

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 12, 2016

Diane M. Fremgen
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. 2016AP436

Cir. Ct. No. 2014SC11199

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

GARY A. KRAMSCHUSTER AND STEPHANIE M. PRZYTARSKI,

PLAINTIFFS-APPELLANTS,

V.

LAW OFFICES OF ANDREW C. LADD, LLC,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
RICHARD J. SANKOVITZ, Judge. *Dismissed.*

¶1 BRENNAN, J.¹ Gary Kramschuster and Stephanie Przytarski (“Przytarski”), *pro se*, appeal the December 2, 2015 order denying their motion for reconsideration. Przytarski contends that her February 29, 2016 notice of appeal

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14).

was timely filed and that this court has jurisdiction.² Because this court concludes that it does not have jurisdiction, the appeal is dismissed.

DISCUSSION

¶2 The threshold question in the review of this dispute over attorneys' fees between Przytarski and the Law Offices of Andrew C. Ladd ("Ladd") is whether jurisdiction exists. In an order dated April 11, 2016, this court noted that "[a]n 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" and instructed the parties to address in their briefs whether this court lacks jurisdiction to review the decision denying reconsideration.

¶3 This court lacks jurisdiction to consider an untimely appeal. *Falk v. Indus. Comm'n*, 258 Wis. 109, 111, 45 N.W.2d 161 (1950) ("In several decisions this court has reiterated the rule that when an appeal is not taken within the statutory period allowed therefor the court had no jurisdiction of the matter."). A notice of appeal must be filed within 45 days of the entry of judgment where written notice of the entry of a final judgment was given within 21 days. *See* WIS. STAT. § 808.04(1).³ 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. Gen. Cas. Co. of Wis.*, 143 Wis.2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is to

² We refer to the parties collectively as Przytarski in light of the fact that this case is one of many actions Przytarski has brought, many of them associated with a 2008 paternity case involving her daughter.

³ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted. Written notice of the entry of final judgment was given within 21 days; thus, under WIS. STAT. § 808.04(1), this appeal is governed by the 45-day deadline.

prevent litigants from using a motion for reconsideration 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). The determination of whether an order denying a motion for reconsideration is appealable requires a comparison of the issues raised in the motion for reconsideration with those disposed of in the order sought to be reconsidered. *Harris v. Reivitz*, 142 Wis.2d 82, 88, 417 N.W.2d 50 (Ct. App. 1987).

¶4 The sole question is whether the December 2, 2015 order denying the motion for reconsideration is appealable. Przytarski does not dispute that she did not file a notice of appeal within 45 days of the entry of final judgment on September 23, 2015. See WIS. STAT. § 808.04(1).

¶5 Przytarski does not present an argument that her motion for reconsideration is appealable pursuant to *Silverton Enterprises, Inc.*, 143 Wis. 2d at 665, on the grounds that it presents different issues from those determined in the order sought to be reconsidered.⁴ Ladd argues that it is not and that “the essence of the motion to reconsider is grounded in [Przytarski’s] belief that the court erred when it determined that [Ladd] did not, as a matter of law, breach its contract” Resp. Br. at 2. Because this was an issue discussed by the trial court in its ruling, Ladd argues, Przytarski’s motion for reconsideration raised “the same issue raised in the original motion for summary judgment” Resp. Br. at 2. Przytarski does not reply to this argument and therefore concedes the issue. See *Charolais*

⁴ She instead argues that “jurisdiction remained in the trial court” after September 23, 2015. App. Br. at 12. She does not address the statutory time limits for appeal at all, and her argument appears to be that the time for appeal does not begin to run until the trial court no longer has jurisdiction. App. Br. at 12.

Breeding Ranches, Ltd. v. FPC Secs. Corp., 90 Wis.2d 97, 109, 279 N.W.2d 493 (Ct. App.1979) (unrefuted arguments are deemed conceded).

¶6 Because Przytarski has conceded that her motion for reconsideration is not appealable by failing to argue that it meets the relevant legal test, this court concludes that it is not appealable and that there is no timely appeal in this case that gives this court jurisdiction to review the trial court's order.

¶7 Consequently, the appeal is dismissed.

By the Court.—Appeal dismissed.

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

