

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2018

Sheila T. Reiff
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. 2017AP2279

Cir. Ct. No. 2017SC2406

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STEVE SPECKMAN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH FONDEK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County:
L. EDWARD STENGEL, Judge. *Affirmed.*

¶1 NEUBAUER, C.J.¹ This appeal addresses time limits for service of a summons and complaint in a WIS. STAT. ch. 799 eviction action. Landlord

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version.

Steve Speckman filed an eviction complaint against tenant Joseph Fonddek, with a return date of October 30, 2017. The circuit court entered judgment after Fonddek failed to appear on October 30, 2017. The court subsequently denied Fonddek’s motion to reopen on November 7, 2017, without a hearing. Fonddek contends that service was improper and the court was without personal jurisdiction. Because the summons and complaint were properly served pursuant to the time limits set forth in WIS. STAT. § 799.16(3), we affirm.

BACKGROUND

¶2 Speckman filed the summons and complaint with the circuit court on October 20, 2017. It provided a return date to “appear/file an answer” of October 30, 2017, at 8:30 a.m.

¶3 An affidavit of the process server avers that service was attempted three times. An attempt was made on October 20, 2017. In a second attempt, on October 22, 2017, the process server found Fonddek’s front door “open slightly,” but no one answered the server’s repeated knocks. The process server posted the summons and complaint to the screen door, which was locked. The process server then drove by approximately three hours later, and saw the document was no longer on the screen door, nor was it in or around the front porch area or ground.

¶4 Copies of the summons and complaint were also mailed by prepaid first-class mail on October 24, 2017.

DISCUSSION

¶5 Fonddek argues service of the summons and complaint was improper under WIS. STAT. §§ 799.05(3) and 799.16(3)(a). He contends that the statutory minimum number of days for service before the return date should be increased.

He relies on WIS. STAT. § 801.15(1)(b), which excludes Saturdays, Sundays, and holidays from time computation when the period of time prescribed or allowed is less than eleven days. If weekends were excluded, Fondék contends service here would be untimely. We disagree that § 801.15 applies to this WIS. STAT. ch. 799 eviction proceeding.

¶6 Personal jurisdiction is a question of law, which we review de novo. *Landreman v. Martin*, 191 Wis. 2d 787, 794, 530 N.W.2d 62 (Ct. App. 1995). A small claims court obtains personal jurisdiction over a defendant “when the defendant is served with a summons in the manner prescribed by the statutes.” See *Hagen v. City of Milwaukee Employee’s Ret. Sys. Annuity & Pension Bd.*, 2003 WI 56, ¶12, 262 Wis. 2d 113, 663 N.W.2d 268.

¶7 We review issues of statutory interpretation de novo. *State v. Setagord*, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997). The purpose of statutory interpretation is to ascertain and give effect to the legislature’s intent. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. We first look to the language of the statute itself. *Id.*, ¶45. If the meaning of the statute is clear on its face, we apply it as written. *Id.* Our primary purpose in reviewing a statute is to achieve a reasonable construction that will effectuate the statutory purpose. *Barnett v. LIRC*, 131 Wis. 2d 416, 420, 388 N.W.2d 652 (Ct. App. 1986).

¶8 The context and structure of a statute are also important to its meaning. *Kalal*, 271 Wis. 2d 633, ¶46. “[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.* “Statutes relating to the same subject matter

are to be construed together and harmonized.” *State v. Burkman*, 96 Wis. 2d 630, 642, 292 N.W.2d 641 (1980).

¶9 WISCONSIN STAT. ch. 799 governs procedure in small claims actions and, pursuant to WIS. STAT. § 799.01(1), “the procedure in this chapter is the exclusive procedure to be used in circuit court in” eviction actions. Sec. 799.01(1)(a). Under WIS. STAT. § 799.12(1), “[e]xcept as otherwise provided in this chapter, all provisions of chs. 801 to 847 with respect to jurisdiction of the persons of defendants, the procedure of commencing civil actions, and the mode and manner of service of process, shall apply to actions and proceedings under this chapter.” Likewise, WIS. STAT. § 801.01(2) provides that “Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings ... except where different procedure is prescribed by statute or rule.”

