

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 6, 2026**

Samuel A. Christensen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2024AP1328  
STATE OF WISCONSIN**

**Cir. Ct. No. 2020PR1865**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE ESTATE OF NANCY H. BALCER:**

**STEPHANIE RAPKIN,**

**APPELLANT,**

**V.**

**JOHNSON FINANCIAL GROUP,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DAVID L. BOROWSKI, Judge. *Affirmed.*

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

Per curiam opinions 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).

¶1 PER CURIAM. Stephanie G. Rapkin appeals from an order of the circuit court requiring her to repay \$18,716.25 of the \$24,225 paid to her from the Nancy H. Balcer Revocable Trust (the “Trust”) by the trustee, Johnson Financial Group (“JFG”). Rapkin argues that the circuit court erred in limiting her compensation under WIS. STAT. § 857.05 (2023-24),<sup>1</sup> which governs allowances to an estate’s personal representative for expenses, services, and attorney fees. She contends that in performing services related to Balcer’s property in December 2020 and January 2021, she was acting as an independent contractor for JFG as trustee of the Trust and not as the personal representative for Balcer’s estate (the “Estate”). JFG contends that the circuit court was correct to limit Rapkin’s fees under § 857.05, because Rapkin was acting pursuant to her role as personal representative of the Estate when performing the services at issue. For the reasons set forth below, we affirm the circuit court’s order.

## BACKGROUND

¶2 The events in this case begin with the death of Nancy Balcer on December 6, 2020, and the administration of the Estate and Trust following her death. The Trust documents establish JFG as the trustee of the Trust. Balcer’s will named Rapkin, who is an attorney, as the personal representative of the Estate, with JFG named as the successor personal representative.

¶3 The will gave interest in “the balance of [Balcer’s] personal effects, household furnishings, automobiles, and all other items of tangible personal property ... to the Personal Representative who in her or its best judgement, said

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

items may either be distributed ... or sold.” It also directed “the Personal Representative to pay from the residue of [the] Estate allowable claims, funeral expenses, and expenses of administration,” providing that if the Estate funds were insufficient, “the Personal Representative may request in writing said funds from the Trustee of the [Trust][.]” As compensation, the personal representative was authorized to “receive fees commensurate with those set by statutory law.”

¶4 In December 2020 and January 2021, Rapkin handled certain legal and nonlegal matters triggered by Balcer’s death, including preparing the initial probate pleadings, cleaning out Balcer’s condominium, and arranging for some of Balcer’s personal property to be donated, sold, and distributed to Balcer’s family. For these matters, Rapkin billed JFG for 64.6 hours of work at her standard rate as an attorney of \$375 per hour, which totaled \$24,225. Out of the 64.6 hours billed, 4.9 hours were attributable to legal work and the remaining 59.7 hours consisted of nonlegal work. JFG paid Rapkin’s bills promptly and without question.

¶5 On February 18, 2021, the probate registrar issued domiciliary letters appointing Rapkin as personal representative of the Estate. Following her appointment, Rapkin failed to close the Estate within 18 months as required by Milwaukee County Circuit Court Rule 3.61B. JFG was unable to complete its administration of the Trust until the Estate was closed. Therefore, in its role as trustee, JFG subsequently petitioned the circuit court to remove Rapkin as personal representative, appoint JFG as the new personal representative, order Rapkin to repay the fees attributable to nonlegal work performed in December 2020 and January 2021, and award JFG its attorneys’ fees incurred in filing the petition. JFG argued that WIS. STAT. § 857.05 did not permit Rapkin to charge her hourly rate as an attorney for nonlegal work and that Rapkin should be required to repay \$23,193.75 of the fees she charged. JFG further argued that it was entitled

to an award of its attorneys' fees due to Rapkin's "bad faith administration of the Estate."

¶6 The circuit court removed Rapkin as personal representative due to her failure to comply with the deadline imposed by Milwaukee County Circuit Court Rule 3.61B and replaced her with JFG.<sup>2</sup> After completing an interim account of the Estate, JFG moved to recover an additional \$11,708.07 in payments that Rapkin received from the Estate for work performed during March-June 2021, after her appointment as personal representative in February 2021.

¶7 The circuit court entered an order on May 8, 2024, addressing the remaining issues in JFG's petition and motion. The circuit court determined that Rapkin could not charge her standard rate as an attorney for the nonlegal work she performed in December 2020 and January 2021 and required her to return \$18,716.25 of the \$24,225 paid to her by the Trust. Relying on WIS. STAT. § 857.05, the court reasoned that this amount would allow Rapkin to retain her compensation for legal work billed at her standard rate, and compensate her for the nonlegal work she performed at a reduced rate of \$75 per hour. The court found that Rapkin's conduct did not warrant a surcharge of JFG's attorney's fees and denied JFG's motion to recover the \$11,708.07 paid to Rapkin by the Estate.

