Appellate Procedure

Court of Appeals – Authority of Court of Appeals to Overrule Prior Published Opinion

***Wisconsin Voter All. v. Secord*, 2025 WI 2 (filed Jan. 17, 2025)**

HOLDING: The court of appeals was bound to follow an earlier published decision of the court of appeals that addressed the same legal issue.

SUMMARY: The Wisconsin Voter Alliance filed identical petitions for writ of mandamus against the registers in probate for 13 Wisconsin circuit courts, demanding access to Notice of Voting Eligibility (NVE) forms under Wisconsin's public records law. These forms are used by circuit courts to document their findings regarding an individual's competency to vote.

In the first case to reach the Wisconsin Court of Appeals, District IV of the court issued a unanimous published opinion holding that the public records law and Wis. Stat. section 54.75 exempt NVE forms from disclosure; thus, Wisconsin Voter Alliance was not entitled to them. *See Wisconsin Voter All. v. Reynolds,* 2023 WI App 66, 410 Wis. 2d 335, 1 N.W.3d 748. Shortly thereafter, District II of the court reached the opposite conclusion in an unpublished decision, holding that the public records law and Wis. Stat. section 54.75 do not exempt NVE forms from disclosure; thus, Wisconsin Voter Alliance was entitled to them. The analysis that follows deals with the appeal of the District II case to the supreme court.

In a majority opinion authored by Justice Protasiewicz, the supreme court reversed the decision of District II. The court did not reach the merits of the litigation regarding the disclosure of the NVE forms. Rather, it held that District II was bound by District IV's published decision in *Reynolds,* finding that the two appeals "are virtually indistinguishable" (¶ 31). The court of appeals, which is comprised of four districts that sit in different parts of the state, is a unitary court – not four separate courts. Officially published opinions of the court of appeals are precedential and have statewide effect. Only the supreme court can overrule, modify, or withdraw language from a published court of appeals opinion (*see* ¶ 32).

When the court of appeals disagrees with a prior published court of appeals opinion, it has only two options. It may certify the appeal to the supreme court and explain why it believes the prior opinion is wrong. Or it may decide the appeal, adhering to the prior opinion, and explain why it believes the prior opinion is wrong (*see* ¶ 3). *See Cook v. Cook,* 208 Wis. 2d 166, 560 N.W.2d 246 (1997). Because District II violated *Cook* in reaching a decision that conflicted with prior published authority from District IV, the supreme court reversed and remanded this case to District II with instructions to follow *Cook.*

Justice Hagedorn filed a concurring opinion in which he agreed with the majority's decision but questioned whether the rule of *Cook* rests on a solid legal foundation and is worthy of reexamination. Justice R.G. Bradley filed a dissent that was joined in by Chief Justice Ziegler.

Final Orders – Appellate Jurisdiction

***Morway v. Morway*, 2025 WI 3 (filed Jan. 22, 2025)**

HOLDING: The Wisconsin Court of Appeals correctly dismissed the appeal in this case for lack of jurisdiction because the notice of appeal was untimely.

SUMMARY: David and Karen Morway were divorced on March 25, 2019. On May 22, 2022, David filed a motion to modify or terminate maintenance due to a substantial change in his employment. In April 2023, the circuit court rendered an oral decision denying the motion, and it memorialized that decision in a written order on May 24, 2023. The order did not contain a statement indicating that it was final for purposes of appeal. Set forth in the findings of the May 24 order was a statement anticipating that Karen would be filing a separate motion for overtrial. On June 2, 2023, Karen filed that overtrial motion, which was subsequently granted. On August 28, 2023, the court ordered David to pay a set amount in fees and costs.

On Sept. 1, 2023, 100 days after the circuit court entered the May 24 order regarding maintenance, David filed a notice of appeal from the August 28 order and all prior nonfinal orders. Upon receipt of the notice of appeal, the court of appeals instructed the parties to file memoranda addressing whether the May 24 order was final. The court questioned its jurisdiction to hear David's appeal because his notice of appeal was filed outside the 90-day timeframe for filing appeals. Ultimately, the court concluded that the May 24 order was final for purposes of appeal because it disposed of all matters raised in David's post-judgment maintenance motion. As a result, David's appeal was not timely, and the court of appeals dismissed his appeal because of lack of jurisdiction. In a majority opinion authored by Justice A.W. Bradley, the supreme court affirmed.

A judgment or order of a circuit court is appealable to the court of appeals as a matter of right only if the judgment or order is "final." Wis. Stat. section 808.03(1) defines "final judgment" and "final order" as "a judgment, order or disposition that disposes of the entire matter in litigation as to one or more of the parties ...." Once a circuit court enters a final judgment or order, a party seeking to appeal has no more than 90 days to file a notice of appeal, unless the law provides otherwise. Because David filed his notice of appeal 100 days after the May 24 order was entered, this raised the question whether the May 24 order disposed of the entire matter in litigation and therefore was final for purposes of appeal (*see* ¶ 18).

