

**STATE OF WISCONSIN  
SUPREME COURT**

**Appeal No. 2018AP1672  
Circuit Court No. 2015PR33**

**FILED  
FEB 09 2021  
CLERK OF SUPREME COURT  
OF WISCONSIN**

In re the estate of Elizabeth H. Lauer:

Richard A. Lauer, Appellant,

v.

Dennis Lauer, Personal Representative for the Estate of  
Elizabeth H. Lauer, Respondent.

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**MOTION FOR RECONSIDERATION OF THE DENIAL OF  
PETITION FOR REVIEW ON JANUARY 20, 2021.**

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**MOTION FOR RECONSIDERATION OF THE DENIAL OF  
PETITION FOR REVIEW ON JANUARY 20, 2021.**

Pursuant to Wis. Stats. 751.06, 808.10, 809.14, 809.63, 809.64, and 857.15 Richard A. Lauer, the appellant in this matter, moves the Supreme Court (SC) for reconsideration of its January 20, 2021 Order which denied a Petition for Review (PFR) filed in Appeal No. 2018AP1672.

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**Issue:**

1. Do rules of appellate procedure authorize a party to seek “other relief” than specific statutory relief
  - a. Does *Archdiocese of Milwaukee v. Milwaukee*, 284 N.W.2d 29, 91 Wis. 2d 625 (1979) control or support that no authority to reconsider a denial of a petition for review in consideration of Wis. Stat. 809.14 which allows a petitioner to seek “other relief”?
  - b. Archdiocese is a per curiam decision with no precedential value.
  - c. Archdiocese is bad law as the SC is the court of last resort in an appeal and its reasons for the denial of a PFR should be in the record.
  - d. A denial of a PFR constitutes both the opinion and judgment whereas it is the last document which ends litigation for both parties.
  
2. Should the Supreme Court be required by its own standards to provide a rationale for its decision, in particularly for denials of Petitions for Review.

**Petitioner Position:**

Current case law in *Archdiocese of Milwaukee v. Milwaukee*, 284 N.W.2d 29, 91 Wis. 2d 625 (1979) suggests that a Motion for Reconsideration is not permissible under Wis. Stat. 809.64.

The SC has determined that Archdiocese (1979) is a per curiam decision with no precedential value. Wis. Stat.809.23(3).

*Archdiocese* suggests that Wis. Stat. (Rule) 809.64 does not allow for reconsideration of a PFR which was denied by the SC as being neither a judgment nor an opinion.

Petitioner proffers that the simple unreasoned denial of a petition would also actually constitute the opinion and judgment and mandate whereas the rationale of the SC is summed up in one word ...denied.

Petitioner proffers that a Petition for Review is an extension of appellate proceedings in the COA and the SC has review jurisdiction under Wis. Stat. 808.10 which provides,

**808.10 Review by the supreme court.**

(1) PETITION FOR REVIEW; TIME LIMIT. A decision of the court of appeals is reviewable by the supreme court only upon a petition for review granted by the supreme court.

*State v. Barrett*, 280 N.W.2d 114, 89 Wis. 2d 367 (1979). @ [2,3]

Further, pursuant to Wis. Stat. (Rule) **809.64** which provides,

**809.64 Rule (Reconsideration).** A party may seek reconsideration of the judgment or opinion of the supreme court by filing a motion under s. 809.14 for reconsideration within 20 days after the date of the decision of the supreme court.

For purpose of this motion only, Richard concedes these statutory points.

The SC demonstrates that those statutes as set forth in *Archdiocese* only address reconsideration of PFR granted by the SC which naturally produces a Judgment or opinion.

However, that is not the issue. The issue is whether under Wis. Stat. (Rule) 809.14 a party may seek "other relief" not specific to 808.10 and 809.64 as viewed in *Archdiocese*, ie...the denial of a PFR.

