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DISTRICT I

September 30, 2025

To:

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Clerk of Circuit Court
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Robin A. Palm
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You are hereby notified that the Court has entered the following opinion and order:

2024AP558

State of Wisconsin ex rel. Robin A. Palm v. Mark Hammond
(L.C. # 2023CV3140)

Before Colón, P.J., Donald, and Geenen, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robin A. Palm, pro se, appeals an order of the circuit court denying his motion for reconsideration of a circuit court decision granting Paulette Enders's¹ motion to quash Palm's petition for a writ of mandamus. Based upon our review of the briefs and record, we conclude at

¹ Paulette Enders was the Development Director for the City of Wauwatosa at the time Palm filed his action in the circuit court. Mark Hammond currently holds the title and is named as the Respondent in this case.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).² We dismiss the appeal for lack of jurisdiction.

On March 21, 2023, the Common Council of the City of Wauwatosa approved Resolution R-23-42, which granted a Conditional Use Permit (CUP) to Jeff Olson of Hansen Storage Company for a general warehousing operation at 1300 Glenview Place. Palm, though not a resident of Wauwatosa, filed a Board of Zoning Appeals (BOZA) application to appeal the Common Council's approval of the resolution. The City notified Palm that the BOZA did not have the jurisdiction to hear appeals of the Common Council's CUP decisions; thus, the City was unable to process his request. Palm filed another BOZA application to appeal the City's jurisdiction decision; in response, the City Attorney sent Palm a letter reiterating the BOZA's lack of jurisdiction over Palm's appeal application.

On May 1, 2023, Palm filed a petition for a writ of mandamus naming Paulette Enders, the former Development Director for the City of Wauwatosa, as the respondent. Palm filed an amended mandamus action two days later. The petition alleged that the BOZA violated WIS. STAT. § 62.23(7)(e)4.—the statute addressing appeals of zoning decisions. Palm asked the circuit court to order Enders to immediately schedule and hold a hearing for his first BOZA appeal application. Enders moved to quash the petition. Following a hearing, court granted the motion to quash.

After the hearing, although the circuit court had already decided the motion to quash, Palm moved the circuit court to allow for additional briefing. In a written order dated September

² All references to the Wisconsin Statutes are to the 2023-24 version.

5, 2023, the court both denied Palm's briefing request and reduced to writing its decision granting Enders's motion to quash. On September 7, 2023, the court issued a "Notice of Entry of Final Order," informing Palm that he had 45 days from September 5, 2023, to appeal its decision.

On September 25, 2023, Palm moved the circuit court to reconsider its decision to quash his mandamus petition. The court indicated that it would take no further action in Palm's case. On November 2, 2023, Palm filed a revised brief in support of reconsideration. Enders opposed the revised reconsideration motion. On February 12, 2024, the court entered an order denying Palm's motion for reconsideration. On March 22, 2024, Palm filed a notice of appeal with this court, seeking to appeal the denial of his motion for reconsideration. In an order dated June 3, 2024, this court noted that Palm's notice of appeal did not indicate that Palm was appealing the circuit court's September 5, 2023 order. We stated that such an appeal would be untimely. *See* WIS. STAT. § 808.04(1). We also stated that while Palm filed his notice of appeal within ninety days of the February 12, 2024 order, *see* § 808.04(1), we may nonetheless lack jurisdiction over that order because an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered. We directed the parties to address in their appellate briefs whether the motion for reconsideration that was denied in the February 12, 2024 order presented the same issues as those determined in the September 5, 2023 order from which reconsideration was sought. Upon review, we now conclude that we lack jurisdiction over Palm's appeal.

The filing of a timely notice of appeal is necessary to give this court jurisdiction over an appeal from a final judgment or order. WIS. STAT. RULES 809.10(1)(e) and (4). It is undisputed that in a civil action where a notice of entry of judgment was filed, such as this action, the time to appeal is 45 days from the entry of a final judgment or order. *See* WIS. STAT. § 808.04(1). The

jurisdictional dispute in this case centers on two issues: (1) whether this court has jurisdiction to consider the September 5, 2023 order to quash the mandamus writ under the theory that WIS. STAT. § 805.17(3) extends the time period to appeal that order to 90 days from the circuit court's February 12, 2024 order denying Palm's motion for reconsideration; and (2) whether this court has jurisdiction over Palm's appeal of the February 12, 2024 order denying his reconsideration motion. We conclude that Palm's failure to timely appeal the September 5, 2023 order deprives the court of jurisdiction over any issues addressed in that order and that we lack jurisdiction over Palm's appeal of the February 12, 2024 order.

