COURT OF APPEALS
DECISION
DATED AND FILED

January 22, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP650 **Cir. Ct. No. 2004TR1904**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN THE MATTER OF THE REFUSAL OF MAURICE J. CORBINE:

SAWYER COUNTY,

PLAINTIFF-RESPONDENT,

V.

MAURICE J. CORBINE,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Sawyer County: JOHN P. ANDERSON, Judge. *Appeal dismissed*.

¶1 MANGERSON, J.[1] Maurice Corbine, pro se, appeals an order denying his motion for reconsideration of an order denying his petition for a writ

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

coram nobis.[2] We conclude Corbine's motion for reconsideration does not present any new issues and, therefore, we dismiss for lack of jurisdiction.

BACKGROUND

¶2 On September 26, 2004, Corbine was arrested for operating while intoxicated. He then apparently refused the officer's request to submit to a chemical blood alcohol test under the implied consent law, and the officer issued him a "Notice of Intent to Revoke Operating Privilege." (Some capitalization omitted.) The notice was dated September 26, 2004 and informed Corbine that his operating privilege would be revoked unless he filed a written request with the Sawyer County Circuit Court for a refusal hearing within ten days. The record does not reflect that Corbine requested a refusal hearing. As a result, the court entered a default judgment, revoking Corbine's operating privilege for violating the implied consent law.

¶3 Approximately eight years later, on October 15, 2012, Corbine filed a petition for a writ coram nobis.[3] Corbine argued the refusal judgment was invalid because: (1) Corbine attended a hearing where the court decided to dismiss the refusal citation because it determined the citation was too similar to his pending operating while intoxicated charge; (2) the criminal complaint for the

[2] Corbine also appealed the order denying his petition for a writ coram nobis. However, by order dated July 11, 2013, we concluded we lacked jurisdiction to review the court's denial of his petition for a writ coram nobis because Corbine filed his notice of appeal more than ninety days after entry of the court's order. *See* WIS. STAT. RULE 809.10(1)(e).

[3] The writ coram nobis is a discretionary writ of "very limited scope" that is "addressed to the trial court." ***Jessen v. State***, 95 Wis. 2d 207, 213, 290 N.W.2d 685 (1980). "The purpose of the writ is to give the trial court an opportunity to correct its own record of an error of fact not appearing on the record and which error would not have been committed by the court if the matter had been brought to the attention of the trial court." ***Id.*** at 213-14.

related operating while intoxicated charge indicated he did not refuse any test; and (3) the State lost the video of his arrest, which resulted in the amendment of his operating while intoxicated charge to an inattentive driving forfeiture, and should have also resulted in the dismissal of his refusal citation.

¶4 At the hearing on Corbine's petition for a writ coram nobis, the State responded the refusal judgment was valid because, pursuant to the implied consent statute, Corbine was required to request a refusal hearing within ten days, the record indicated Corbine failed to request a refusal hearing, and, as a result, the court properly entered a default judgment for violating the implied consent law. The circuit denied Corbine's petition and entered a written order to that effect on December 6, 2012.

¶5 Corbine moved for reconsideration. He argued the circuit court erred by relying on the court record for the refusal violation because the record did not reflect he received notice of a refusal hearing or was present at the hearing, and the record contradicted his affidavit that he was present at a hearing where the court dismissed the refusal citation. He also argued the court erred by failing to rule on his assertion that the operating while intoxicated criminal complaint showed he did not refuse any test. The court denied Corbine's motion for reconsideration by order filed May 3, 2013.

¶6 Corbine appealed both the order denying his petition for a writ coram nobis and the order denying his motion for reconsideration. On July 11, 2013, we entered an order providing:

> The December 6, 2012 order was a final order from which an appeal as of right could be taken. *See* WIS. STAT. § 808.03(1) (2011-12). The ninety-day appeal period in WIS. STAT. § 808.04(1) applied. Although Corbine moved for reconsideration, the motion did not affect the time for

> appealing because it was not filed after a trial to the court or other evidentiary hearing. *See* ***Continental Cas. Co. v. Milwaukee Metro. Sewerage Dist.***, 175 Wis. 2d 527, 533-35, 499 N.W.2d 282 (Ct. App. 1993) (WISCONSIN STAT. § 805.17(3) does not apply to reconsideration motions in a summary judgment context.). Because the notice of appeal was filed more than ninety days after entry of the December 6, 2012 order, this court lacks jurisdiction to review the order. *See* WIS. STAT. RULE 809.10(1)(e).
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> The next question is whether this court has jurisdiction to review the May 3, 2013 reconsideration order. An appeal cannot be taken from an order denying a motion for reconsideration which presents the same issues as those determined in the order sought to be reconsidered. *See* ***Silverton Enters., Inc. v. General Cas. Co.***, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a motion for reconsideration not be used to extend the time to appeal from a judgment or order when that time has expired. ***Id.*** *See also* ***Ver Hagen v. Gibbons***, 55 Wis. 2d 21, 197 N.W.2d 752 (1972). We conclude that as the first issue in their appellate briefs the parties should address the threshold jurisdictional issue of whether the motion for reconsideration which was denied in the May 3, 2013 order presented the same issues as those determined in the December 6, 2012 order. Therefore,
>
> IT IS ORDERED that this court lacks jurisdiction to review the December 6, 2012 order.
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> IT IS FURTHER ORDERED that the parties should address, as the first issue in their appellate briefs, whether this court has jurisdiction to review the reconsideration order.