The petitioner reasons that the legislative and/or judicial intent of such statute is not the obliteration of a Motion for Reconsideration on a PFR by the SC when a Petition is denied. Their intent would not be the prevention of justice. A PFR is likely the last filing in the SC which deals with the final decision of the Courts.

Interpreting Wis. Stat. 809.64 to suggest the legislature or judiciary did not provide for a Motion for Reconsideration on a denial of a PFR is illogical. Courts are interested in fairness and justice, not simply finality.

When the SC fails to issue an opinion and judgment and simply denies a PFR, justice is likely averted, and suspicion runs high because they failed to address how the petitioner was in error.

By its nature, such reconsideration document should be warranted whereas it is mostly confined to the points of law or fact alleged to be erroneously decided in the decision and must include supporting argument.

Leave us remember that a PFR demonstrates a belief that the Court of Appeals (COA) erred in its judicial determination. That is, they violated a law or settled principle of justice. A PFR should be the easiest legal rendering there is for the SC. Either the COA was right or it was wrong, and justice was not served.

An unreasoned denial by the SC is not in the best interest of the judiciary or the citizens of Wisconsin and the Court itself has noted this fact.

¶ 52. In deciding legal issues this court owes litigants and the public an explanation for its rulings. A statement of explanation is essential to the judicial decision-making process; it is of benefit to judges, litigants, and the public.

When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy court, the reasons are an essential demonstration that the court did in fact fix its mind on the case at hand. . *State v. Stuart*, 664 N.W.2d 82, 262 Wis. 2d 620, 2003 W.I. 73 (2003).

*Archdiocese* appears to be the Judiciaries way of setting off decisions which may impugn the character of the Judges or Justices. A court should never be afraid to address legal matters or provide an explanation for its decision or the law relied upon to make such determination; certainly not to the detriment of pro se litigants.

A formulary “denial” of a PFR fails justice, truth, and principle. It raises suspicions of *judicial bias and lack of impartiality*.

An unreasoned decision has very little claim to acceptance by the defeated party and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently

changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid. **id. Stuart supra and State v. Allen, 778 N.W.2d 863, 322 Wis. 2d 372, 2010 W.I. 10 (2010) @ ¶79.**

Again, this perception was raised by a justice of the SC. In Allen,

¶ 78 Justice Prosser suggests at ¶ 256 that the court should have denied Allen's motion "quickly, without comment," to avoid "exposing controversy within the court."

**We think otherwise. We believe that a hallmark of our courts in Anglo-American jurisprudence is that a court explains its decision. A court should be transparent and accountable by giving reasons for its decisions, reasons that can be evaluated and used to inform future decisions by the litigants, reviewing courts, and the public. (my emphasis)**

Petitioner suggests that Wisconsin Citizens desire a transparent court with reasoned decisions, especially by the SC.

### **Written Opinions and Sound Mandates**

It is time that the SC holds itself to the standard to which the lower courts are held. It is time for the SC to give "reasons for its decision." Sound opinions by the SC will logically cause more sound decisions in the lower courts and expedite litigation.

### **Wis. Stat. (Rule) 809.14 (Motions).**

**Archdiocese** stated that

The city's motion is purportedly based upon sec. (Rule) 809.64 which provides as follows:

"809.64 Reconsideration. A party may seek reconsideration of the *judgment or opinion* of the supreme court by filing a motion under Rule 809.14 for reconsideration within 20 days of the filing of the decision of the supreme court." (Emphasis added.) **@ 626**

And subsequently

The order the city wants reconsidered simply denied the petition for review. It was neither a judgment nor an opinion. Therefore, sec. (Rule) 809.64, Stats., provides no authority for the city to move for reconsideration of such order. The motion must be dismissed. **@ 627**

Richard notes that his request is predicated upon Wis. Stat. 809.14. This statute provides a catch all provision for relief.

**809.14(1)** A party seeking an order or other relief in a case shall file a motion for the order or other relief.

Wis. Stat. 809.14 allows for a Motion for Reconsideration for “other relief.” Certainly, a Motion for Reconsideration of an unreasoned order of the denial of a petition for review would qualify as such whereas the SC has determined it is neither a judgment nor an opinion.

(As previously stated, petitioner contends that a one word denial would encompass both opinion and judgment by the SC.)

### **Richard’s Petition for Review**

The PFR minimally sought relief of an illogical error laden ruling by the COA. The COA determined that it

1. Could add language and requirements to a statute to produce a result favorable to the Court and the Respondent.
2. Could construe the lack of required reasoning and absence of any rationale or law relied upon, by the Circuit Court Judge to be a sub-silentio determination.
3. Could reason that a Personal Representative could not be remove because he was properly appointed.
4. Could allow a Circuit Court discretion where none was authorized by statute.
5. Could act as a lawyer for the respondent and raise an issue on his behalf.
6. Could use an order that is void as a matter of law to raise a claim preclusion defense.
7. Would not address the issue of the void order
8. Would create the wrong legal standard, attribute it to the Circuit Judge, and rule against Richard predicated upon the wrong legal standard.
9. Failed to address the underlying issues raised in the petition for removal.

Additionally, the COA is aware of the costliness of ongoing litigation and knowingly failed to correct the errors of the Circuit Court.

### **Denial of Petition for Review**

The denial of the PFR obviously only benefits the judiciary from the Circuit Court to the SC. It protects the errors of both the Circuit Court

and COA at the expense of a pro se litigant. **It intentionally, lets the decision of the COA stand by an act of silencing a litigant, rather than as an act of enacting justice.**

The denial intentionally skirts the law, rather than addressing the law so this behavior by the lower courts never repeats.

### **Discretionary Acts**

The decision to grant or deny a PFR cannot be simply reduced to “unfettered-decision making” by a reviewing court which is required to exercise its discretion. In fact, the SC has itself set forth the standard for a discretionary action.

“However, this court has frequently pointed out that the exercise of discretion is not the equivalent of unfettered decision-making. McCleary v. State, 49 Wis.2d 263, 182 N.W.2d 512 (1971).”

A discretionary determination, to be sustained, must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law.

Additionally, and most importantly, a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination. It is recognized that a trial court in an exercise of its discretion may reasonably reach a conclusion which another judge or another court may not reach, but it must be a decision which a reasonable judge or court could arrive at by the consideration of the relevant law, the facts, and a process of logical reasoning.

How can the SC sustain its own discretionary determination to deny a PFR, when it is not the product of a rational mental process which is demonstrably made?

As the petitioner stated in his PFR. The COA affirmed the Circuit Court Judge by adding words and requirements to a statute; determining that a personal representative could not be removed because he was appointed and relied upon the wrong legal standard. How does this not require clarification of the law? No, not require...rather command review.

The lack of reasoning or explanation by the SC is clearly cause for litigants to question the lack of impartiality and bias of the SC. The denial of a PFR which demonstrates violations of law is beneath the

expectations of the people of Wisconsin who seek an honest and fair judiciary. scrutiny. It appears the SC has determined itself to have failed to properly exercise its discretion.

A denial of this PFR is not warranted. Courts are required to follow the law, not deny justice to, or pick petty but life-changing fights with prose litigants and citizens of Wisconsin.

### **Writ of Mandamus**

The SC should issue a writ of mandamus requiring the COA to expunge its Order of September 6, 2018. It is impractical for the appellant to do so as he has tried numerous times. The COA simply refuses to even address the Order and the circumstances of its issuance. This Order too is a travesty, and the SC is aware that the COA knowingly violated a statute which operated to disenfranchise Richard and again attempt to end this 11 years of litigation.

### **Discretionary Reversal**

When the Circuit Court denies a petition for the removal of a personal representative via an unexplained denial, and in contradiction to Wis. Stat. 857.15, the statute which governs and requires a hearing, it is easily seen that the matter or real controversy has not been tried.

This matter is basically an 11 years continuation of a flawed guardianship proceeding and the real controversy has never been tried.

From the onset of the removal of Richard as agent under a valid and licit Durable Power of Attorney for trumped up financial abuse allegations by Richard, to the reopening of a case dismissed by the COA, to the renaming of that case to cover the removal of an unqualified Guardian ad Litem, to Circuit Court Judge Gregory Gill Jr. conducting secret hearings and then denying Richard, a party to matter but not notified of the secret hearings, access to transcripts from those hearings, and where the COA stated they were informed that Richard was not a party to that matter and therefore not entitled to transcripts, to sanctions against Richard, to the incarceration of Richard.

Judge Gill then failed to conduct a hearing for the removal of a personal representative by an unreasoned denial of Richard's lawful petition for removal. Then the COA determines this denial is the result of sub-silentio meanderings in the mind of Judge Gill and that a personal representative cannot be removed because they were

appointed. The COA added requirements to the statute and granted discretionary authority to the Gill court in opposition to the mandates of a statute.

The COA then reasoned that an appeal which was dismissed by the very same judges, for the failure to file a brief, which was not due, could serve as the basis for a claim preclusion defense proffered by the same COA behalf of the respondent.

This matter simply requires a fair tribunal.

When Richard proved there was no financial abuse in 2012 and the Court (Judge Gill) found there was no financial abuse, this matter should have been done. The Order removing Richard as DPOA is void as a matter of law and should also be expunged. There was no good cause to remove Richard as agent under DPOA yet Judge Gill did so.

Again, it was Judge Gill who appointed Dennis Lauer as personal representative under the wrong legal standard. It was Judge Gill who denied the petition for removal contrary to statute. The COA then reasoned that Judge Gill denied a petition on the wrong legal standard, via a sub-silentio discretionary determination, where no discretion was authorized and then further determined that a personal representative cannot be removed because he was appointed.

This is crazy law, and beneath the dignity of the SC. It warrants minimally a hearing to remove Dennis as personal representative and the expungement of the COA Order of September 6, 2018 and the Order which removed Richard as agent under the DPOA.

## **Conclusion**

**Archdiocese** is bad law. Court's have the inherent authority to reconsider every decision they make. Certainly, when litigants demonstrate an error of law or fact, the SC, the court of last resort, the court of esteemed justices, the court concerned with the development, harmony and clarification of the law should **welcome** their Petitions for Review and Motions for Reconsideration.

Wis. Stat. (Rule) 809.14 allows for "other relief" not specifically noted in Wis. Stat. 809.64. A motion for reconsideration would be warranted as it qualifies as other relief.

Notwithstanding that the remittitur has occurred at the COA level predicated upon the decision of the SC, the SC has authority under Article VII, § 3 of the Wisconsin Constitution to pull back the denial and record from the Circuit Court.

Richard moves the Supreme Court

- allow the filing of Motion to Reconsider under Wis. Stat. 809.14
- Pursuant to its Discretionary Reversal authority under Wis. Stat. 751.06 order the matter returned to the Circuit Court for a hearing in accord with Wis. Stat. 857.15 whereas the real controversy has not been tried
- Order a Writ of Mandamus to the COA to expunge its order of September 6, 2018 dismissing appeal 2017AP1790 as void whereas it is impractical to seek this in the COA
- Order a Writ of Mandamus to the Circuit Court to expunge the unlawful Order which removed Richard as agent under DPOA. This order is void as a matter of law and served Judge Gill's purpose in the appointment of Dennis Lauer as personal rep.
- Order the respondent and the COA and Judge Gill to respond to this motion.
  - The COA should minimally explain how it dismissed an entire appeal for a failure to file briefs that were not due.

This would be a good place to start the end of this litigation.

Respectfully submitted this 9<sup>th</sup> day of February 2021

Richard A. Lauer 2-9-21

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