

---

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 2

DANE COUNTY

---

JOHN J. and DIXIE R. POEHLING,

Petitioners,

v.

Case No. 18CV140

**FILED**

**MAY 17 2018**

WISCONSIN DEPARTMENT OF REVEUE  
and DAVID L. COON,

DANE COUNTY CIRCUIT COURT

Respondents.

---

**DECISION ON PETITION FOR JUDICIAL REVIEW**

---

Petitioners filed this Petition for Judicial Review on January 16, 2018. In their petition they ask for review of a Tax Appeals Commission decision dated October 25, 2017. On January 24, 2018 Respondents filed a Motion to Dismiss, Petitioners responded on February 12, 2018, and Respondents filed a reply on March 13, 2018. The Court has read the briefs and is ready to rule.

Because the petitioners filed outside of the statutory window to appeal Tax Appeals Commission decisions, and because Wisconsin law requires strict compliance with those deadlines, the petitioners' request for judicial review will be denied.

The original decision in the petitioners' case was issued October 25, 2017. The petitioners filed a petition for rehearing, and that was eventually denied by a decision of the Commission from December 5, 2017. Pet. Ex. B:2-3. Petitioners do not dispute that it is this date, December 5, 2017, that started the running of their window to file. Petitioners do not dispute that their deadline to be considered timely was January 4, 2018. Pet'r's Resp. Br. 3-4. The original filing by the Petitioners had errors that prevented filing. Pet'r's Resp. Br. 4.

Therefore, their actual filing date was not when the original petition was received on January 8, but rather on January 16, 2018. *Id.*; Pet'r's Ex. A.

Wisconsin law gives a narrow window for appeal of these tax appeals commission decisions by judicial review. Wis. Stat. §227.53(1)(a)2 (30-day service and filing window beginning on the day of mailing by the agency). Wisconsin courts have made clear that strict compliance with the service and filing statutes in Wis. Stat. §227 is required. *Kegonsa Joint Sanitary Dist. V. City of Stoughton*, 87 Wis. 2d 131, 150, 274 N.W.2d 598 (1979) (“strict compliance is required... failure to comply with the mandatory time limitation results in the loss of... competency to proceed and the petition must be dismissed.”).

Petitioners do not offer any argument interpreting Wis. Stat. §227.53 in their defense. They argue that their request for review is not bound by §227.53, but rather by a different statute. They are incorrect. The statute Petitioners cite for the contention that petitions are timely filed if they are postmarked before midnight the last day of filing, Wis. Stat. §73.01(5)(a), only applies to appeals *to* the tax commission, not to the circuit court. Petitioners note that they are filing *pro se* and therefore the Court must construe their pleadings liberally. Pet'r's Br. 1. However, as the Respondent notes in the reply brief, this does not extend to creating and arguing points on the behalf of a *pro se* litigant. *See State ex rel. Harris v. Smith*, 220 Wis. 2d 158, 164-65, 582 N.W.2d 131 (Ct. App. 1998). Nor does it require extending deadlines for *pro se* litigants. Apart from citing to the incorrect statute and arguing that the court should consider their *initial* filing attempt instead of their subsequent *successful* filing attempt, the petitioners offer no legal argument against the Motion to Dismiss.

Even if the original filing had been filed by the Clerk of Courts as soon as it was received, it would still be too late to satisfy the statutory requirements. Wis. Stat. §227.53(1)(a)2 is the statute that governs the petitioners' filing, and it requires the petition to be *filed* within 30 days, not just mailed within that time frame. The Petitioners included in their motion Exhibit A which is the certified mail receipt for the Dane County Clerk's Office and that is dated January 8, 2018. Since, as noted above, the date of *filing* is what matters in this instance and not the date of mailing, even this date would be beyond the Petitioners' January 4 deadline.

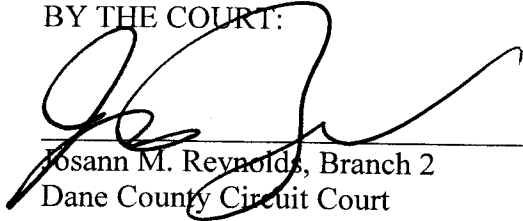
Because the Petitioners did not file their action within 30 days of the mailing of the Tax Appeals Commission decision as required by Wis. Stat. §227.53(1)(a)2, this Court lacks jurisdiction to proceed. Therefore the Respondents' Motion to Dismiss is **GRANTED**.

It is so ordered.

This is a final order for purposes of appeal.

Dated this 17 day of May, 2018.

BY THE COURT:



\_\_\_\_\_  
Josann M. Reynolds, Branch 2  
Dane County Circuit Court