

HAGNER JUDY 00CV001312 072600 MILWAUKEE CTY CIR CT

Library JUL 31 2000

STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY  
BRANCH 17

JUDY HAGNER,  
Petitioner,

vs.

STATE OF WISCONSIN APPEALS  
COMMISSIONERS - MUSOLF, and  
DEPARTMENT OF REVENUE

Respondents.

FILED  
JUL 26 2000  
JOHN BARETT  
Clerk of Circuit Court

COPY

Case No. 00-CV-001312

AUG 2000  
State of Wisconsin  
Department of Revenue  
Legal Staff  
Received

DECISION

Petitioner brought several claims before the Tax Appeals Commission ("TAC"). In Docket No. 99-I-200, petitioner claimed that the STRJDS Trust ("Trust"), of which she is trustee, is entitled to a tax refund of \$5,691,736, for 1998. In Docket No. 99-I-177, petitioner claims she is personally entitled to a tax refund of \$5,691,736, and is also entitled to a \$6,000,000, judgment against the Department of Revenue ("DOR") and DOR attorney Veronica Folstad because their delay in handling petitioner's case violated her civil rights. Finally, in Docket No. 99-I-158, petitioner claims she is entitled to a \$15,000, judgment against DOR and Folstad as a penalty for their delay in handling her case.

These cases were disposed of by the TAC on February 4, 2000. DOR was granted summary judgment in Docket Nos. 99-I-200 and 99-I-177 because there was no basis in the record demonstrating petitioner or the Trust paid nearly \$6,000,000 in taxes. DOR's motion to dismiss Docket No. 99-I-157 was granted because the TAC determined it lacked jurisdiction to

hear the case because DOR had not yet issued a final determination. Petitioner filed her petition for review with this court on February 15, 2000. Petitioner served a copy of the petition on the TAC on February 18, 2000.

Section 227.53(1), Stats., provides, in relevant part:

(1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a)

1. Proceedings for review shall be instituted by serving a petition thereof personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the credit union review board, the savings and loan review board or the savings bank review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par.

(b) 1. to 5.

(b) The petition shall state the nature of the petitioners interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the partys attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the partys attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agencys decision under s. 227.47 or the persons attorney of record.

Section 227.47, Stats., provides, in relevant part:

Every proposed or final decision [of an agency or hearing examiner following a hearing] shall include a list of the names and addresses of all persons who appeared before the agency in the proceeding who are considered parties for purposes of review under s. 227.53.

Respondent argues this court lacks subject matter jurisdiction over this case because petitioner failed to comply with sec. 227.53(1)(c), Stats., when she failed to serve DOR with a copy of her petition. Section 227.53(1)(c), Stats., provides that a copy of a petition be served within thirty days of filing upon each party to the proceedings before the TAC. Failure to so serve DOR has been held to be fatal error. Cudahy v. Department of Revenue, 66 Wis. 2d 253, 258-59 (1974) (construing then sec. 227.16(1), Stats.). Since the Cudahy decision, the last sentence was added to sec. 227.53(1)(c), Stats. This amendment does not change the result here, however, for the DOR is a party under sec. 227.47, Stats., and their name and address were included on the TAC's decisions. Moreover, secs. 227.53(1)(a)1, and 227.53(1)(b)1, Stats., also mandate service upon DOR. Strict compliance with sec. 227.53(1), Stats., is mandatory, even if the agency was not prejudiced and service was reasonable. Wisensel v. DHSS, 179 Wis. 2d 637, 643-44 (Ct. App. 1993). In this case, there is no evidence petitioner served DOR within thirty days of the filing of her petition on February 15, 2000. Petitioner has submitted four affidavits of service, but none of these were directed to DOR.

Therefore, it is hereby ordered that petitioner's petition for review is dismissed, as this court is without subject matter jurisdiction to hear it.

Dated at Milwaukee, Wisconsin, this 26th day of July, 2000.

BY THE COURT:

/s/F.T. WASIELEWSKI

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Hon. Francis T. Wasielewski  
Circuit Judge, Branch 17