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STATE OF WISCONSIN COURT OF APPEALS DISTRICT I

10-11-2013

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

CITY OF WEST ALLIS,
Plaintiff-Respondent,

v.

BRANDON J. MICHAELS,
Defendant-Appellant.

Case No. 2013-AP-000710

ON APPEAL FROM THE CIRCUIT COURT FOR MILWAUKEE COUNTY
THE HONORABLE CAROLINA STARK, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

CITY OF WEST ALLIS

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STATEMENT OF THE ISSUE¹

I. Whether Brandon Michaels's Failure to Serve the City Attorney's Office with Notice of His Municipal Appeal, in compliance with Wisconsin Statute Section 800.14(1), Rendered the Circuit Court without Jurisdiction to Hear His Appeal.

The circuit court ordered the municipal appeal dismissed after Michaels failed to prove that he served the city attorney's office with notice of his municipal appeal.

¹ Michaels does not present a Statement of the Issue in his brief, so the City of West Allis is assuming that he is appealing this particular issue.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not necessary for this appeal because the briefs of the parties fully present and meet the issue on appeal and fully develop theories and legal authorities on each side.

Publishing this opinion is unnecessary because it is a decision by one court of appeals judge.

STATEMENT OF THE CASE

On July 12, 2012, the West Allis Police Department cited Brandon Michaels for disorderly conduct. (App. at A1.) He was convicted of said citation after a trial in the West Allis Municipal Court on January 15, 2013. (*Id.* at A2.) On February 4, 2013, Michaels filed a notice of appeal with the West Allis Municipal Court. (*Id.*) Nowhere does the record show that Michaels filed a notice of appeal with the city attorney's office.

On February 21, 2013, the Milwaukee County Circuit court mailed a notice of hearing to both Michaels and Jenna Merten of the West Allis City Attorney's office to notify them of a pretrial conference on March 8, 2013. (*Id.* at A3.) At that pretrial conference, Attorney Merten requested that the court dismiss Michaels's appeal with prejudice due to his failure to serve the city attorney's office with notice of his appeal. (*Id.* at A5-A9.) In response to Attorney Merten's motion to dismiss, Michaels did not provide any documentation that he had served the city attorney's office. (*Id.* at A10-A21.) All he could provide to the court was a statement that he believed he took the proper steps "of letting everybody know." (*Id.* at A12.) Additionally, Amy Segerson testified on Michaels's

behalf and stated that she gave a copy of the notice of appeal to the West Allis Police Department. (*Id.* at A14-A15.) Thus, since Michaels had not demonstrated to the court that he had served the city attorney's office with notice of his appeal, the court dismissed the appeal. (*Id.* at A17.)

STANDARD OF REVIEW

The standard of review for statutory compliance when seeking to appeal is a question of law the court reviews *de novo*. *Welin v. American Family Mut. Ins. Co.*, 2006 WI 81, ¶ 16, 292 Wis.2d 73, 80-81, 717 N.W.2d 690, 693.

ARGUMENT

I. The Circuit Court Properly Dismissed Michaels's Appeal Because Michaels's Failure to Serve the City Attorney with Notice of His Appeal Rendered the Circuit Court without Jurisdiction to Hear His Appeal.

Article VII, Section 8 of the Wisconsin Constitution states that circuit courts shall have appellate jurisdiction "as the legislature may prescribe by law." As such, a circuit court can obtain jurisdiction over a municipal appeal only if "the rules of appealability established by the legislature" are followed. *Walford v. Bartsch*, 65 Wis.2d 254, 258, 222 N.W.2d 633, 635 (Wis. 1974). For a right of appeal to exist, "some statute must grant it and a party seeking to appeal must follow the method prescribed in the governing statute." *City of Mequon v. Bruseth*, 47 Wis.2d 791, 794, 177 N.W.2d 852, 854 (Wis. 1970).

Wis. Stat. § 800.14(1) (2013) requires appellants of municipal court judgments to give written notice of appeal to the municipal judge and other party within 20 days after judgment. For service to be proper, in situations where the non-appealing party has an attorney, the appealing party shall serve the non-appealing party's attorney, unless the court orders the appealing party to

serve the non-appealing party in person. Wis. Stat. § 801.14(2) (2013). Service shall be effectuated by mailing the notice to the attorney, personally delivering it to the attorney, or, if no address is known, by leaving it with the court clerk. *Id.*

Strict compliance with the statutory service requirements is necessary for a court to confer jurisdiction over a party. *519 Corp. v. Dept. of Trans.*, 92 Wis.2d 276, 287, 284 N.W.2d 643, 649 (Wis. 1979).

"Failure to comply with the statutory procedure deprives the court of jurisdiction to conduct the review."

Walford, 65 Wis.2d at 258, 222 N.W.2d at 636. The party seeking circuit court jurisdiction has the burden to prove compliance with statutory service requirements.