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<sup>2</sup> The proceedings to remove Rapkin as personal representative were held before the Honorable Lindsey Grady. The Honorable David Borowski decided the amounts Rapkin was required to repay, and whether Rapkin was liable for JFG's attorneys' fees.

¶8 Rapkin appeals.<sup>3</sup>

## DISCUSSION

¶9 As a threshold issue, JFG argues that this court does not have jurisdiction over this case because the May 8, 2024 order which Rapkin appeals from was not final. Specifically, it argues that the order is nonfinal because a subsequent order entered on September 16, 2024, also mentioned Rapkin. We disagree.

¶10 A final order, appealable as a matter of right, must “dispose[] of the entire matter in litigation as to one or more of the parties[.]” WIS. STAT. § 808.03(1). “[T]he test to determine whether the order in question is final is not whether a subsequent document exists but whether the circuit court contemplated the order to be a final order at the time the order was entered.” *Radoff v. Red Owl Stores, Inc.*, 109 Wis. 2d 490, 493, 326 N.W.2d 240 (1982).

¶11 Rapkin was removed as personal representative in March 2023 and in 2024 the only remaining issues involving Rapkin stemmed from JFG’s petition and motion seeking reimbursement from Rapkin and an award of attorneys’ fees. The May order resolved all issues concerning Rapkin by requiring her to repay \$18,716.25 to the Trust, “in full within [30] days of the date of this [o]rder,” and denying JFG’s request for attorneys’ fees and motion to recover an additional \$11,708.07 in payments made by the Estate. The September order, entered over

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<sup>3</sup> While this appeal was pending, on September 17, 2026, our supreme court decided *OLR v. Rapkin*, 2026 WI 31, \_\_ Wis. 2d \_\_, \_\_ N.W.3d \_\_, in which it sanctioned Rapkin for her “pattern of neglect in handling [Balcer’s] affairs,” including billing a “combination of services to the [E]state and the [T]rust without identifying which services related to which entity,” and billing “many charges at her attorney rate for non-legal services.” *Id.*, ¶¶1, 4-9, 20.

four months later, does not address any additional issues, and merely reiterates that Rapkin must reimburse the Trust “[p]ursuant [to] the [c]ourt’s Order entered in the docket as Document 148”—the May order—and enters judgment in favor of the Trust.

¶12 Nowhere in the May order did the circuit court state an intention to enter judgment against Rapkin at a later date. Considering this absence, and the language requiring repayment within 30 days of the May order, it is clear that the circuit court intended the May order to dispose of the entire matter in litigation as to Rapkin. Therefore, we conclude that we have jurisdiction over this appeal because the May 8, 2024 order is a final order.

¶13 Turning to Rapkin’s arguments on appeal, she contends that the circuit court erred in applying WIS. STAT. § 857.05—which governs a personal representative’s expenses, fees and commissions—to require her to repay the portion of her fee attributable to nonlegal work performed in December 2020 and January 2021 because she was not the personal representative of the Estate at that time, thus the statute cannot apply to her. We disagree.

¶14 Determining whether WIS. STAT. § 857.05 applies to the facts before us presents a question of law that we review independently. See *Friebel v. Friebel*, 181 Wis. 2d 285, 293, 510 N.W.2d 767 (Ct. App. 1993). Absent an erroneous exercise of discretion, we uphold circuit court determinations of the amount of a personal representative’s fee and the amount of reasonable attorney fees. *Huehne v. Huehne*, 175 Wis. 2d 33, 42-43, 498 N.W.2d 870 (Ct. App. 1993).

¶15 Rapkin argues that she was not acting as the personal representative when she performed services in December 2020, and January 2021, because

domiciliary letters appointing her as personal representative of the Estate were not issued until February 2021.

¶16 However, as JFG emphasizes in its response, there is a longstanding doctrine of a personal representative's powers relating back before court appointment. *See e.g.*, 26 A.L.R. 1359 (explaining that the “relating back to the death of the intestate or testator letters testamentary or of administration granted to one who had intermeddled with the estate ... to validate his [or her] previous intermediate acts which were or might have been otherwise tortious” is a doctrine that is “fully 500 years old.”).

¶17 In Wisconsin, relation back is codified in WIS. STAT. § 865.09(2)<sup>4</sup> which states that “[t]he duties and powers of a personal representative appointed ... commence upon the personal representative's appointment. The personal representative's powers relate back in time to acts by the personal representative prior to appointment which are beneficial to the estate.” Therefore, upon Rapkin's appointment, her role as personal representative related back to the services she performed which benefitted the Estate prior to her appointment.

