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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

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

FAXED TO :

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STATE OF WISCONSIN SUPREME COURT

Appellate Case No. 2018AP1672

**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

FILED

MAR 05 2021

CLERK OF SUPREME COURT
OF WISCONSIN

**Motion for Reconsideration of the
February 16, 2021 Order by the Clerk
and Court Commissioners which
Denied a Motion to Expunge a Void
Order**

**Motion for Review of a Determination
by the Clerk and Commissioner.**

**Motion for Judicial Review of an
Order by the Clerk and
Commissioners.**

Richard A. Lauer – pro se
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Richard A. Lauer moves the Supreme Court (SC) to review the February 16, 2021 determination of the Clerk and Court Commissioners which took “no action” on a motion to expunge a void order.

Richard additionally moves the SC to issue a writ of mandamus under its *superintending authority*, to the Court of Appeals (COA) to expunge the Order of September 6, 2020 which is void ab initio as a matter of law and fact.

Richard moves the SC to reinstate appeal 17AP1790 whereas it was dismissed without basis in law, in a manner prejudicial against Richard A. Lauer.

History:

On September 6, 2018, the COA dismissed Richard’s appeal in 17AP1790 for his failure to file a brief which was not yet due.

OCCD CA 09-06-2018 Opinion/Decision
Judge Panel: Stark, Hruz, Seidl
Opinion: Memo Opinion
Decision: Delinquency Dismissal Pages: 2
Order Text: IT IS ORDERED that appeal No. 2017AP1790 is dismissed. IT IS FURTHER ORDERED that the motion for consolidation is denied.

As set forth in his Petition for Review (PFR), Richard’s brief was due on August 24, 2018. On August 23 Richard filed a Motion for Consolidation under Wis. Stat. 809.14(3) a. ¹

By operation of Wis. Stat. 809.14 (3) a, the briefing period was tolled until the date the COA decided the Motion.

¹ (3)

(a) The filing of a motion seeking an order or other relief which may affect the disposition of an appeal or the content of a brief, or a motion seeking consolidation of appeals, automatically tolls the time for performing an act required by these rules from the date the motion was filed until the date the motion is disposed of by order.

As shown in the table, the decision of the COA on the Motion for Consolidation was not made until September 6, 2018. Richard's brief was due not at the time the appeal was dismissed for failure to file a brief.

On August 18, 2020, the same Judicial Panel issued the Order which is at the heart of this appeal

In that order, the Stark, Hruz and Seidel panel stated the following.

Richard appealed the July 26 order and judgment, as well as a subsequent order denying his motion for reconsideration. In an opinion and order dated September 6, 2018, that appeal, No. 2017AP1790, was dismissed pursuant to WIS. STAT. RULE 809.83(2), based on Richard's failure to either file a brief or establish good cause for an extension.

¶14 During the pendency of appeal No. 2017AP1790, Richard filed the underlying petition for a hearing to remove Dennis and Hahn as personal representative and attorney, respectively, of the estate. Richard also moved again for the judge's recusal. The circuit court denied the petition and motion without a hearing, and this appeal follows.

They continue:

The elements of claim preclusion appear to apply, as the issues in this appeal could have been raised in Richard's earlier appeal, *had he filed a brief.* (my emphasis).

Furthermore, we view Richard's prior appeal as essentially moving to reopen the prior judgment, and to the extent he is again making such a claim in the present appeal, it is not properly before us. Although Richard's present appeal may be procedurally barred, we nevertheless address the merits of his arguments.

POINT 1: Judges Stark, Hruz and Seidel raised the issue of the September 6, 2018 order as the basis of a claim preclusion knowing full well that they dismissed an appeal in violation of Wis. Stat. 809.14(3) a. Clearly such issue is relevant to the COA determination and the subsequent PFR.

POINT 2: The order of September 6, 2018 is void ab initio. Richard did not fail to timely file a brief or seek an extension. In fact, not only did Richard file a Motion for Consolidation, but he additionally filed for an extension. The COA fails to address

either of these points in raising the claim preclusion issue on behalf of the respondent.

POINT 3: The panel states:

Furthermore, we view Richard's prior appeal as essentially moving to reopen the prior judgment, and to the extent he is again making such a claim in the present appeal, it is not properly before us.

This is non-sensical whereas Richard was not moving to reopen Appeal No. 2016AP465 as alleged by the panel. In fact, Richard clearly stated that the "**appointment** of Dennis Lauer as Personal Representative" (PR), was a prerequisite to his removal as a PR. The COA avoided this obviously relevant requirement.

