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To: Wisconsin Supreme Court

From: Richard Lauer

Date: March 5, 2021

Re: In re the Estate of Elizabeth H. Lauer
Richard A. Lauer v. Dennis Lauer

L.C. # 2015PR33
Appeal 2018AP1672

**1 of 2 Motions for Reconsideration of Denial of Petition
for Review and Miscellaneous Relief**

FAXED TO :

1 per Olivia

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STATE OF WISCONSIN
SUPREME COURT
Appellate Case No. 2018AP1672

FILED
MAR 05 2021
CLERK OF SUPREME COURT
OF WISCONSIN

Outagamie County Circuit Court Case No. 2015PR33
Judge Gregory B. Gill Jr. Presiding.

In re:

The Estate of Elizabeth H. Lauer

Richard A. Lauer: Appellant/Petitioner

v.

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

MOTION FOR RECONSIDERATION,
JUDICIAL REVIEW OF AN ORDER BY
THE CLERK AND COURT
COMMISSIONERS and
CLARIFICATION OF THE ORDER OF
FEBRUARY 16, 2021.

Richard A. Lauer

10 Main St. Apt. 106

Menasha, WI 54952

1-920-257-3330

Richard A. Lauer, the appellant/petitioner in this matter herein moves the Supreme Court (SC) for:

JUDICIAL REVIEW OF AN ORDER BY THE CLERK AND COURT COMMISSIONERS OF THE ORDER OF FEBRUARY 16, 2021.

- Additionally, whereas the Clerk and Court Commissioners did not address the issues raised by the Appellant in his Motion for Reconsideration filed on February 9, 2021, Richard would move the Court to Reconsider the denial order of the Petition for Review filed regarding the SC Order of January 20, 2021.
- Additionally, Richard seeks clarification of the January 20th Order whereas the rational of the Supreme Court is not evident from either Order.

Appellant/Petitioner Position

Richard notes that the Clerk and Court Commissioners simply stated:

IT IS FURTHER ORDERED that the motion to reconsider the January 21, 2021 order denying the petition for review is dismissed. There is no statutory authority permitting a motion for reconsideration of an order denying a petition for review, **Archdiocese of Milwaukee v. City of Milwaukee**, 91 Wis. 2d 625, 284 N.W.2d 29 (1979)

Richard's Motion for Reconsideration raised issues not covered by **Archdiocese**.

Richard in part, noted that **Archdiocese** was predicated upon Wis. Stat. 809.64 which stated:

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

Richard clarified that accepting arguendo that **Archdiocese** remains good law, his claim to reconsideration was not predicated upon the order being either a "judgment or an opinion" as defined in Wis. Stat. Rule 809.64.

His position on page 3-4 of his Motion for Reconsideration was that Wis. Stat. 809.14 allows for "other relief" not specifically defined by Wis. Stat. 809.64 and that neither the legislature nor the Court's would intend to prevent justice by an unreasoned denial of a Petition for Review (PFR); particularly given the history of this litigation.

The Clerk and Court Commissioners avoided this issue even though the denial of a PFR is "other relief" than noted in Wis. Stat. 809.64. This position was set forth in Richard's Motion for Reconsideration.

Archdiocese further stated:

Similarly, this court's order was clearly not an opinion within the meaning of the rule. Opinion is defined in Black's Law Dictionary (Rev. 4th Ed. 1968), pp. 1243-1244 as, among other things:

"The statement by a judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based." *See also*, 21 C.J.S., *Courts*, sec. 217, pp. 400-404.

Notwithstanding that Wis. Stat. 809.14 allows for "other relief," Richard set forth that the single word "denied" constitutes a decision, judgment, and opinion by the SC whereas it is the only offering of the Court. An unreasoned decision is synonymous to a judgment and to an opinion as defined above.

In **Archdiocese**, the SC stated, n sec. 806.01(1) (a), Stats., of the Rules of Civil Procedure, a judgment is defined as the determination of the action... The action in this case was determined by the court of appeals' decision affirming the trial court's judgment invalidating the ordinance in question. This court's order denying review of that

judgment did not determine the action but rather simply left the lower court's determination stand.

This is a semantical difference with no distinction.

The final action in the appeal is that of the SC. It determined the action when it "*simply left the lower court's determination stand.*"

This action constitutes an affirmance of the determination of the lower court. This is obviously a determinative action, no matter how "simply" it is construed or constructed.

