

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 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. 2025AP2013

Cir. Ct. No. 2022CV515

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

WISCONSIN MANUFACTURERS AND COMMERCE, INC.,

PLAINTIFF-APPELLANT,

V.

VILLAGE OF PEWAUKEE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County:
PAUL BUGENHAGEN, JR., Judge. *Affirmed.*

Before Lazar, P.J., Gundrum, and Grogan, JJ.

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. Wisconsin Manufacturers and Commerce, Inc. (“WMC”) appeals a circuit court order denying its combined motion for attorney fees and for reconsideration of the order denying attorney fees. For the reasons explained below, we conclude the circuit court properly denied the motion. We affirm.

BACKGROUND

¶2 In *Wisconsin Manufacturers and Commerce, Inc. v. Village of Pewaukee*, 2024 WI App 23, ¶3, 411 Wis. 2d 622, 5 N.W.3d 949, we struck down the Village of Pewaukee’s (“Village”) transportation user fee after concluding it was an impermissible tax. The Village timely petitioned the supreme court for review of our decision. While the petition for review was pending, the Village continued to impose the transportation user fee on its utility customers. The supreme court denied the Village’s petition in August 2024. The Village did not include the transportation user fee on any further utility bills.

¶3 In November 2024, WMC¹ moved for sanctions for contempt of court, alleging that the Village had committed contempt of our decision “by imposing its ‘transportation user fee’ for several months after the Wisconsin Court of Appeals declared it to be unlawful and by failing to return that money to its utility customers.” As relevant to the present appeal, in its motion, WMC

¹ Although WMC was and continues to be the only plaintiff in the underlying circuit court action, it included as a movant in its sanctions for contempt motion, Hawthorne Place LLC. In its motion, WMC advised that “Hawthorne Place LLC owns the Hawthorne Place apartments in the Village of Pewaukee.” Because Hawthorne Place was not a party in the circuit court and because Hawthorne Place is not a party on appeal, we do not include Hawthorne Place in our discussion.

“request[ed] that the Court do the following: ... 4. Award [WMC] attorney fees and costs pursuant to WIS. STAT. § 785.04(1)(a) [(2023-24)].”²

¶4 In WMC’s brief in support of its motion for sanctions for contempt of court, WMC included a section titled “IV. This Court should award attorney fees to the movants.” (Emphasis omitted.) WMC advised the circuit court that WIS. STAT. § 785.04(1)(a) authorized an award of attorney fees to the parties that filed a contempt motion. WMC stated, “Here, the Movants might file a separate motion for costs and attorney fees under WIS. STAT. § 785.04(1)(a). If they do, the Court should grant that motion.”

¶5 Then, in WMC’s reply brief in support of its motion for sanctions for contempt, WMC argued:

The Movants seek remedial sanctions, which include “[p]ayment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.” WIS. STAT. § 785.04(1)(a). Attorney fees for pursuing a contempt action are also “recoverable under § 785.04(1)(a).” **Benn v. Benn**, 230 Wis. 2d 301, 315, 602 N.W.2d 65 (Ct. App. 1999). The Movants are seeking those two forms of remedial sanctions.^[3]

¶6 At the contempt hearing, the circuit court found the Village in contempt. It noted that “I’m not finding that the Village was doing something absurd here. This was still in litigation. Nobody ... is bringing in any other facts to say that this was somehow reckless or with ill intent.”

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

³ Record No. 99 is WMC’s motion for sanctions for contempt of court, where it requested the circuit court to “[a]ward [WMC] attorney fees and costs pursuant to WIS. STAT. § 785.04(1)(a)[.]”

¶7 As for sanctions, the circuit court determined that as a remedial sanction it would order the Village to refund the transportation utility fee “to anyone that did pay them in those two ... payments [while the petition for review was pending].” However, it stated:

I’m not imposing any further sanctions, other than the disbursements of the monies that were collected. I don’t find it appropriate to order attorney fees even as parties could have handled it in a different manner to have absolute clarity of [the effect of the court of appeals’ decision while the petition for review was pending]. I don’t find that the Village is frivolously making this argument, by any means.

