

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 3, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP2596

Cir. Ct. No. 2006CV944

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

JOSEPH E. SABOL,

PETITIONER-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Racine County:
STEPHEN A. SIMANEK, Judge. *Affirmed.*

Before Brown, C.J., Anderson, P.J., and Snyder, J.

¶1 SNYDER, J. Joseph E. Sabol appeals from two orders. The first order granted the State's motion to dismiss Sabol's petition for circuit court review

of a Labor and Industry Review Commission (the Commission) decision. The second denied Sabol's motion for reconsideration. Sabol asserts that the circuit court erred when it held that he had failed to comply with the service requirements contained in WIS. STAT. § 227.53(1)(c) (2005-06).¹ In the alternative, he argues that § 227.53(1)(c) is ambiguous because it does not make clear who is responsible for admitting service when first-class mail is used. We disagree with both assertions and affirm the orders of the circuit court.

BACKGROUND

¶2 This case originated with Sabol's filing of employment discrimination and retaliation complaints against the University of Wisconsin–Eau Claire. Sabol filed multiple complaints against UWEC, and the complaints were consolidated for hearing. Ultimately, the Department of Workforce Development Equal Rights Division (ERD) took up the consolidated cases and issued a Ruling, Order and Memorandum dismissing all three complaints.

¶3 Sabol then appealed to the Commission, which adopted the ERD's ruling, with modifications, as its own. In a written notice of appeal rights, the Commission notified Sabol of his right to petition for judicial review of its decision. That notice stated in relevant part:

Any party may commence legal proceedings for review of this decision within 30 calendar days of the date of this decision. Such proceedings are commenced by:

- Serving a petition, either personally or by certified mail, upon the Labor and Industry Review Commission at the address below:

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

....

- Copies of the petitions must be served upon all parties who appeared before the commission in this case not later than 30 calendar days after commencing the proceedings for review.

The complainant(s) and respondent(s) whose names and addresses appear in the caption of this decision are considered parties for purposes of judicial review. The copies shall be served:

- Personally
- By certified mail, or,
- When service is timely admitted in writing, by first[-]class mail

¶4 The Commission mailed its final decision along with the notice of appeal rights to Sabol on January 31, 2006. On February 28, Sabol filed a petition for review with the clerk of circuit court. That same day, Sabol served a copy of the petition on the Commission by certified mail and a copy of the petition on the University of Wisconsin System by first-class mail. The UW System did not timely admit service, in writing, of a copy of Sabol's petition.

¶5 The Commission moved to dismiss Sabol's petition. As grounds, it alleged that the circuit court lacked competency to adjudicate the case because Sabol had failed to effect service in a manner that complied with WIS. STAT. § 227.53(1)(c). The circuit court conducted a hearing and orally granted the Commission's motion to dismiss. Sabol moved for reconsideration. The circuit court entered separate written orders, one memorializing its oral decision to grant the motion to dismiss and the other denying Sabol's motion for reconsideration. Sabol appeals.

DISCUSSION

¶6 Sabol first asserts that the circuit court improperly determined that he had failed to meet the service requirements contained in WIS. STAT. § 227.53(1)(c), and therefore the court erroneously concluded that it lacked competency to proceed. Although no Wisconsin circuit court is without subject matter jurisdiction to hear actions of any nature whatsoever, a circuit court may be deprived of competency, in other words its authority to exercise its subject matter jurisdiction, if required statutory procedures for invoking the court's jurisdiction are not followed. *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶¶8-9, 273 Wis. 2d 76, 681 N.W.2d 190. Whether a circuit court has lost competency is a question of law and therefore subject to de novo review. *Id.*, ¶7.

¶7 Sabol maintains that the circuit court retained competency to proceed to judgment because he “engaged in due diligence and filed a written admission with the court admitting that copies of the petition were served in accordance with [the statute].” The written admission to which Sabol refers is his own “Certification of Service” that was filed with the court on March 10, 2006. In an affidavit to the circuit court, Sabol stated at the time he filed his petition, he understood WIS. STAT. § 227.53(1)(c) to mean that “the party filing the petition for judicial review was a party with permissive responsibility and authority to admit service.” Upon learning that UW System's admission of service was required, Sabol wrote to UW System's counsel and requested that he admit service. On April 17, 2006, the UW System sent Sabol a letter stating in part, “The University does not admit service of petitions for judicial review.”

