

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 15, 2015

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. 2014AP2859

Cir. Ct. No. 2014SC3549

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

TIMOTHY L. HOELLER,

PLAINTIFF-APPELLANT,

V.

DR. MICHAEL KULA, PSY.D.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County:
PATRICK C. HAUGHNEY, Judge. *Affirmed.*

¶1 REILLY, J.¹ The only issue on appeal in this case is which statute governs time limits for de novo hearing requests after a decision has been issued

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

by a small claims circuit court commissioner. Timothy Hoeller's suit against Dr. Michael Kula in small claims court was dismissed by a circuit court commissioner on October 13, 2014. The circuit court later held that a letter filed by Hoeller on October 24, 2014, constituted a request for a de novo trial, but was untimely under WIS. STAT. § 799.207(2). Hoeller appeals the circuit court's determination that his request was untimely, arguing that WIS. STAT. § 799.28(2) applies to time limits in this case and allows him the right to file a request for a de novo hearing up to one year after the commissioner's decision. We affirm the circuit court's decision that § 799.207(2) governs time limits for small claims actions heard before circuit court commissioners and find Hoeller's request to be untimely.

BACKGROUND

¶2 Hoeller sued Kula in small claims court on August 25, 2014. As a pro se litigant, Hoeller claimed Kula, who is a licensed psychiatrist Hoeller had previously seen for mental competency testing, breached the duty of care owed to Hoeller as a patient by failing to find Hoeller mentally competent to handle his own finances. Kula moved for summary judgment and dismissal of the suit. During a motion hearing on October 13, 2014, a circuit court commissioner issued an oral decision dismissing Hoeller's claims.

¶3 Hoeller filed a letter with the circuit court on October 24, 2014, that did not specifically use language requesting a de novo hearing, but was titled "Fifteen Day Notice of Plaintiff's Right to Appeal from court Commissioner Dehring's Ruling." The text of the letter also stated "Kindly, consider this letter a request for that appeal" and "I apologize for any delays, but the decision about whether or not this case stays in your courtroom or goes to the court of appeals is

not entirely up to me.” Despite finding that Hoeller’s letter constituted an appropriate request for a de novo hearing, the circuit court held that WIS. STAT. § 799.207(2) made Hoeller’s request untimely because he did not file a request with the court within ten days after the commissioner’s oral decision. Hoeller appeals.

DISCUSSION

¶4 The sole issue in this case is one of statutory interpretation, and as such, we review de novo. *Phelps v. Physicians Ins. Co. of Wis., Inc.*, 2009 WI 74, ¶36, 319 Wis. 2d 1, 768 N.W.2d 615. The judiciary’s role when engaging in statutory interpretation is to give a statute its “full, proper, and intended” meaning by determining legislative intent. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. We determine legislative intent by looking first at a statute’s plain language meaning, which is considered in the context that the language is used. *Id.*, ¶¶45-46. If no ambiguities exist, consultation of extrinsic sources is unnecessary and the statute is applied on its face. *Id.*, ¶46.

¶5 Hoeller argues that WIS. STAT. § 799.28(2) grants him one year to file a de novo hearing request after the commissioner’s October 13 decision. We disagree. Section 799.28(2) pertains to motions for a new trial founded upon newly discovered evidence. While a one-year time limit does exist under § 799.28(2), this statute does not apply to Hoeller’s case. Hoeller has not presented any newly discovered evidence to trigger the one-year time limit for motions for a new trial.

¶6 WISCONSIN STAT. § 799.207 governs small claims proceedings before a circuit court commissioner. Under § 799.207(2)(b), a party must file a

demand for a trial within ten days from the date of a commissioner's oral decision or within fifteen days from the date of a written decision by a commissioner. Absent a timely demand, a circuit court commissioner's decision becomes a final judgment and the opportunity for a new trial before the circuit court is lost.

¶7 The circuit court determined that Hoeller's October 24 letter was a request for a de novo trial and that the request was untimely pursuant to WIS. STAT. § 799.207(2). We agree on both points. Hoeller's letter referred several times to an "appeal" of the circuit court commissioner's decision. The court's finding of fact that Hoeller's letter constituted a request for a de novo trial in the circuit court was not clearly erroneous. *See* WIS. STAT. § 805.17(2). The court also correctly deemed Hoeller's demand for a de novo trial was untimely as it was filed eleven calendar days after the court commissioner's oral decision. Unlike in proceedings governed by WIS. STAT. chs. 801 to 847, or statutes that explicitly incorporate its provisions, WIS. STAT. § 801.15(1)(b) does not apply to calculations of time under § 799.207(2) so as to exclude Saturdays, Sundays, or holidays.

¶8 Hoeller, therefore, had ten days to file a request for a de novo trial following the circuit court commissioner's oral decision on October 13, 2014. As Hoeller's request was filed with the court on October 24, 2014, his request for a de novo trial was untimely. Although Hoeller has argued the merits of his case, we affirm the circuit court's decision denying Hoeller's request for a de novo trial because of the untimeliness of his filing. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