¶18 In her reply, Rapkin recognizes that a personal representative's powers relate back prior to his or her appointment, but nonetheless maintains that relation back is inapplicable here because she was working as an independent

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<sup>4</sup> Chapter 865 of the Wisconsin Statutes applies to “informal administration.” It was through informal administration that Rapkin was appointed personal representative, although we note that the proceedings were later temporarily converted to formal administration for a limited purpose. Therefore, WIS. STAT. § 865.09(2) determines the circumstances in which Rapkin's powers may relate back to actions taken prior to her appointment.

contractor for the Trust at the direction of JFG.<sup>5</sup> However, Rapkin does not argue that there is any contract between her and JFG, in the record or otherwise, and JFG denies having a contractual relationship with Rapkin. Instead, Rapkin contends that a contract with JFG should be implied from her actions here because she was paid for her work through JFG. See *Theuerkauf v. Sutton*, 102 Wis. 2d 176, 185, 306 N.W.2d 651 (1981) (“A contract implied in fact may arise from an agreement circumstantially proved[.]” (citation omitted)). We disagree.

¶19 JFG as trustee lacked the authority to direct Rapkin to take possession of the property in the Estate and dispose of it. Instead, Rapkin’s authority to do so stemmed from her powers as Balcer’s personal representative as laid out in Balcer’s will. See also WIS. STAT. §§ 857.01, 857.03(1). Additionally, Balcer’s will authorized Rapkin, as personal representative, to request compensation for services from the Trust via JFG as trustee. Consequently, the statute governing a personal representative’s compensation for services to an estate, WIS. STAT. § 857.05, applies to Rapkin’s actions because she was acting under her authority as personal representative of the Estate. Therefore, the circuit

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<sup>5</sup> Rapkin does not develop an argument disputing that the tasks she performed benefitted the Estate or that the property she disposed of was controlled by the Trust instead of the Estate. We note that Rapkin suggests, without citation to the record, that all of Balcer’s assets except for several certificates totaling \$200,000 were in the Trust; however, the inventory schedule of Estate property subject to administration contradicts her statement by including a substantial amount of tangible personal property amongst other assets. Additionally, JFG argues that Rapkin forfeited the argument that any services at issue were not performed under her authority as personal representative for other reasons by not raising the issue before the circuit court. See *State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (“It is a fundamental principle of appellate review that issues must be preserved at the circuit court.”). Rapkin did not respond to this argument in her reply. Therefore, we conclude that the services at issue were beneficial to the Estate. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (this court does not address undeveloped arguments); *United Co-op. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant’s failure to respond in the reply brief to an argument made in the response brief may be taken as a concession).

court did not err by reducing Rapkin’s compensation pursuant to § 857.05 because § 857.05(3) does not allow a personal representative to charge his or her rate as an attorney when providing nonprofessional services.<sup>6</sup> See **Sherman v. Hagness**, 195 Wis. 2d 225, 229-30, 536 N.W.2d 133 (Ct. App. 1995).

¶20 As a final matter, at the end of its respondent’s brief, JFG argues that this appeal is frivolous and that it should be awarded its costs, fees, and reasonable attorney fees for responding to the appeal. However, “parties wishing to raise frivolousness must do so by making a *separate* motion to the court,” **Howell v. Denomie**, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621 (emphasis added), “filed no later than the filing of the respondent’s brief.” WIS. STAT. RULE § 809.25(3)(a). “[A] statement in a brief that asks that an appeal be held frivolous is insufficient notice to raise this issue.” **Howell**, 282 Wis. 2d 130, ¶19. JFG did not file a separate motion prior to filing its respondent’s brief. Accordingly, we do not address the issue further.

## CONCLUSION

¶21 For the foregoing reasons, we conclude that the circuit court did not err in limiting Rapkin’s compensation pursuant to WIS. STAT. § 857.05 because Rapkin was acting as the personal representative of the Estate when she rendered the services at issue.

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<sup>6</sup> Rapkin also argues that the circuit court erred by reducing her fees under a theory of unjust enrichment. However, Rapkin’s argument appears to be based on her contention that she was not the personal representative of the Estate at the time and she fails to explain how the circuit court’s reduction of her fees under WIS. STAT. § 857.05 is inequitable. Therefore, because we conclude that she was acting as the Estate’s personal representative and the circuit court had the authority to reduce her fees pursuant to § 857.05, we do not discuss unjust enrichment further. See **Pettit**, 171 Wis. 2d at 646-47.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT.  
RULE 809.23(1)(b)5.