¶8 After making its determination, the circuit court asked, “WMC, anything I misstated or any further clarification?” WMC responded negatively. The court asked WMC to “prepare ... an order and make it a final order.” WMC agreed. The court then reminded WMC, “And again, no attorney fees on this[.]” and asked, “WMC, anything further?” WMC responded, “No, Your Honor. Thank you.”

¶9 WMC prepared and filed a proposed order that provided in part: “[T]he Movants’ request for attorney fees and costs pursuant to WIS. STAT. § 785.04(1)(a) is denied.” The circuit court signed the proposed order on February 25, 2025. WMC filed a notice of entry of final order on February 25, 2025. Neither the Village nor WMC appealed the February 25th order.

¶10 Instead, on March 21, 2025, WMC filed a “combined motion for attorney fees and reconsideration of the order denying attorney fees.” WMC asked the circuit court to “reconsider its order denying attorney fees for the Movants.” It asserted the court “decided that issue prematurely, before the parties presented any evidence or arguments on the issue.” WMC pointed to its brief in support of its motion where it had stated it “might file a separate motion for costs

and attorney fees under WIS. STAT. § 785.04(1)(a)” and argued that WMC had “clarified that [it was] not yet seeking attorney fees.”

¶11 WMC also argued, “If this Court reconsiders its denial of attorney fees, it should award attorney fees to the Movants for one of two alternative reasons.” WMC offered argument as to its two alternative reasons.

¶12 The circuit court held a hearing on WMC’s motion. The court observed that in WMC’s motion and briefs, WMC had asked for attorney fees to be awarded pursuant to WIS. STAT. § 785.04(1)(a), and the court considered whether to award attorney fees at the contempt motion hearing. The court stated:

I don’t find it appropriate to now go back and break it down to another level, give WMC another chance to come in and argue, well, Judge, thanks for giving us that part of the ruling, now we want to add on this as well. I’ve already considered it as a whole....

.... I note as well, it’s true that the movants did state that they might file another motion for costs and attorney fees. I don’t see how this -- how that can arise to a manifest error. The Court even looking at WMC’s brief, you cite the law that there has to be manifest error, but really just argue, well, Judge, let’s do this again. It’s more of a do-over of the consideration rather than that this Court committed a manifest error. WMC adds in a lot more. I understand that, that there’s other considerations that you’re asking me to consider. The Court declines to do so, however, because I can’t find that there was a manifest error.

¶13 The circuit court denied the reconsideration motion. Because it denied reconsideration, it advised that it would not consider WMC’s two alternative theories regarding why it was entitled to attorney fees. WMC appeals.

DISCUSSION

¶14 As a threshold matter, during briefing, we directed the parties to address our jurisdiction to review the circuit court order denying the reconsideration motion. We observed that the February 25, 2025 order holding the Village in contempt and denying attorney fees and the July 22, 2025 order denying reconsideration were final orders for purposes of appeal. However, because WMC did not timely appeal from the February 25, 2025 order, we observed that our jurisdiction over the appeal of the reconsideration decision was governed by the ***Ver Hagen/Silverton*** rule, which provides that “[n]o 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.” See ***Silverton Enters., Inc. v. General Cas. Co.***, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988); see also ***Ver Hagen v. Gibbons***, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972). Under the “new issues test” we compare the issues raised in the motion for reconsideration with the issues that the circuit court disposed of in the final order. ***Harris v. Reivitz***, 142 Wis. 2d 82, 87-88, 417 N.W.2d 50 (Ct. App. 1987) (citing ***Ver Hagen***, 55 Wis. 2d at 25).

¶15 In their briefs, the parties debate whether the ***Ver Hagen/Silverton*** rule applies. However, even assuming that the rule does apply, we are convinced that WMC raised a new issue in its motion for reconsideration—namely did the circuit court prematurely deny its motion for attorney fees. We have jurisdiction to review the denial of the motion for reconsideration.

