

FILED
04-29-2026
Anna Maria Hodges
Clerk of Circuit Court
2025CV009593

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

MICHAEL FISCHER,

Petitioner,

v.

CASE NO.
25CV009593

CITY OF WAUWATOSA – BOARD OF REVIEW,

Respondent.

**RESPONDENT’S REPLY BRIEF IN SUPPORT OF
CITY’S MOTION TO DISMISS PETITION**

Respondent, City of Wauwatosa – Board of Review (the “City”), by its attorneys, Crivello, Nichols & Hall, S.C., respectfully submits this Reply Brief in Support of its Motion to Dismiss the Petition for Certiorari.

INTRODUCTION

Petitioner’s response confirms the jurisdictional defects identified in the City’s opening brief. It is undisputed that Petitioner never properly served an authenticated writ of certiorari on the City as required by Wis. Stat. § 801.02(5), and that Petitioner personally attempted service despite being a named party. Wisconsin law is unequivocal: failure to strictly comply with statutory service requirements constitutes a fundamental defect that deprives the Court of personal jurisdiction, regardless of notice, actual knowledge, good faith, or lack of prejudice.

Petitioner’s reliance on “actual notice” and equitable considerations asks this Court to do what Wisconsin courts have repeatedly refused to do—excuse noncompliance with unambiguous service statutes. Because the defects here are fundamental, dismissal is mandatory.

ARGUMENT

I. PETITIONER CONCEDES FUNDAMENTAL DEFECTS IN SERVICE.

The material facts here are not in dispute: the Petition—not an authenticated writ—was hand-delivered on November 7, 2025. Service occurred before the writ of certiorari was issued. The writ itself was never properly served. Service was performed by Petitioner, a party to the action, in violation of Wis. Stat. § 801.10. No proof of proper service of the writ was filed. Each of these defects independently deprives the Court of personal jurisdiction. Together, they underscore why dismissal is required.

Wis. Stat. § 801.02(5) expressly governs certiorari actions and requires either: (1) service of an appropriate original writ, or (2) service of an authenticated complaint together with a judge-signed order. Petitioner did neither. Service of an unissued petition—by a party—is legally ineffective.

II. ACTUAL NOTICE CANNOT CONFER JURISDICTION

Petitioner's response rests almost entirely on the assertion that the City had actual notice and suffered no prejudice. Wisconsin law squarely rejects this argument.

The Court of Appeals has repeatedly held that improper service is a fundamental defect, fatal to jurisdiction, “regardless of prejudice.” *Bergstrom v. Polk County*, 2011 WI App 20, ¶12; *Hagen v. City of Milwaukee Employees' Ret. Sys.*, 2003 WI 56, ¶13; *Bartels v. Rural Mut. Ins. Co.*, 2004 WI App 166, ¶16. Strict compliance is required even when dismissal appears harsh. Petitioner's attempt to distinguish these cases fails. None of them turn on whether the defendant had notice; rather, they hold that service statutes must be followed as written. As the court explained in *Dietrich v. Elliott*, “Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may appear to be harsh.” *Dietrich v. Elliott*, 190 Wis. 2d

816, 823. If actual notice were sufficient, the service statutes would be rendered meaningless—precisely the result Wisconsin courts have cautioned against.

Petitioner argues that the defects here are merely “technical.” That is incorrect as a matter of law. Wisconsin recognizes a narrow category of technical defects only where statutory requirements are substantially satisfied. Here, they were not. Serving the wrong document, at the wrong time, by the wrong person, is not a minor defect—it is a complete failure to invoke the Court’s jurisdiction. Courts consistently treat service by a party, failure to serve a summons or writ, and failure to comply with § 801.02 as fundamental defects requiring dismissal. See *Studelska v. Avercamp*, 178 Wis. 2d 457 (1997). No case permits a court to overlook these failures based on fairness or participation alone.

III. DEFECTS IN SERVICE WERE NOT WAIVED BY THE CITY

Petitioner also implies that the City waived its objection by appearing and answering. The record shows otherwise. The City expressly asserted improper service and lack of jurisdiction as an affirmative defense in its Answer, preserving the issue. Wisconsin law allows a defendant to appear and defend without waiving jurisdictional objections when they are timely raised under Wis. Stat. § 802.06(2)(a)5. Accordingly, there has been no waiver.

IV. STATUTORY PREFERENCE FOR CERTIORARI DOES NOT OVERRIDE JURISDICTIONAL REQUIREMENTS

Petitioner’s reliance on Wis. Stat. § 70.47(13)’s preference language is misplaced. While certiorari actions may be expedited once properly commenced, the statute does not dispense with service requirements or authorize courts to ignore jurisdictional defects. Preference presumes a valid action; it does not create one.

CONCLUSION

The defects in service here are undisputed, fundamental, and jurisdictionally fatal. Wisconsin law does not permit courts to excuse them based on notice, fairness, or lack of prejudice. Because the Court never acquired personal jurisdiction over the City, it must dismiss the Petition. Based on the foregoing, in conjunction with the Respondent's moving brief, the City, respectfully requests that the Court grant its motion to dismiss the petition altogether with costs and disbursements of this action and any other relief that the Court deems just and/or equitable.

Dated this 29th day of April, 2026.

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