¶10 Under WIS. STAT. § 799.05(3)(a), every small claims summons “shall specify a return date and time.” “In eviction actions, the return date for a summons served upon a resident of this state shall be not less than 5 days nor more than 25 days from the issue date, and service shall be made not less than 5 days prior to the return date.” Sec. 799.05(3)(b).

¶11 Under WIS. STAT. § 799.16(3)(a), if a defendant cannot be served with personal or substituted service under WIS. STAT. § 799.12(1), then

the plaintiff may, at least 7 days prior to the return date, affix a copy of the summons and complaint onto some part of the premises where it may be conveniently read. At least 5 days prior to the return date an additional copy of the summons and complaint shall also be mailed to the defendant at the last-known address, even if it is the premises which are the subject of the action.

¶12 WISCONSIN STAT. §§ 799.05(3)(b) and 799.16(3)(a) provide minimum time periods for service of eviction summons and complaints. All periods are set in relation to the return date: the return date shall not be less than five days from the issue date; service not less than five days before return; posting not less than seven days before return; service by mail not less than five days before return. The statutes do address “time computation” in that they make clear that both the first and last day are counted, because each time period is “not less than” the minimum specified number of days.

¶13 We conclude that these specific minimum statutory time periods for service in eviction actions prescribe the procedure to be exclusively applied. There is no indication in the language of these provisions that the time computation provisions of WIS. STAT. § 801.15(1)(b) apply to §§ 799.05(3)(b) or 799.16(3)(a).

¶14 Indeed, all aspects of the eviction procedure reflect an intent to address the dispute with dispatch. WISCONSIN STAT. § 799.206(3) governs return date hearings:

When all parties appear in person or by their attorneys on the return date in an eviction, garnishment, or replevin action and any party claims that a contest exists, the matter shall be forthwith scheduled for a hearing, to be held as soon as possible before a judge and in the case of an eviction action, not more than 30 days after the return date.

If an eviction action is disputed or “contest[ed],” the court commissioner must immediately set the matter for a hearing before a judge. *Id.* Indeed, specific to eviction actions, “a court or jury trial of the issue of possession of the premises” “shall [be held] and complete[d]” within thirty days of the return hearing date. WIS. STAT. § 799.20(4); *see also* WIS. STAT. § 799.44(1) & (2) (if plaintiff is

found entitled to possession, “the court shall immediately enter an order” for restitution and “shall immediately order that a writ of restitution be issued”).

¶15 Fondek states that “[t]he entire Wis. Stat. Ch. 799 is silent” as to the matter of time computation. We note that there is one reference to WIS. STAT. § 801.15. WISCONSIN STAT. § 799.28(1) permits the court to enlarge the time within which to hear a motion for new trial, pursuant to § 801.15(2)(b). This explicit reference indicates that silence elsewhere is intentional.

¶16 We further note that Fondek provides no authority for the application of WIS. STAT. § 801.15(1)(b) to any time period in WIS. STAT. ch. 799. Indeed, he identifies two cases in which this court found it does not apply to other small claims time periods. *See Team Prop. Mgmt. LLC v. Reiss*, No. 2016AP2163, unpublished slip op. ¶3 (WI App May 24, 2017); *Hoeller v. Kula*, No. 2014AP2859, unpublished slip op. ¶7 (WI App July 15, 2015).²

¶17 Based on the plain language of the eviction statutes, we are satisfied that the legislature did not intend the time computation provisions of WIS. STAT. § 801.15(1)(b) to apply to the minimum periods of time provided for service of an eviction summons and complaint.

CONCLUSION

¶18 We conclude that WIS. STAT. § 801.15(1)(b) does not apply in a ch. 799 eviction proceeding calculation of the minimum amount of time for service prior to return under WIS. STAT. §§ 799.05(3) and 799.16(3)(a). The

² One-judge opinions are not precedent, but may be cited for persuasive value. WIS. STAT. RULE 809.23(3)(b).

circuit court did not err in denying Fondék's motion to reopen the default judgment. We affirm the circuit court's order.

By the Court.—Order affirmed.

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