A judgment or order disposes of the entire matter in litigation when the text of that judgment or order leaves nothing else to be decided as a matter of substantive law. If a judgment or order does not clearly dispose of the entire matter in litigation as to one or more of the parties, then the court will liberally construe ambiguities in that judgment or order to preserve the right to appeal. Circuit courts are required to indicate that their final judgments and orders are final for purposes of appeal with a finality

BLINKA

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In this column, Prof. Daniel D. Blinka and Prof. Thomas J. Hammer summarize all decisions of the Wisconsin Supreme Court (except those involving lawyer or judicial discipline).

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statement. However, an incorrect or nonexistent finality statement will not render ambiguous an otherwise unambiguous final judgment or order (*see* ¶ 25).

A majority of the supreme court concluded that "the May 24 order unambiguously disposed of the entire matter in litigation. When the circuit court entered the May 24 order, all that was before the court was David's motion to modify or terminate maintenance, which the order explicitly denied. The May 24 order provided that David was not entitled to a refund of any maintenance paid since his employment contract expired. It stated that '[m]aintenance to Karen will not be terminated' and that '[a]ny maintenance received by Karen since June 30, 2022, shall not be returned or refunded to David.' Therefore, we conclude that the finality of the May 24 order is not ambiguous because its language makes clear that there was nothing left to be decided as a matter of substantive law. Accordingly, we determine that the May 24 order disposed of the entire matter in litigation" (¶ 34). David's notice of appeal, which was filed outside the 90-day timeframe for appeal, was not timely, and the court of appeals therefore properly dismissed the appeal for lack of jurisdiction (*see* ¶ 40).

The majority took the opportunity to reaffirm the rule that circuit courts are required to include a finality statement on final judgments and orders. This requirement brings clarity to the question of when the clock for filing appeals begins to run (*see* ¶ 39).

Justice Dallet filed a concurring opinion. Justice Hagedorn filed a dissent that was joined in by Justice R.G. Bradley. Chief Justice Ziegler did not participate in this case.

Election Law

Wisconsin Elections Commission – Appointment of Administrator

***Wisconsin Elections Comm'n v. LeMahieu*, 2025 WI 4 (filed Feb. 7, 2025)**

HOLDING: The Wisconsin Elections Commission (WEC) does not have a duty to appoint a new administrator when the term of the current administrator expires and the current administrator lawfully holds over in that position.

SUMMARY: The WEC possesses numerous powers and duties with respect to the administration of elections in Wisconsin. Among those duties is the appointment of an administrator, who serves as the chief election officer of the state. In 2019, the Wisconsin Senate confirmed the WEC's appointment of Meagan Wolfe to serve a term that would expire in 2023. Although her term has expired, the WEC has not appointed a replacement, and Wolfe is lawfully holding over as the administrator.

In this action, several leaders in the Wisconsin Legislature sought mandamus and declaratory judgment relief, alleging that the WEC has a duty to appoint a new administrator. They contended that Wolfe's term as the administrator of the WEC expired in 2023 and that the WEC must appoint a new administrator. The circuit court disagreed and granted the WEC's motion for judgment on the pleadings, reasoning that Wis. Stat. section 15.61(1)(b)1. does not place a duty on the WEC to appoint a new administrator when the current administrator's term expires and the current administrator lawfully holds over. Instead, the WEC has a duty to appoint a new administrator only when a vacancy in the position occurs (*see* ¶¶ 2, 9). The legislators appealed. The WEC filed a petition to bypass the court of appeals, and the supreme court granted that petition.

In a majority opinion for a unanimous court authored by Chief Justice Ziegler, the supreme court concluded that "[s]ection 15.61(1)(b)1. imposes a duty on WEC to appoint a new administrator only '[i]f a vacancy occurs in the administrator position[.]' No vacancy in the position exists. [*State ex rel. Kaul v.*] *Prehn*, 402 Wis. 2d 539; Wis. Stat. § 17.03. Consequently, under [Wis. Stat. section] 15.61(1)(b)1., WEC does not have a duty to appoint a new administrator to replace Wolfe simply because her term has ended" (¶ 31). The WEC *may* appoint a new administrator to replace her, but it need not do so (*see* ¶ 30). Accordingly, the circuit court did not err in denying the writ of mandamus.

Justice A.W. Bradley, joined by Justice Dallet and Justice Karofsky, joined the majority opinion and also filed a concurrence. Justice R.G. Bradley, joined by Chief Justice Ziegler, also filed a concurring opinion. **WL**