¶8 Essentially, Sabol's argument boils down to this: The UW System did in fact receive a copy of the petition and that copy was sent by first-class mail

within the statutory time limit; therefore, the service requirement was met. Sabol seeks a loose interpretation of the service requirement, elevating the end result over the process. However, the law does not support this “no harm done” approach. “[T]he test is not whether the method of service was reasonable or whether the agency was prejudiced, but whether the service strictly complied with statutory requirements.” *Weisensel v. DHSS*, 179 Wis. 2d 637, 644, 508 N.W.2d 33 (Ct. App. 1993).

¶9 The right to judicial review of agency decisions is dependent upon strict compliance with WIS. STAT. § 227.53(1)(c). See *Cudahy v. DOR*, 66 Wis. 2d 253, 259, 224 N.W.2d 570 (1974). Sabol had three options available to him for service on the UW System: personal service, certified mail or, when service is timely admitted in writing, by first-class mail. He accomplished none. “The failure to comply with the mandatory time limitation for filing and serving a petition for judicial review of an agency decision results in the loss of the circuit court’s competency to proceed and the petition must be dismissed.” *Wisconsin Power and Light Co. v. PSC*, 2006 WI App 221, ¶11, 296 Wis. 2d 705, 725 N.W.2d 423. Therefore, Sabol’s failure to comply with the statutorily prescribed procedure required the circuit court to dismiss the petition for lack of competency to adjudicate the case.

¶10 In the alternative, Sabol argues that WIS. STAT. § 227.53(1)(c) is ambiguous with regard to the term “service,” specifically in terms of who is responsible for admitting service when first-class mail is used. Sabol directs us to WIS. STAT. § 801.14(2) for support of his contention that service was complete upon his mailing of the petition. He directs us to § 801.14(4) for the proposition that his filing of a certification of service was sufficient to demonstrate the petition

was timely served on the UW System. He asserts that these statutes demonstrate reasonable alternate interpretations of what constitutes effective service.

¶11 We disagree. WISCONSIN STAT. § 227.53 imposes very specific requirements on persons seeking judicial review of an agency decision. Where there is a conflict between WIS. STAT. ch. 277 and the general rules of civil procedure, such as those contained in WIS. STAT. § 801.14, the “dictates of ch. 227 must prevail.” *Wagner v. State Med. Examining Bd.*, 181 Wis. 2d 633, 639, 511 N.W.2d 874 (1994). Furthermore, “[l]itigants must inform themselves of applicable legal requirements and procedures.” *Hilmes v. DIHLR*, 147 Wis. 2d 48, 55, 433 N.W.2d 251 (Ct. App. 1988). A litigant’s uninformed perception of what constitutes effective service, even a reasonable perception, is insufficient where specific statutory requirements remain unmet. *See id.* at 55.

¶12 Sabol also argues that he is being unfairly penalized for the UW System’s failure to admit service because he had no control over whether it would or would not acknowledge receipt of his petition for review. Again, we disagree. Sabol was not as powerless as he suggests. Sabol could have avoided the problem altogether simply by sending the petition to the UW System or its attorney by certified mail, which would have complied with the statute regardless of the UW System’s policy not to admit service.

CONCLUSION

¶13 The circuit court correctly determined that Sabol did not comply with the service requirements of WIS. STAT. § 227.53(1)(c). The court then properly observed that it did not have competency to hear the case and it dismissed the petition. When Sabol chose to serve his petition on the UW System by first-class mail, he opted for a method that would require the UW System to “timely

admit[.]” service in writing. *See id.* Without that timely admission, service was incomplete. The service requirements of § 227.53(1)(c) are clear and specific and do not conflict with the more general rules of civil procedure contained elsewhere in the statutes. Accordingly, we affirm the circuit court’s order to dismiss the petition and its order denying Sabol’s motion for reconsideration.

By the Court.—Orders affirmed.

Not recommended for publication in the official reports.