First, this court does not have jurisdiction to review the September 5, 2023 order because the timing provisions of WIS. STAT. § 805.17(3) apply only to court trials. Here, the circuit court entered an order quashing Palm's writ petition and dismissing the action. That order was a final order from which an appeal as of right could have been taken. *See* WIS. STAT. § 808.03(1). Palm did not file a timely appeal of that order. Instead, Palm argues that the deadline to appeal that order was extended pursuant to § 805.17(3), which states, in relevant part:

RECONSIDERATION MOTIONS. Upon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may amend its findings or conclusions or make additional findings or conclusions and may amend the judgment accordingly.... If the court denies a motion filed under this subsection, the time for initiating an appeal from the judgment commences when the court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within 90 days after entry of judgment the court does not decide a motion filed under this subsection on the record or the judge, or the clerk at the judge's written direction, does not sign an order denying the motion, the motion is considered denied and the time for initiating an appeal from the judgment commences 90 days after entry of judgment.

Based on this statute, Palm contends that the March 22, 2024 notice of appeal timely appealed the September 5, 2023 order because the notice was filed within 90 days of the February 12,

2024 order denying reconsideration. Palm is incorrect that the appellate timing provisions of § 805.17(3) apply here.

In *Continental Casualty Co. v. Milwaukee Metropolitan Sewerage District*, 175 Wis. 2d 527, 499 N.W.2d 282 (Ct. App. 1993), this court held that WIS. STAT. § 805.17(3) modifies the deadline for filing an appeal “only when a reconsideration motion has been timely filed after a trial to the court.” *Id.* at 535. We therefore declined to apply the reconsideration procedures of § 805.17(3) to the summary judgment context, concluding that the motion for reconsideration “had no effect on the deadline for filing a notice of appeal.” *Continental*, 175 Wis. 2d at 535.

As in *Continental*, Palm’s motion for reconsideration was not brought “after a trial to the court.” *See id.* Rather, it was filed following the circuit court’s order quashing Palm’s writ petition. Accordingly, WIS. STAT. § 805.17(3) does not apply in this case. For this court to have jurisdiction over the September 5, 2023 order, Palm was to file a notice of appeal within 45 days of the issuance of that order. Because Palm did not do so, we are without jurisdiction. *See* WIS. STAT. § 808.04(1); *Wainwright v. Wainwright*, 176 Wis. 2d 246, 250, 500 N.W.2d 343 (Ct. App. 1993) (“Failure to appeal within the times set by either [§ 808.04] or [§ 805.17(3)] deprives this court of jurisdiction.”).

Next, we conclude that this court does not have the jurisdiction to review the circuit court’s February 12, 2024 order denying Palm’s motion for reconsideration. “No right of appeal exists from an order denying a motion to reconsider which presents the same issues as those determined in the order or judgment sought to be reconsidered.” *Silverton Enters., Inc. v. General Cas. Co. of Wis.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988); *see also Marsh v. City of Milwaukee*, 104 Wis. 2d 44, 45, 310 N.W.2d 615 (1981) (stating that for this

court to obtain jurisdiction over an appeal from an order denying reconsideration “a party must present issues other than those determined by the original final order or judgment”). In applying the new-issues test, we “compare the issues raised in [the] petition for reconsideration with those disposed of in the order dismissing [the] complaint.” *Harris v. Reivitz*, 142 Wis. 2d 82, 87, 417 N.W.2d 50 (Ct. App. 1987).

Here, Palm does not establish that his motion for reconsideration satisfies the “new-issues test.” In comparing the arguments raised in Palm’s writ and his motion for reconsideration, the crux of both motions is Palm’s contention that he is an aggrieved party with a right to challenge the CUP at issue with the BOZA. Palm repeatedly argues in both motions that a CUP is an administrative decision subject to a BOZA appeal. Palm failed to establish his entitlement to BOZA review in both motions. This court does not have jurisdiction to review the order denying Palm’s motion for reconsideration.

Therefore,

IT IS ORDERED that this appeal is dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals