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DISTRICT III

August 11, 2026

To:

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Circuit Court Judge
Electronic Notice

Jacques C. Condon
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Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
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You are hereby notified that the Court has entered the following opinion and order:

2025AP817

Riley Fiontar, LLC v. Wisconsin Department of Natural Resources
(L. C. No. 2024CV163)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders 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).

Riley Fiontar, LLC, (“Riley”) appeals from a circuit court order that affirmed the decision of an administrative law judge (“ALJ”), which in turn affirmed a decision of the Wisconsin Department of Natural Resources (“DNR”). Riley argues that the circuit court was required to hold a “hearing/trial” before issuing a decision on Riley’s petition for judicial review of the ALJ’s decision. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21

(2023-24).¹ For the reasons explained below, we reject Riley’s argument that the court was required to hold a “hearing/trial,” and we therefore summarily affirm the court’s order.

Riley owns a closed landfill in Eau Claire County. Under Wisconsin law, the owner of a closed landfill has an obligation to provide long-term care for that facility. See WIS. ADMIN. CODE § NR 520.05 (Mar. 2026). After a prior owner of Riley’s landfill declared bankruptcy, the DNR established an account to hold funds for the landfill’s long-term care. Since Riley acquired the landfill, Riley and the DNR have had ongoing disputes regarding what long-term care activities Riley is required to complete and the amounts that the DNR will reimburse Riley for those activities.

In February 2018, Riley and the DNR entered into a Memorandum of Understanding (“MOU”) to resolve their disputes and set an annual budget and schedule for the DNR to provide payments to Riley for the landfill’s long-term care. As relevant here, the MOU requires the DNR to prepay Riley 75% of the annual budget for long-term care activities at the landfill by January 31 each year. Riley, in turn, is required to perform certain long-term care activities each year, to document its performance of those activities, and to submit an annual report regarding its performance on or before January 30.

The parties’ disputes continued after they entered into the MOU. On January 31, 2023, the DNR notified Riley that it would not prepay 75% of the annual long-term care budget for 2023 because Riley had failed to provide sufficient information showing that it had performed the required long-term care activities in 2021 and 2022. Riley then filed a petition for a

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

contested case hearing challenging the DNR’s January 31, 2023 decision. The DNR granted Riley’s petition for a contested case hearing with respect to the single issue of the DNR’s “decision to not release, in advance, up to 75% of the anticipated cost of long-term care work for calendar year 2023 at the Landfill.” The DNR denied a contested case hearing as to all other issues raised in the petition.²

A contested case hearing subsequently took place before an ALJ. Following the hearing, the ALJ issued a written decision concluding that Riley had “failed to meet its burden to prove that the [DNR’s] decision ... should be modified or reversed.”

Riley then filed a petition for judicial review of the ALJ’s decision. The circuit court entered a scheduling order, which set briefing deadlines and stated that an “in-person hearing on the briefs” would take place on March 12, 2025. Thereafter, Riley filed a brief in support of its petition for judicial review, the DNR filed a response brief, and Riley filed a reply brief.

On March 7, 2025—five days before the scheduled hearing—the circuit court entered a two-page written order affirming the ALJ’s decision. The court concluded that substantial evidence supported the ALJ’s decision, that the decision followed controlling law, and that Riley had failed to establish any procedural errors in the administrative proceedings.

Riley now appeals from the circuit court’s order affirming the ALJ’s decision, raising a single, narrow issue. Namely, Riley argues that the court erred by issuing its decision without first holding a “hearing/trial” on Riley’s petition for judicial review.

² In Ozaukee County Case No. 2023CV128, Riley sought judicial review of the DNR’s decision to deny a contested case hearing with respect to the other issues raised in its petition. Case No. 2023CV128 was dismissed on October 15, 2024.

As an initial matter, we note that it is unclear whether Riley intends to argue that the circuit court was required to hold an evidentiary hearing on its petition, or whether Riley instead means to argue that the court was required to hold oral argument.³ To the extent Riley means to argue that the court was required to hold an evidentiary hearing, we reject that argument.

Riley cites no legal authority supporting the proposition that a circuit court is required to hold an evidentiary hearing on a petition for judicial review of an agency decision. To the contrary, WIS. STAT. § 227.57(1) provides that judicial review of an agency decision “shall be conducted by the court without a jury *and shall be confined to the record.*” (Emphasis added.) Thus, “[a] challenge to an agency decision under WIS. STAT. ch. 227 is limited to the record on review in that proceeding.” **Lake Beulah Mgmt. Dist. v. DNR**, 2011 WI 54, ¶53, 335 Wis. 2d 47, 799 N.W.2d 73. “A court may consider evidence outside the record on review only ‘in cases of alleged irregularities in procedure before the agency.’” *Id.* (quoting § 227.57(1)). Here, however, Riley does not cite any portion of the appellate record showing that it sought to present testimony in the circuit court under § 227.57(1) regarding any procedural irregularities before the agency. Nor does Riley develop any argument that the circuit court erroneously exercised its discretion by declining to allow Riley to present such testimony. See § 227.57(1) (stating that testimony regarding procedural irregularities “*may be taken in the court*” (emphasis added)); see also **Liberty Grove Town Bd. v. Door Cnty. Bd. of Supervisors**, 2005 WI App 166, ¶10, 284

³ In its response brief on appeal, the DNR notes that Riley’s brief-in-chief fails to explain “whether the ‘hearing/trial’” that Riley contends the circuit court should have held “would have consisted of oral argument, an evidentiary hearing, or something else.” In its reply brief, Riley does not clarify the nature of the hearing that it believes the circuit court should have held.