Hagen v. City of Milwaukee Employees Retirement Sys. Annuity & Pension Bd., 2003 WI 56, ¶ 12, 262 Wis.2d 113, 119, 663 N.W.2d 268, 271. In *Am. Family Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis.2d 524, 481 N.W.2d 629 (Wis. 1992), the Wisconsin Supreme Court held that a court did not have personal jurisdiction on an action where the plaintiff failed to meet the statutory service requirement over a defendant. *Id.* at 535, 481 N.W.2d at 629. The Court stated that defects in service can be either "fundamental" or "technical." *Id.* at 533, 481

N.W.2d at 629. For fundamental violations, courts cannot exercise personal jurisdiction regardless of prejudice or actual notice. *Id.* at 533-34, 481 N.W.2d at 629; see also *519 Corp.*, 92 Wis.2d at 288, 284 N.W.2d at 649 (finding that an appeal was invalid because it was sent by regular mail and not certified mail as required by statute). As stated in *American Family*, the court determined that lack of service within the time frame required by statute is a fundamental violation. *Am. Family Mut. Ins. Co.*, 167 Wis.2d at 534, 481 N.W.2d at 629. Similarly, in *Hagen*, the court found that the defendant's serving the wrong city clerk, although a reasonable mistake by the process server, did not comply with the statutory service requirements and upheld the circuit court's dismissal of the action. *Hagen*, 2003 WI 56, at ¶¶ 23-26, 262 Wis.2d at 125-26, 663 N.W.2d at 274-75. Accordingly, courts do not have personal jurisdiction in cases where service is not properly effectuated.

Failing to serve the city attorney with a notice of appeal within 20 days of a municipal court decision renders the circuit court without jurisdiction to hear the appeal. *City of Milwaukee v. Hall*, 2013 WI App 13, ¶5, 2012 Wisc. App. LEXIS 949 (unpublished). See also

City of Milwaukee v. Brophy, 2011 WI App 58, 2011 Wisc. App. LEXIS 248 (unpublished); *City of Milwaukee v. Mallett*, 2010 WI App 135, 2010 Wisc. App. LEXIS 638 (unpublished).¹ In *Hall*, the defendant failed to serve the city attorney with notice of her appeal of her municipal disorderly conduct conviction. *Hall*, 2013 WI App 13, at ¶ 3. Finding that the defendant failed to comply with the statutory requirements for appeal, the court found that the circuit court was without jurisdiction to hear the appeal and, accordingly, upheld the circuit court's dismissal of the defendant's appeal. *Id.* at ¶¶ 5, 7.

Here, Michaels failed to serve the city attorney's office within 20 days and, therefore, the circuit court had no jurisdiction to hear his appeal. Michaels has the burden to prove compliance with the statutory service requirements. He did not present any affidavit of service, affidavit of mailing, or file-stamped sheet of paper that indicated he served the city attorney's office. Similarly, Amy Segerson, the witness who testified on his behalf, stated that she filed a copy of the notice of appeal only with the West Allis Police

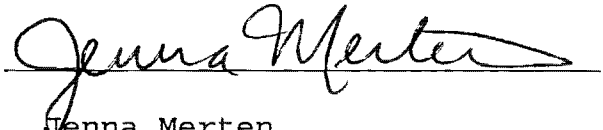
¹ Pursuant to Wis. Stat. § 809.23(3)(b), the City of West Allis is citing these cases for persuasive value only.

Department. (App. at A14-A15). Although Michaels argues in his brief that Segerson testified in court that the city attorney's office received the information and that the court clerk stated that she would give the information to the city attorney's office, none of that testimony was elicited or provided to the circuit court on March 8, 2013 and is not contained in the record. (See generally *id.* at A5-A21.) Items not contained in the record may not be considered by the court of appeals and any missing material is assumed to support the trial court's ruling. *Fiumefreddo v. McLean*, 174 Wis.2d 10, 21-22, 496 N.W.2d 226, 232 (Wis. Ct. App. 1991). Finally, Attorney Merten informed the court that she did not receive any service. (App. at A9.) Without such service and with Michaels failing to prove that he did meet the service requirement, the circuit court has no jurisdiction. Thus, the circuit court properly dismissed Michaels's appeal from municipal court.

CONCLUSION

The court should affirm the circuit court's ruling and find that the circuit court did not have jurisdiction to hear Michaels's municipal appeal because he failed to meet the statutory requirement of serving the city attorney's office with notice of his appeal.

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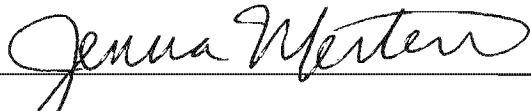
CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. section 809.19(8)(b) and (c) for a brief produced with a monospaced font.

The length of this brief is 5 pages.

Date this 8th day of October, 2013.

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

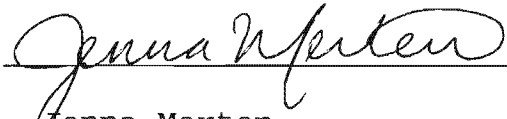
I hereby certify that I have submitted an electronic copy of this brief that complies with Wis. Stat. section 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

Dated this 8th day of October, 2013.

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