

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 1, 2014

Diane M. Fremgen
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. 2012AP718

Cir. Ct. No. 2011CV15518

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

KENNETH J. KRAEMER,

PETITIONER-APPELLANT,

v.

**WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES,
MILWAUKEE BUREAU OF CHILD WELFARE AND WISCONSIN
DIVISION OF HEARINGS AND APPEALS,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
DOMINIC S. AMATO, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Kenneth J. Kraemer, *pro se*, appeals the circuit court's order dismissing his action. He sought judicial review of a decision of the Wisconsin Department of Children and Families substantiating charges that he

sexually abused a child and therefore was ineligible for licensing or employment in certain settings involving children. The issue is whether the circuit court properly dismissed Kraemer's petition for judicial review. We affirm.

¶2 A party seeking judicial review of an agency decision must file a petition for judicial review with the clerk of circuit court and serve the agency personally or by certified mail within thirty days after service of the agency decision. *See* WIS. STAT. § 227.53(1). It is well established that “strict compliance with procedural statutes is necessary to obtain jurisdiction to review administrative agency decisions.” *Department of Transportation v. Peterson*, 226 Wis. 2d 623, 633, 594 N.W.2d 765, 770 (1999) (citation omitted). The decision was final on September 7, 2011. Kraemer filed his petition for judicial review on October 3, 2011, within the thirty-day time limit, but he did not serve the Department personally or by certified mail until November 15, 2011. Therefore, the circuit court properly dismissed the action.

¶3 Kraemer contends that the circuit court should not have dismissed his action because the Department had *actual* notice of his petition; he sent them a “courtesy copy” of the petition for judicial review by regular first-class mail. When a party does not properly commence an action, the error is fundamental and no jurisdiction attaches regardless of whether the defendant was prejudiced. *American Family Mutual Insurance Company v. Royal Insurance Company*, 167 Wis. 2d 524, 533–534, 481 N.W.2d 629, 632–633 (1992). Kraemer is not entitled to relief because the Department had actual notice of the action.

¶4 Kraemer next contends that the Department waived its objection to the court's jurisdiction by transmitting a certified copy of the record to the circuit court with a cover letter that incorrectly indicated that it had been served with the

petition for judicial review. We agree with the State that “[t]his cover letter was not a pleading or otherwise any sort of admission to the court that service on the Department was proper.” Moreover, whether the circuit court or this court has competency to hear an action is a matter for the court to decide, not for the Department.

¶5 Finally, Kraemer argues that the circuit court erred in denying his motion to extend the time to serve the Department under WIS. STAT. § 801.15(2)(a). Civil procedure statutes cannot be used to enlarge or modify the substantive rights of a litigant. *See Pulchinski v. Strnad*, 88 Wis. 2d 423, 429, 276 N.W.2d 781, 784 (1979). When a limitations period expires, a party’s substantive rights are affected because the party’s right to bring an action is extinguished. *Id.*, 88 Wis. 2d at 428–429, 276 N.W.2d at 783–784. The deadline for serving the Department could not be extended under § 801.15(2)(a), a civil procedure statute, because an extension would have, in effect, allowed Kraemer to bring an action that was not properly commenced within the statutory time limitation period. The circuit court properly denied Kraemer’s motion.

By the Court.—Order affirmed.

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

