publication of the summons ... and by mailing. If the defendant’s post-office address is known ... there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and ... complaint.”

⁴ WISCONSIN STAT. § 801.11(5) also provides the method of serving a summons on an insurer. See § 801.11(5)(d). A similar provision was in effect when our supreme court decided *Sacotte v. Ideal-Werk Krug & Priester Machinen-Fabrik*, 121 Wis. 2d 401, 359 N.W.2d 393 (1984). See § 801.11(5)(d) (1983-84). The Medical College is not an insurance company. Therefore, like the *Sacotte* court, we do not discuss § 801.11(5)(d).

WISCONSIN STAT. § 801.11(5)(c) allows service of a summons in a manner specified by any other statute. *Id.* WISCONSIN STAT. § 801.14(2) provides that service of pleadings and other papers on a represented party shall be accomplished by serving the party’s attorney unless personal service on the party is ordered by the court; such service may be by mail. *Id.* The *Sacotte* court concluded, however, that “[§] 801.14(2), is applicable only after the action has been commenced and an attorney has appeared in the action on behalf of a party.” *Sacotte*, 121 Wis. 2d at 408. Because those conditions had not been met when Eborka mailed the summons and complaint in this case, he could not rely on § 801.14(2) as the basis for serving process on the Medical College by mail.

“[T]he service of a summons in a manner prescribed by statute is a condition precedent to a valid exercise of personal jurisdiction.” *Johnson v. Cintas Corp. No. 2*, 2012 WI 31, ¶25, 339 Wis. 2d 493, 811 N.W.2d 756 (citation omitted). Accordingly, the circuit court could not grant Eborka a default judgment against the Medical College. *Id.*, ¶50 (holding that a default judgment is void absent personal jurisdiction over the defendant). Rather, in the absence of personal jurisdiction over the Medical College, the circuit court properly dismissed the case. *Mech v. Borowski*, 116 Wis. 2d 683, 684, 686, 342 N.W.2d 759 (Ct. App. 1983).

Before we close, we observe that throughout the pendency of this proceeding, Eborka has sent a virtually ceaseless blizzard of miscellaneous documents to this court. The submissions have included copies of cases, manuals, statutes, court rules, articles, and screen shots, among other items. The miscellany has also included allegations and arguments—often fragmented and inscrutable—regarding matters of apparent concern to Eborka. We entered orders declining to

consider such submissions and advising Eborka that submissions unaccompanied by a proper motion would be placed in this court's file without action.⁵ The submissions continued unabated. We now reiterate that we have not considered these submissions in resolving this appeal. To the extent that Eborka intended the materials as supplemental briefs, the rules of appellate procedure do not contemplate such piecemeal briefing. *Cf.* WIS. STAT. RULE 809.19. To the extent that Eborka sought to introduce facts that are not in the circuit court record, the rules of appellate procedure do not permit this court to consider evidentiary items that are not included in the record. *Verex Assur., Inc. v. AABREC, Inc.*, 148 Wis. 2d 730, 734 n.1, 436 N.W.2d 876 (Ct. App. 1989). The parties therefore may not rely on materials that postdate the notice of appeal and the transmittal of the record to this court. *Id.*

Upon the foregoing,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* 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

⁵ Eborka also filed several procedural motions that we addressed in separate orders.