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DISTRICT II

November 19, 2025

To:

Hon. Paul Bugenhagen Jr.
Circuit Court Judge
Electronic Notice

Ronald S. Stadler
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Stephen Green
124 McCal Street
Waukesha, WI 53186

Amy Manthey
Electronic Notice

Jonathan E. Sacks
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP2184

Stephen Green v. City of Waukesha (L.C. #2023CV1719)

Before Neubauer, P.J., Gundrum, and Grogan, 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).

Amy B. Manthey, pro se, appeals from an order dismissing her complaint in which she challenges the City of Waukesha's regulations on keeping fowl. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ Because Manthey failed to file her notice of appeal within the statutory 45-day time period after the circuit court entered the order granting

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

the motion to dismiss, we have no jurisdiction over this appeal. We dismiss the appeal for lack of jurisdiction.

The filing of a timely notice of appeal is necessary to give this court jurisdiction to review any judgment or order that was entered in a circuit court case. WIS. STAT. RULE 809.10(1)(e). On July 18, 2024, the circuit court entered an order dismissing Manthey's complaint. The City filed a notice of entry of order on July 19, 2024. The notice of entry shortened the time to appeal to 45 days after entry of the dismissal order. *See* WIS. STAT. §§ 806.06(5), 808.04(1). On October 28, 2024, Manthey filed a notice of appeal, 102 days after the dismissal order was entered. Thus, the notice of appeal was untimely unless the time to appeal was delayed by statute.

In this case, Manthey filed a timely motion for reconsideration pursuant to WIS. STAT. § 805.17(3) on August 7, 2024. The circuit court denied the motion for reconsideration on November 4, 2024. Manthey contends that she had 45 days after the denial of her motion for reconsideration to file her notice of appeal.²

WISCONSIN STAT. § 805.17(3) can apply to “modif[y] the time to appeal a judgment following a trial to the court by delaying the commencement of the appeal timeline.” *See Kraemer v. Traun*, 2025 WI App 8, ¶19, 415 Wis. 2d 125, 17 N.W.3d 49 (2024).³ However, the statutory extension only applies “after a trial to the court.” *See Continental Cas. Co. v.*

² Manthey did not file an appeal of the denial of her motion for reconsideration.

³ Pursuant to WIS. STAT. § 805.17(3), “[i]f 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.”

Milwaukee Metro. Sewerage Dist., 175 Wis. 2d 527, 535, 499 N.W.2d 282 (Ct. App. 1993) (stating that § 805.17(3) applies “only when a reconsideration motion has been timely filed after a trial to the court.”) The circuit court decided this case on a motion to dismiss based on the allegations of the complaint, not following a trial to the court.

While we have applied WIS. STAT. § 805.17(3) in cases where the circuit court goes beyond summary judgment methodology and engages in factfinding, Manthey has failed to show that the court did so when dismissing her complaint based on the allegations of the complaint. See *Schmeling v. Phelps*, 212 Wis. 2d 898, 905, 569 N.W.2d 784 (Ct. App. 1997); *Schessler v. Schessler*, 179 Wis. 2d 781, 785, 508 N.W.2d 65 (Ct. App. 1993).⁴

In her reply brief, Manthey contends that *Salzman v. DNR*, 168 Wis. 2d 523, 484 N.W.2d 337 (Ct. App. 1992), requires a broad reading of WIS. STAT. § 805.17(3) because in that case the time limits were extended based on a motion for reconsideration filed pursuant to entry of a declaratory judgment. In *Salzman*, we harmonized the 45-day shortened time limit after notice of entry of judgment with the 90-day time limit for a circuit court to decide a motion for reconsideration. *Salzman*, 168 Wis. 2d at 530-31.

We rejected the very argument Manthey makes here in *Continental Casualty*, 175 Wis. 2d at 534, holding that “*Salzman* is not controlling ... because it never decided the issue before us in this case.” In *Continental Casualty*, we dismissed the appeal for lack of jurisdiction

⁴ Because the notice of appeal was filed after the 45-day deadline, we issued an order dated March 3, 2025, in which we directed the parties to specifically address in their briefs the jurisdictional issue of whether WIS. STAT. § 805.17(3) applies and whether the circuit court engaged in factfinding. Manthey does not address whether the factfinding exception applies or whether the circuit court engaged in factfinding.

because there had been no trial to the court and the circuit court did not engage in factfinding when deciding the case on summary judgment. As we explained:

In *Salzman*, the court gave [WIS. STAT. §] 805.17(3) ... retroactive application to a motion for reconsideration filed pursuant to entry of a declaratory judgment and harmonized the appellate time limits of [§] 805.17(3) with those of [WIS. STAT. §] 808.04(1)... . The *Salzman* court *assumed without discussion and without analysis* that a motion for reconsideration filed pursuant to entry of a declaratory judgment operated to extend the time for filing an appeal.... Because the precise issue presented in the instant case was not even addressed in *Salzman*, we reject the appellants' argument that *Salzman* requires a broad construction and application of [§] 805.17(3)[.]

Continental Cas., 175 Wis. 2d at 534-35.

In sum, because the circuit court dismissed the complaint on a motion to dismiss and did not engage in factfinding, WIS. STAT. § 805.17(3) does not apply to extend the time for Manthey to file her notice of appeal.

Therefore,

IT IS ORDERED that the appeal is summarily dismissed for lack of jurisdiction. *See* WIS. STAT. RULE 809.21; WIS. STAT. § 752.01(1).

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

Samuel A. Christensen
Clerk of Court of Appeals