Had it granted the PFR, the SC would again be the court of last resort and determine the action. If it then agreed with the lower court, it would affirm such court and the affirmation would terminate the action predicated upon the determination of the COA. The result would be exactly the same.

In *Wilson v. Sellers*, 138 S. Ct. 1188, 584 U.S., 200 L. Ed. 2d 530 (2018) @ 1194, a federal habeas corpus case, the Supreme Court discussed "unreasoned opinions" by the State's highest courts.

That is not surprising in light of the fact that the "look through" presumption is often realistic, for state higher courts often ...write "denied" or "affirmed" or "dismissed" when they have examined the lower court's reasoning and found nothing significant with which they disagree.

Again, the COA and SC make me argue rationale beyond the scope of a simple appeal simply because of they continue to decide against Richard with unreasoned or illogical and flawed legal reasoning.

A PFR is an extension of the appeal and the unreasoned denial of a PFR would logically suggest that the SC agrees with the rational of the COA and or Circuit Court. (ie. there is no basis for review and the "look through" principle applies)

As such, the denial of a PFR does in fact determines the action, whereas it is the "final order" in the Appeal that likely terminates the matter. **Archdiocese is illogical and should be cast upon the heap of badly decided legal precedence.**

Discretion by the SC, Clerk and Court Commissioners

Richard is trying not to raise the issue of bias, but it is obvious. The SC failed to exercise its discretion. There is no supportable reason to refuse to grant Richard's PFR. There is no reasonable Judge that could support the decision of either the CC or the COA.

The failure to offer a rationale for the denial of a PFR logically constitutes prima facie evidence that discretion was not exercised by the SC, but rather, the Court, Clerk and Commissioners simply decided Richard would not prevail.

This is not difficult to see.

As noted, the basis for the COA determination against Richard, was a series of violations of long-standing legal methodology and statute. (These all warranted the need for harmony/clarification)

1. Richard noted that the COA determined that a Personal Representative could not be removed because they had been appointed. (inane logic demanding clarification)
2. Richard noted that the COA determined that the Circuit Court Judge could exercise discretion where none was permitted by law; need not put his reasoning on the record but could make a sub-silentio determination in his mind, that relied upon the wrong legal standard. (violates all established legal principles and demands clarification.)
3. That the CC did not need to follow the statute as written and that the COA could add language to the statute to benefit the party adverse to Richard. (is abhorrent to the Court and Legislature and the citizens of Wisconsin and contrary to justice on every level).

It becomes obvious why the SC, the Clerk and the Court Commissioners deny review. The ongoing actions by the CC and COA are startling. This has been going on for nearly 11 years. The Court simply wants to purge itself of Richard.

Even at this stage, the Clerk and Commissioners do not express why Wis. Stat. 809.14 is not a practical for "other relief. The answer is simple. Richard's facts are all supportable on the record

and the rulings by the CC and COA are unreasonable. The lower courts did not follow case law or statutes; they simply ruled against Richard. The Court's cannot defend their position, so they never do.

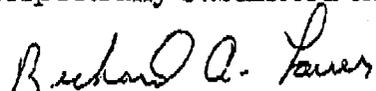
Richard will express this more clearly in a second motion relative to the same order of February 16, 2021 where he simply asked both the COA and the SC to expunge an order that dismissed an appeal for failure to file a brief which was not yet due.

Again, this Court will most likely not address that issue and its animus and abject bias will be demonstrated once again, perpetuating litigation and costs to Elizabeth's estate.

Conclusion:

- Wis. Stat. 809.14 sets forth grounds for "other relief." A Motion for Reconsideration of a non-judgment or non-opinion would qualify.
- Richard's PFR warranted review predicated upon the facts, the law and the required criteria for review.
- The SC did not exercise its discretion. It simply decided against Richard as is evidence by its lack of reasoning or reliance upon the proper legal standards.
- The SC should grant reconsideration, discretionary reversal, or review. It should clarify the issues Richard fails to comprehend.
- Richard requests the Court clarify the dismissal of appeal 17AP1790 as it served as the COA basis for claim preclusion in its August 18, 2020 order. (order on appeal)
- Richard requests the Court to clarify Wis. Stats. 857.15 and 809.14(3) as they relate to the decision to deny review.
- Richard requests the Court to consider this motion with his second motion regarding a request to expunge a void order in case 17AP1790.

Respectfully submitted this 5th day of March, 2021



Richard A. Lauer – pro se