

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**NOTICE**

August 7, 1997

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

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

**No. 96-1708**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MANOR HEALTHCARE CORPORATION, D/B/A AMERICANA  
HEALTHCARE CENTER,**

**PETITIONER-APPELLANT,**

**V.**

**DEPARTMENT OF INDUSTRY, LABOR AND HUMAN  
RELATIONS,**

**RESPONDENT-RESPONDENT,**

**LAURIE A. HOPKINS,**

**COMPLAINANT-RESPONDENT-  
RESPONDENT.**

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APPEAL from a judgment of the circuit court for Dane County:  
MARK A. FRANKEL, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Manor Healthcare Corporation appeals from a judgment upholding an administrative decision of the Department of Industry, Labor and Human Relations and dismissing its petition for a ch. 227, STATS., review of the agency's decision. The issue is whether Manor properly commenced the review action within the thirty-day deadline set forth in § 227.53(1), STATS. We conclude that the trial court properly dismissed the petition on this jurisdictional issue, and therefore affirm.

Manor and one of its employees, Laurie Hopkins, litigated a family and medical leave dispute before DILHR. Manor was aggrieved by DILHR's decision, and petitioned the trial court for review. Manor timely and properly served DILHR in this instance.

In the subsequent court proceeding, Assistant Attorney General Richard Moriarty represented DILHR. The trial court held that DILHR's decision insufficiently considered a waiver issue and lacked certain necessary findings of fact. The court therefore remanded the case with directions. The decision further provided that "because the issues for remand may be dispositive of this petition, the court will not undertake full judicial review until such time as may become necessary."

DILHR took no action on the remand for several months. Manor's counsel contacted Moriarty about the delay, and Moriarty arranged for a remand hearing. Moriarty did not participate in the subsequent administrative proceeding, however. At its conclusion, DILHR issued a decision that essentially left the parties in the same position as after the original decision. Manor therefore decided to return to circuit court for additional review.

At this point an attorney for Manor, Lynn Stathas, asked Moriarty whether he believed a new petition for review was necessary and whether DILHR would object if Manor requested Judge Torphy's continued assignment to the case. According to Stathas, Moriarty responded that a new petition was necessary, in his opinion, and he would probably not object to Judge Torphy's reassignment. Moriarty presented a somewhat different view of his communications with Stathas, adding that he expressly told her that he did not represent DILHR at the time, but would likely be reappointed if new proceedings were initiated, due to his familiarity with the case.

Manor timely filed its new petition for review and attempted to timely serve DILHR by serving the petition on Moriarty in his status as DILHR's counsel of record in the first proceeding. Hopkins moved to dismiss the petition, contending that Manor failed to timely commence the action through proper service on DILHR. The trial court agreed and dismissed for lack of subject matter jurisdiction, resulting in this appeal.

Section 227.53(1)(a)1, STATS., provides that review proceedings are commenced by filing a petition in the circuit court and by serving the petition upon "the agency or one of its officials" within thirty days of the agency's decision. Manor concedes that it did not timely serve the agency or one of its officials, but asks that we apply the "special circumstances" test to hold that service on Moriarty satisfied the statutory requirement.<sup>1</sup> The special circumstances Manor identifies are Moriarty's participation in the first review proceeding, his help in initiating the remand proceeding, his communications and

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<sup>1</sup> While as a general rule an attorney is not authorized to accept service for a client, an exception is made for "special circumstances." *Gangler v. Wisconsin Elec. Power Co.*, 110 Wis.2d 649, 658, 329 N.W.2d 186, 190 (1983).

representations to Stathas, his acceptance of service of the petition addressed to DILHR in care of him, and his subsequent reference to DILHR as “my client” in a letter to Manor’s counsel.

Manor essentially argues that Moriarty’s actions and communications estopped DILHR and Hopkins from raising their jurisdictional claim. However, subject matter jurisdiction in ch. 227, STATS., proceedings may not be conferred upon the trial court by estoppel. *Wisconsin Env’tl. Decade v. Public Serv. Comm’n*, 84 Wis.2d 504, 515-16, 267 N.W.2d 609, 616-17 (1978). Courts have generally enforced a rule of strict compliance with § 227.53(1), STATS., to confer subject matter jurisdiction, and have only recognized limited exceptions. *Weisensel v. DHSS*, 179 Wis.2d 637, 647, 508 N.W.2d 33, 37 (Ct. App. 1993). The only exceptions to that rule either do not involve estoppel, or they predate, and are therefore overruled by, *Wisconsin Environmental Decade*.

In any event, Manor failed to establish grounds for estoppel even accepting as true its disputed version of Moriarty’s communications with Stathas. For estoppel to apply, a party’s reliance or another’s action or inaction must be reasonable and justifiable. *Tomah-Mauston Broad. v. Eklund*, 143 Wis.2d 648, 657, 422 N.W.2d 169, 173 (Ct. App. 1988). If Moriarty conveyed the mistaken impression that Manor could properly commence a review proceeding by serving him instead of DILHR, then Manor’s attorneys, admittedly experienced in administrative law, should have caught that mistake. There is no authority for the proposition that an attorney can excuse his or her mistake of law by relying on adverse counsel’s actions or advice, especially where, as here, there was a plainly stated statutory service requirement and numerous cases strictly enforcing it.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