Wis. 2d 814, 702 N.W.2d 33 (“The use of the word ‘may’ in a statute implies discretionary authority.”).

Additionally, we note that WIS. STAT. § 227.56(1) provides:

If before the date set for trial, application is made to the circuit court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceedings before the agency, *the court may order that the additional evidence be taken before the agency* upon such terms as the court may deem proper.

(Emphasis added.) Notably, this statute does not permit *a circuit court* to take additional evidence on judicial review of an agency’s decision. Instead, it grants the court discretion to order *the agency* to take additional evidence under certain circumstances. Again, Riley cites no portion of the appellate record showing that it ever sought leave of the court to present additional evidence before the agency under § 227.56(1). Further, Riley does not develop any argument showing that it met the statutory prerequisites for presenting such evidence.

To the extent Riley instead means to argue that the circuit court was required to hold oral argument before deciding its petition for judicial review, we also reject that argument. As a general matter, a circuit court has “inherent power, exercisable in its sound discretion, consistent within the Constitution and statutes, to control disposition of causes on its docket with economy of time and effort.” *Neylan v. Vorwald*, 124 Wis. 2d 85, 94, 368 N.W.2d 648 (1985) (citation omitted). We agree with the DNR that this inherent, discretionary authority encompasses “[a] circuit court’s decision to hold oral argument or a hearing” in a particular case.

In support of its argument that the circuit court was required to hold oral argument on its petition for judicial review, Riley cites WIS. STAT. § 227.56(2), which states that “[p]roceedings

for review of administrative agency decisions as provided in this chapter *may be brought on for trial or hearing* at any time upon not less than 10 days’ notice given after the expiration of the time for service of the notices provided in [WIS. STAT. §] 227.53(2).” (Emphasis added.) Riley also cites § 227.56(1), which allows a litigant to seek leave to present additional evidence before the agency “before the date set for trial.” According to Riley, the references to a “trial” or “hearing” in § 227.56 show that a court is required to hold a hearing before ruling on a petition for judicial review. We agree with the DNR, however, that these statutory provisions merely “authorize[], but do[] not require, hearings in [the] circuit court on a petition for judicial review of an agency decision.” In particular, the use of the word “may” in § 227.56(2) indicates that a circuit court has discretion—but is not required—to hold a hearing on a petition for judicial review. See **Liberty Grove Town Bd.**, 284 Wis. 2d 814, ¶10.

Riley also relies heavily on this court’s decision in **Jackson v. LIRC**, 2006 WI App 97, 293 Wis. 2d 332, 715 N.W.2d 654. **Jackson** is inapposite, however, as it addressed the circumstances under which a circuit court may dismiss a petition for judicial review under WIS. STAT. § 227.56(3) for failure to allege sufficient facts showing that the petitioner was aggrieved by the agency’s decision—an issue that is not relevant to this appeal. See **Jackson**, 293 Wis. 2d 332, ¶17. Nothing in **Jackson** supports Riley’s claim that the circuit court was required to hold a hearing before deciding Riley’s petition for judicial review on the merits. Contrary to Riley’s assertion, the court did not sua sponte “dismiss[]” Riley’s petition without a hearing; rather, it decided the petition on the merits based on its review of the parties’ briefs and the administrative record.

Having rejected Riley’s argument that the circuit court was required to hold oral argument on Riley’s petition for judicial review, we further conclude that the court did not

erroneously exercise its discretion by failing to do so. As noted above, the court initially ordered that an “in-person hearing on the briefs” would take place on March 12, 2025, following the completion of merits briefing. After reviewing the parties’ briefs and the administrative record, however, the court apparently concluded that no hearing was required and that the case could be decided without oral argument. Based on the written materials, the court concluded that “substantial evidence supports the ALJ’s factual findings, her decision adheres to controlling law and [Riley] has not shown any procedural error.” We see no basis to conclude that the court erroneously exercised its discretion by drawing those conclusions based upon the parties’ briefs and the administrative record, without holding oral argument on Riley’s petition.⁴

Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

⁴ Riley briefly argues that the circuit court erred “when it *adopted* one set of facts as its own.” At the beginning of its decision, the court stated that it “adopts pages 2-13 of [the DNR’s] brief and will not repeat here the introduction, law governing landfill operations, factual background, and standards governing judicial review.”

Riley cites no legal authority in support of the proposition that, after reviewing the parties’ briefs and the administrative record, the circuit court could not adopt the factual and legal background set forth in the DNR’s brief. Moreover, Riley does not explain which—if any—points of fact or law in the DNR’s brief were actually disputed. Riley’s argument that the court erred by adopting portions of the DNR’s brief is therefore undeveloped, and we decline to address it further. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).