



OFFICE OF THE CLERK  
**Supreme Court of Wisconsin**

110 EAST MAIN STREET, SUITE 215

P.O. Box 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: [www.wicourts.gov](http://www.wicourts.gov)

FILED

01-08-2025

CLERK OF WISCONSIN

SUPREME COURT

January 8, 2025

**To:**

Hon. Stephen E. Ehlke  
Circuit Court Judge  
Electronic Notice

Jeff Okazaki  
Clerk of Circuit Court  
Dane County Courthouse  
Electronic Notice

Mel Barnes  
Electronic Notice

Leslie Anne Freehill  
Electronic Notice

Charlotte Gibson  
Electronic Notice

Teresa A. Manion  
Electronic Notice

\*Distribution List continued on Page 5.

You are hereby notified that the Court has entered the following order:

---

No. 2024AP1713

Wisconsin State Legislature v. Wisconsin Dept. of Public  
Instruction, L.C. #2024CV1127

On October 29, 2024, defendants-counterclaim plaintiffs-appellants-cross respondents, Wisconsin Department of Public Instruction and Tony Evers (collectively, "DPI"), filed a petition to bypass the court of appeals pursuant to Wis. Stat. § (Rule) 809.60. The bypass petition concerns a summary judgment "Decision and Order" of the Dane County Circuit Court, Hon. Stephen E. Ehlke, presiding, entered on August 27, 2024 (the "decision"). Both DPI and plaintiff-counterclaim defendant-respondent-cross appellant, Wisconsin State Legislature, filed notices of appeal regarding the circuit court's decision. Both DPI and the Legislature identified the circuit court's decision as "final" in their notices of appeal.

In a November 4, 2024 order, the court of appeals stated that "[i]t appears . . . that the [decision] from which both sides appeal is not a final [decision]," because "[w]hile the document contains extensive reasoning and ultimately grants summary judgment to both sets of defendants," it lacks explicit language that "actually dispose[s] of either the plaintiffs' or the counterplaintiff's claims." The court of appeals explained that while it "would ordinarily take steps to address this

Page 2

January 8, 2025

No. 2024AP1713

Wisconsin State Legislature v. Wisconsin Dept. of Public  
Instruction, L.C. #2024CV1127

jurisdictional concern,” it would not do so here in light of the bypass petition currently pending before this court.

We acknowledge the court of appeals’ concern that the circuit court’s decision may not be a final order or judgment from which an appeal can be taken. In light of the foregoing, and in order to eliminate any question as to this court’s jurisdiction to consider the pending bypass petition,

IT IS ORDERED that within seven calendar days of the date of this order, the Dane County Circuit Court, Hon. Stephen E. Ehlke, presiding, shall enter a written order or judgment based on the August 27, 2024 “Decision and Order” that clearly satisfies the finality requirement of Wis. Stat. § 808.03. See, e.g., Wambolt v. West Bend Mut. Ins. Co., 2007 WI 35, ¶39, 299 Wis. 2d 723, 728 N.W.2d 670; see also Wis. Const. art. VII, § 3(2) (“The supreme court may issue all writs necessary in aid of its jurisdiction.”). It is unnecessary for any party to file a new notice of appeal; the notices of appeal already filed will be considered filed as of the date the final written order or judgment required above is entered, pursuant to Wis. Stat. § 808.04(8); and

IT IS FURTHER ORDERED that within seven calendar days of the entry of the final written order or judgment required above, the clerk of the circuit court shall cause the appellate record to be supplemented with that order or judgment; and

IT IS FURTHER ORDERED that within seven calendar days of the supplementation of the appellate record with the final written order or judgment required above, defendants-counterclaim plaintiffs-appellants-cross respondents, Wisconsin Department of Public Instruction and Tony Evers, shall file an amended appendix to their opening appellate brief that includes the final written order or judgment. This requirement does not, however, affect the existing appellate briefing deadlines; and

IT IS FURTHER ORDERED that an order disposing of the pending petition for bypass will be issued in due course.

BRIAN HAGEDORN, J. (*concurring*). I understand the court’s order to be an exercise in caution and join it on that basis. It appears the parties and the circuit court thought all matters in litigation had been resolved. But to avoid any lack of clarity, we send this back to the circuit court to make it explicit. If all matters in the litigation have not been resolved, then this litigation is not properly before us.

