

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 21, 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. 2026AP319
STATE OF WISCONSIN**

Cir. Ct. No. 2011FA441

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

MELISSA A. POPP,

PETITIONER-APPELLANT,

V.

GORDON J. WEST, III,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Winnebago County:
SCOTT C. WOLDT, Judge. *Reversed and cause remanded for further
proceedings.*

¶1 LOCOCO, J.¹ Melissa A. Popp had “20 calendar days” to seek judicial review of a family court commissioner’s oral ruling. *See* WIS. STAT. § 767.17(2). The commissioner issued the ruling on December 15, 2025, making the 20th calendar day January 4, 2026—a Sunday. When the circuit court received Popp’s pro se request on Monday, January 5, it denied it as untimely.

¶2 The Wisconsin Statutes generally treat Sunday as a day of rest, imposing a default rule of statutory construction that “[i]f the last day within which an act is to be done ... falls on a Sunday ... the act may be done ... on the next secular day.” WIS. STAT. § 990.001(4)(b). The rule does not apply if its application “would produce a result inconsistent with the manifest intent of the legislature.” § 990.001.

¶3 The rules of civil procedure, which more specifically apply to actions affecting the family “[e]xcept as otherwise provided in the statutes,” WIS. STAT. § 767.201, likewise prevent the last day of a statutory time period from falling on “a day the clerk of courts office is closed.” WIS. STAT. § 801.15(1)(b). This would include Sundays. *See, e.g., Pulera v. Town of Richmond*, 2017 WI 61, ¶38 n.22, 375 Wis. 2d 676, 896 N.W.2d 342.

¶4 Regardless of which of the two laws applies—Popp argues it both ways—Popp’s deadline at least presumptively shifted to Monday, January 5. This means her filing was timely.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

¶5 The circuit court did not explain its contrary conclusion beyond a citation to § 767.17(2). That statute does provide some additional guidance on computation of time. It says: “As set forth under s. 801.15 (1), 20 calendar days are counted consecutively and include weekends and holidays.”

¶6 If the circuit court thought this sentence means the 20-day review period may terminate on a Sunday (and by the same logic, on Thanksgiving or Christmas Day), it was mistaken. The only reference to weekends in § 801.15(1) reads, “When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation.” Under this provision, courts would count a 20-day period (which is longer than ten days) consecutively and include weekends and holidays. That is exactly what § 767.17(2) provides and what the circuit court below did. But § 801.15(1)(b) addresses how to determine a “last day” separately and, as explained above, using different language; it does not preclude time periods from ending on “weekends” or “Sundays” but rather “day[s] the clerk of courts office is closed.” Lacking similar language, § 767.17(2) is therefore silent on whether Popp’s deadline can fall on a Sunday, requiring application of the default rule: it cannot.

¶7 A definitive interpretation will have to await a future case; Gordon J. West, III, respondent here, concedes Popp’s read of the statutes. Instead he says Popp forfeited her argument by not raising it below. *See Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980). He points out that Popp filed a motion for reconsideration insisting she had electronically filed on January 4 (a factual dispute this court need not resolve) but failed to argue there that the deadline was really January 5.

¶8 The forfeiture rule does not clearly apply. Since the circuit court acted sua sponte and its decision was dispositive, Popp had no opportunity to make her statutory argument before her right to appeal ripened. If there is law requiring such parties to raise all possible arguments in a motion for reconsideration before taking their appeal, West does not direct this court to it. Motions for reconsideration ordinarily have limited purposes. See **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.

¶9 In any event, Popp’s argument addresses an important legal issue likely to recur. Under the circumstances, even assuming the forfeiture rule technically applies, this court will exercise its discretion to disregard it. See **Thompson v. Ouellette**, 2023 WI App 7, ¶15, 406 Wis. 2d 99, 986 N.W.2d 338.

¶10 All that is left is remand. West informs this court that since the parties’ youngest child turned 18 during the pendency of this appeal, some of the claims Popp made before the court commissioner are moot. He asks this court to limit the scope of remand accordingly.

¶11 The only issue on this appeal is whether Popp’s request for judicial review was timely. It was. Since the parties agree that at least some relief remains available to Popp on remand, that issue and this appeal are not moot. See **Marathon County v. D.K.**, 2020 WI 8, ¶19, 390 Wis. 2d 50, 937 N.W.2d 901. The separate question of what Popp’s relief might include below, in contrast, was not examined by the circuit court and is not under review. This court will remand the cause without limitation; West is free to make his mootness argument to the circuit court.

By the Court.—Orders reversed and cause remanded for further proceedings.

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