Richard's Motion for Expungement

In its February 16th order, the Clerk and Commissioners note that it "construes" Richard motion for expungement, "...as a motion to reconsider the court of appeals' order of September 6, 2018.

This is untenable and simply a tactic by which the Clerk and Commissioners seek to avoid the issue of the void order and the illicit dismissal of a prior appeal as a basis for the alleged claim preclusion by the COA in the instant matter.

It is relevant to the instant appeal and PFR, whereas the panel itself raised the issue. The matter is reviewable by the SC whereas, the issue has escaped all judicial scrutiny and both the SC and COA are well aware of the violation by the COA.

POINT 1: Richard's motion sought only to expunge a void order. The SC Clerk and Commissioners are well aware of this and simply did a legal contortion of Richard's motion for expungement predicated upon the facts in the instant appeal and PFR.

POINT 2: Either the September 6th order is void or it is not. If the Court deems it is not, Richard will raise constitutional violations in yet another process of litigation. If the Court deems it to be void, the dismissed appeal must be reinstated.

Wis. Stat. 809.83(2)

The COA noted on August 18, 2018 that,

No. 2017AP1790, was dismissed pursuant to WIS. STAT. RULE 809.83(2), based on Richard's failure to either file a brief or establish good cause for an extension.

Dismissal under 809.83(2) requires a showing of egregious conduct.

¶ 31. For a court to dismiss an appeal under § (Rule) 809.83(2), there must be a showing that the party or the party's attorney has demonstrated bad faith or egregious conduct, or there must be a common sense finding that the appeal has been abandoned. *State v. Smythe*, 592 N.W.2d 628, 225 Wis. 2d 456 (1999).

Richard's brief was not yet due when the appeal was dismissed. He additionally filed for an extension and tolling was mandated by Wis. Stat. 809.14(3).

Summary

The Clerk and Commissioners are likely well aware of the 11-year history of this matter. The COA and SC likely have an awareness as this matter has resulted in minimally 8 appeals and 3 or 4 PFR's.

The present issue is relatively clear. The 3 Judge COA panel raised the issue of the September 6, 2018 order. Whether the Order is void is of monumental consideration to either the granting or denial of a PFR. Certainly, it is relevant to the issue of expungement and reinstatement of an appeal in the context of the instant case.

The SC and COA are well aware that void judgments can be challenged at anytime and that expungement is mandatory, not discretionary.

The Clerk and Commissioners, the SC Justices and the 3 Judge Panel are all aware that appeal 17AP1790 was illicitly dismissed. Now the SC again denies review and expungement of that matter brought up by the COA, simply because it will work to Richard's advantage. This is most perplexing and the SC, the Clerk and the Commissioners should clarify their actions and legal bases.

Additionally, the SC is aware that, to disenfranchise Richard, the COA added words to Wis. Stat. 857.15; did not require the Circuit Court to place it reasoning on the record as required by *McCleary v. State*, 182 N.W.2d 512, 49 Wis. 2d 263, 153 Wis. 208 (1971) and other such case law.; proffered conjecture that the Circuit Court Judge could make a sub-silentio discretionary ruling in violation of Wis. Stat 857.15 and *McCleary* ; and that such ruling could be predicated upon the wrong legal standard.

The COA further determined that a Personal Representative could not be removed simply because they were appointed thus creating case law in opposition to both the SC and statutes.

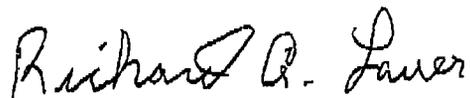
The PFR should be granted whereas Wis. Stat. 809.14(3) needs to be clarified; Wis. Stat. 857.15 needs to be clarified and Wis. Stat. 809.14 needs to be clarified and harmonized with *Archdiocese of Milwaukee v. City of Milwaukee*, 91 Wis. 2d 625, 284 N.W.2d 29 (1979), relative to "other relief."

PFR are extensions of an appeal and an order denying review is likely a constitutional due process issue. The denial of a PFR is the last order likely in an appeal and reconsideration on flawed legal reasoning is warranted.

Richard awaits the decision of the SC on this motion before raising any further Bias, Prejudice, Recusal or Constitutional issues.

Richard's Motion to Expunge a Void order is relevant to the present appeal whereas the issue was raised by the COA in its decision of August 18, 2020. This is the underlying order on appeal in this matter and in the related PFR.

Submitted this 5th day of March 2021



Richard A. Lauer