ANNETTE KINGSLAND ZIEGLER, C.J. (*dissenting*). Today’s order requires the circuit court to enter an order that “clearly satisfies” the finality requirement for an appeal as a matter of right. See Wis. Stat. § 808.03(1) (stating “[a] final judgment or final order is a judgment, order or disposition that disposes of the entire matter in litigation as to one or more of the parties”). This court does not typically command circuit courts to enter final orders to simplify and expedite this court’s potential review of cases. I cannot think of a time this court has so acted. And today’s

Page 3

January 8, 2025

No. 2024AP1713

Wisconsin State Legislature v. Wisconsin Dept. of Public  
Instruction, L.C. #2024CV1127

order cites no cases in which we have done so. Courts of last resort ought not to meddle with the processes of the lower courts to ensure that an issue may be heard. Certainly, with five votes the court can take today's action. But without citing any cases and without granting the petition for bypass, the court reaches down and orders the circuit court to enter a final order to seemingly ensure review of an issue that very well may not otherwise be ready for appellate review—let alone appellate review on bypass. I see no reason to deviate from the normal course in this case. This court has, after all, regularly entertained cases in which a question presented was whether an order was final for purposes of § 808.03(1).<sup>1</sup> See, e.g., Harder v. Pfitzinger, 2004 WI 102, 274 Wis. 2d 324, 682 N.W.2d 398; Wambolt v. W. Bend Mut. Ins. Co., 2007 WI 35, 299 Wis. 2d 723, 728 N.W.2d 670; Tyler v. RiverBank, 2007 WI 33, 299 Wis. 2d 751, 728 N.W.2d 686; Sanders v. Estate of Sanders, 2008 WI 63, 310 Wis. 2d 175, 750 N.W.2d 806; Kenosha Pro. Firefighters, Loc. 414, IAFF, AFL-CIO v. City of Kenosha, 2009 WI 52, 317 Wis. 2d 628, 766 N.W.2d 577; Admiral Ins. Co. v. Paper Converting Mach. Co., 2012 WI 30, 339 Wis. 2d 291, 811 N.W.2d 351.

I would have this case continue under the normal processes and procedures, and for that reason I respectfully dissent.

REBECCA GRASSL BRADLEY, J. (*dissenting*). In 2007, this court explained that for an order or judgment to be final for purposes of appeal as a matter of right under Wis. Stat. § 808.03(1), it must “‘dispos[e]’ of [a] case . . . [with] an explicit statement dismissing or adjudging an entire matter in litigation as to one or more parties.” Wambolt v. West Bend Mut. Ins. Co., 2007 WI 35, ¶35 n.13, 299 Wis. 2d 723, 728 N.W.2d 670. An order or judgment that contains “language [] merely grant[ing] a motion for summary judgment does not suffice to dispose of an entire matter in litigation.” Id., ¶35 n.14. As the court of appeals recognized in a November 4, 2024 order, “[i]t appears [] that the order from which both sides appealed is not a final order” because the circuit court’s order did not dispose of the entire matter in litigation. Ct. App. Order, Nov. 4, 2024. The court of appeals observed that while the order “ultimately grants summary judgment to both sets of defendants, it does not actually dispose of either the plaintiff’s or the counterplaintiff’s claims. “Deciding” a case in the sense of merely analyzing legal issues and resolving questions of law does not dispose of an entire matter in litigation.” Ct. App. Order, Nov. 4, 2024 (quoting Wambolt, 299 Wis. 2d 723, ¶34). Under Wis. Stat. § 808.03(1), neither party in this case possesses a right to appeal because the circuit court’s order from which they

---

<sup>1</sup> Contrary to the concurrence’s suggestion, whether the parties and the circuit court believed that the order was final for purposes of appeal is of no consequence. Wambolt v. W. Bend Mut. Ins. Co., 2007 WI 35, ¶30 n.9, 299 Wis. 2d 723, 728 N.W.2d 670 (explaining that an order is final whether or not a circuit court intends for an order to be final); State v. Carter, 2010 WI 77, ¶50, 327 Wis. 2d 1, 785 N.W.2d 516 (explaining that this court is not “bound by the parties’ interpretation of the law” and “[t]his court, not the parties, decides questions of law”).

Page 4

January 8, 2025

No. 2024AP1713

Wisconsin State Legislature v. Wisconsin Dept. of Public  
Instruction, L.C. #2024CV1127

appealed is not a final order.<sup>2</sup> Accordingly, neither the court of appeals nor this court have jurisdiction to hear this appeal. Rather than saying so, this court presumes the circuit court intended to enter a final order and orders the circuit court to enter a new order satisfying the finality requirement. If the rules of appellate procedure may be so casually disregarded by the state's highest court, perhaps they warrant amendment. While the rules remain in place, I would follow them and deny the petition for bypass because this court lacks jurisdiction to entertain it.

---

Samuel A. Christensen  
Clerk of Supreme Court

---

<sup>2</sup> The concurrence mistakenly frames the finality inquiry as a matter of what the parties and the circuit court “thought.” This court has repeatedly explained “it is the language of the order or judgment, and not anyone’s intentions, upon which the inquiry is based.” Admiral Ins. Co. v. Paper Converting Machine Co., 2012 WI 30, ¶25 n.11, 339 Wis. 2d 291, 811 N.W.2d 351.

Page 5

January 8, 2025

No. 2024AP1713

Wisconsin State Legislature v. Wisconsin Dept. of Public  
Instruction, L.C. #2024CV1127

Distribution List continued:

Amy Catherine Miller  
Electronic Notice

Colin Thomas Roth  
Electronic Notice

Anthony Russomanno  
Electronic Notice

Ryan J. Walsh  
Electronic Notice