

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-3119-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

JULIE ANN COYLE,

PETITIONER-APPELLANT,

v.

PATRICK JOSEPH COYLE,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Reversed and cause remanded.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. Julie Ann Coyle appeals from the judgment divorcing her from Patrick Joseph Coyle.¹ The trial court and the parties agreed

¹ This is an expedited appeal under RULE 809.17, STATS.

that an error of fact substantially affected the trial court's property division. However, when Julie moved for reconsideration of the judgment in order to correct the error, the trial court denied the motion as untimely. The property awards which the trial court and the parties agree were based in part on a factual error remain in the judgment. Julie now seeks review of the decision that her reconsideration motion was untimely. We conclude that the motion was timely made; and therefore, we reverse.

Following a trial on several issues, the court issued a memorandum decision and order in November 1996, resolving some issues but reserving judgment on others. In December 1996, the trial court issued an order resolving the remaining issues, granting the divorce and instructing appellant's counsel to prepare a final judgment for the court's signature. Counsel did not prepare the final judgment within thirty days, as local rules required. On January 31, 1997, with no final judgment submitted, counsel for appellant filed a motion to reconsider the property division. When asked his authority for the filing, counsel cited § 805.17(3), STATS. The trial court then denied reconsideration, holding that the motion was untimely because § 805.17(3) required him to file it within twenty days of the entry of the December judgment, at the latest.

Where, as here, the case is tried to the court, § 805.17(3), STATS., provides in part that “[u]pon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may ... amend the judgment accordingly.” One might conclude, as the trial court did, that “judgment” in this context has the plain unambiguous meaning set forth in § 806.01(1), STATS., as a determination of the action, whether final or nonfinal. Under that interpretation, the motion filed in this case was plainly not timely because the court's two orders, although non-final, did determine the action. However, we do not construe a

statutory phrase in isolation, but in the context of the entire statute that contains it. *Elliott v. Employers Mut. Cas. Co.*, 176 Wis.2d 410, 414, 500 N.W.2d 397, 399 (Ct. App. 1993). Therefore, the entirety of § 805.17(3), must be considered, and it reads as follows:

RECONSIDERATION MOTIONS. Upon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may amend its findings or conclusions or make additional findings or conclusions and may amend the judgment accordingly. The motion may be made with a motion for a new trial. If the court amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If 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. If within 90 days after entry of judgment the court does not decide a motion filed under this subsection on the record or the judge ... does not sign an order denying the motion, the motion is considered denied and the time for initiating an appeal from the judgment commences 90 days after entry of judgment.

Taking § 805.17(3), STATS., in its entirety, “judgment” plainly means a final, appealable judgment. The alternative construction, to include non-final orders or judgments, creates an irreconcilable conflict within the statute because it would allow the time for initiating appeals to commence before the right to appeal accrued, and in some cases provide that the time for appeal would elapse before that occurred.² Here, neither the November nor the December 1996 order was final and therefore appealable as of right, because each contemplated entry of a subsequent document. *Radoff v. Red Owl Stores, Inc.*, 109 Wis.2d 490,

² In this case, the motion was filed on January 31, 1997 and would have been deemed denied under § 805.17(3), STATS., on May 1, 1997, with the appeal time commencing on that date. The trial court did not decide the motion, nor enter the final judgment, until July 22, 1997.

493, 326 N.W.2d 240, 241 (1982). Consequently, their entry had no bearing on the time for seeking reconsideration of the property division under § 805.17(3).

In so holding, we note the trial court's concern with counsel's violation of the rule requiring timely preparation of the final judgment when directed to do so by the trial court. We appreciate that concern. However, compliance or noncompliance with local rules cannot affect our interpretation of § 805.17(3), STATS. We therefore remand for further consideration of the motion for reconsideration, which was timely made.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. See RULE 809.23(1)(b)5., STATS.