(Footnotes omitted.)

DISCUSSION

¶7 In order for this court to have jurisdiction over an appeal from the denial of a motion for reconsideration, "a party must present issues other than those determined by the original final order or judgment[.]" ***Marsh v. City of Milwaukee***, 104 Wis. 2d 44, 45, 310 N.W.2d 615 (1981). Stated another way, an "order is not appealable where ... the only issues raised by the motion were

disposed of by the original judgment or order." ***Ver Hagen***, 55 Wis. 2d at 25. Whether a party's motion for reconsideration raised a new issue "presents a question of law that this court reviews de novo." ***State v. Edwards***, 2003 WI 68, ¶7, 262 Wis. 2d 448, 665 N.W.2d 136.

¶8 Corbine first asserts we have jurisdiction to consider the merits of his appeal because the court's order on his motion for reconsideration voided the order denying his petition for a writ coram nobis such that his arguments are properly before this court. We disagree. The December 6, 2012 order denying his petition for a writ coram nobis was not voided by, or somehow incorporated into, the court's May 3, 2013 order denying his motion for reconsideration. Accordingly, to have jurisdiction over the court's order denying his motion for reconsideration, Corbine's motion for reconsideration needed to present a new issue. *See* ***Ver Hagen***, 55 Wis. 2d at 25.

¶9 In his motion for reconsideration, Corbine argued the circuit court erred by relying on the court record for the refusal violation because the record did not indicate Corbine received notice of the hearing and Corbine's affidavit averred that he was present at a hearing where the court dismissed the refusal charge. Corbine also argued the court failed to rule on his argument that the complaint did not indicate he refused any test.

¶10 We conclude that none of Corbine's arguments in his motion for reconsideration presented a new issue before the circuit court. First, Corbine's argument that the circuit court erred by relying on the court record for the refusal violation was not a new issue. At the hearing on the petition for a writ coram nobis, Corbine specifically argued he was present at a hearing where the court dismissed the refusal citation. In response, the State presented the certified court

record which indicated Corbine never requested a refusal hearing and, therefore the court entered a default judgment on the refusal violation. If Corbine never requested a refusal hearing, there never was a refusal hearing of which Corbine needed to be notified nor during which the court would have dismissed the violation. *See* WIS. STAT. § 343.305(9)(a)4., (10)(a). The issue of whether the court should rely on the court record for the refusal violation was considered by the circuit court.

¶11 Second, Corbine's argument that the court failed to consider his assertion that the operating while intoxicated criminal complaint showed he did not refuse was also presented to the circuit court. Although the court did not specifically rule on this argument, the court's reliance on the court record that Corbine never requested a refusal hearing disposed of this argument. After all, a circuit court loses competence to consider a refusal allegation if a defendant fails to request a hearing within ten days. ***Village of Elm Grove v. Brefka***, 2013 WI 54, ¶44, 348 Wis. 2d 282, 832 N.W.2d 121. Because Corbine never requested a refusal hearing, the court lost competence to consider any defense to Corbine's violation of the implied consent law. Corbine cannot use a petition for a writ coram nobis as a way to circumvent the court's lack of competence.[4]

[4] In any event, we observe the probable cause section of Corbine's operating while intoxicated criminal complaint states, in part:

> Then read him the Informing the Accused Form and asked him if he would give a sample of his blood, Corbine didn't say no. Corbine was yelling extremely loud I want my lawyer and would not answer the question but continued yelling I want my lawyer for approximately 10 minutes. Then I filled out the Notice of Intent to Revoke and issued him his copy.

(continued)

¶12 In short, we conclude Corbine's arguments in his motion for reconsideration did not present any new issues; therefore, his appeal must be dismissed for lack of jurisdiction.

By the Court.—Appeal dismissed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

We also observe that in ***State v. Reitter***, 227 Wis. 2d 213, 218, 595 N.W.2d 646 (1999), our supreme court stated "[W]here a defendant expresses no confusion about his or her understanding of the [implied consent] statute, a defendant constructively refuses to take a … test when he or she repeatedly requests to speak with an attorney in lieu of submitting to the test."