¶16 To succeed on a motion for reconsideration, a movant must either present “newly discovered evidence or establish a manifest error of law or fact.” ***Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons***,

Ltd., 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685 N.W.2d 853. A “manifest error” is “wholesale disregard, misapplication, or failure to recognize controlling precedent.” *Id.* (citation omitted). “We review a trial court’s decision on a motion for reconsideration under the erroneous exercise of discretion standard.” *Id.*, ¶6.

¶17 On appeal, WMC argues a manifest error occurred because the circuit court decided its request for attorney fees prematurely. It contends a manifest error of fact occurred because “[t]he court patently misunderstood—and thus misapprehended—what the Movants were requesting the court to do at the contempt hearing.” WMC argues it was “not requesting the circuit court to award [it] attorney fees at the contempt hearing”; rather, it “reserved the issue of attorney fees for a future motion.” WMC also asserts that a manifest error of law occurred because “[c]ontrolling precedent allows—even encourages—parties to seek attorney fees *after* the underlying merits have been decided in their favor.”

¶18 We disagree that the circuit court committed a manifest error by denying attorney fees at the contempt hearing. In WMC’s motion for sanctions for contempt, it explicitly asked the court for “attorney fees and costs pursuant to WIS. STAT. § 785.04(1)(a)[.]” The court’s scheduling order provided that it would “address Plaintiff’s Motion for Sanctions for Contempt of Court filed on 11/12/2024” at a February motion hearing, and the court set a briefing schedule to address the motion. Although WMC’s brief in support of its motion was somewhat contradictory because it both asked the court to award attorney fees and said it “might file a separate motion for costs and attorney fees under WIS. STAT. § 785.04(1)(a),” any ambiguity was resolved in WMC’s reply brief when it told the court it was seeking attorney fees as a remedial sanction and it directed the court to its motion for sanctions where it explicitly asked to be awarded attorney fees.

¶19 Moreover, at no time during the contempt hearing did WMC ask the circuit court to delay its decision on attorney fees or allow the parties to further brief the issue. Instead, WMC explicitly advised the court on two occasions that it had nothing more for the court, and it agreed to draft a final order denying attorney fees. Nothing in the record suggests the court patently misunderstood WMC. Further, nothing prohibited the court from deciding the issue of attorney fees when it did in this case. We conclude the circuit court did not erroneously exercise its discretion by denying WMC’s motion for reconsideration. See *Koepsell’s*, 275 Wis. 2d 397, ¶44.

¶20 Before the circuit court, WMC argued that if the court “reconsiders its denial of attorney fees, [the court] should award attorney fees to the Movants for one of two alternative reasons.” It then offered argument as to why it was entitled to attorney fees. However, because the court denied WMC’s reconsideration request, the court did not reach WMC’s remaining arguments. The court explained:

I considered getting into the merits of [WMC’s arguments], but I don’t think it’s appropriate for the Court to do so. If the Court of Appeals says, no, Judge, this was a manifest error, that you should have allowed WMC to come back and consider the issue of attorney fees, I guess I’d have to take it up at that point. But the Court’s not going to get into the further arguments, because, in essence, it’s a new litigation. It’s a new -- new issues are being raised by WMC. New arguments are being made by WMC that weren’t initially raised in the moving papers or in the initial brief of WMC. So the Court declines to take those up at this time, instead finding that there was no manifest error in this case of law or fact.

¶21 On appeal, WMC directly argues its alternative arguments and asks this court to reverse the order denying reconsideration and remand with instructions to award attorney fees. We decline to do so. When the circuit court

denied WMC’s reconsideration request it advised WMC that it would not consider WMC’s alternative arguments, including an entirely new theory, as to why it was entitled to attorney fees. Because we conclude the circuit court appropriately denied WMC’s motion for reconsideration, we likewise conclude the circuit court had no obligation to address WMC’s new arguments as to why it was entitled to attorney fees. See ***Bauer v. Wisconsin Energy Corp.***, 2022 WI 11, ¶14, 400 Wis. 2d 592, 970 N.W.2d 243 (“[A] motion for reconsideration is not a vehicle for making new arguments[.]”). We will not do so for the first time within this appeal. We affirm.

By the Court.—Order affirmed.

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

