Wisconsin Law Journal

NEED TO KNOW: What is a 'final judgment or order' for the purposes of appeal?

By: Kimberly Alderman August 15, 2014 1:45 pm

Wisconsin statutes are clear that a final judgment or order is appealable as a matter of right, unless an exception applies.

Kimberly Alderman is an attorney and owner of the Alderman Law Firm, Madison. She maintains the Wisconsin Appeals Blog.

So the Court of Appeals is required to consider a losing party's request for review of a final judgment or order. Meanwhile, a losing party may appeal a nonfinal order only if the Court of Appeals first grants him or her leave to do so. Wis. Stat. § 808.4(2).

So, what is a final judgment or order for the purpose of appeal? Put another way, when does a losing party have the right to appeal, and when must he or she first seek permission to do so?

A final judgment or order "disposes of the entire matter in litigation as to one or more of the parties." Wis. Stat. § 808.03(1). A court disposes of a matter by way of explicit statements on the judgment or order that the adjudication is final. Wambolt v. Illinois Farmers Insurance Company, 2007 WI 35, 299 Wis. 2d 723, 728 N.W.2d 670. Often, circuit court judgments conclude with words akin to, "This order is final for purposes of appeal." These words are not necessary for an order to qualify, however.

In order for the court to dispose of the "entire matter," the order must meet two requirements. Harder v. Pfitzinger, 2004 WI 102, ¶12, 274 Wis. 2d 324, 682 N.W.2d 398. First, it must resolve all the substantive issues between the parties in the case. Id. Second, the order must be the final document the court intended to issue in the case. Id.

In Fredrick v. City of Janesville, 92 Wis. 2d 685, 285 N.W. 2d 655 (1979), the Wisconsin Supreme Court further explained:

"The test of finality is not what later happened in the case but rather, whether the trial court contemplated the document to be a final judgment or order at the time it was entered. This must be established by looking at the document itself, not to subsequent events.

Similarly, in Wick v. Mueller, 105 Wis. 2d 191, 313 N.W.2d 799 (1982), the state Supreme Court held that an order for a new trial was not final and, thus, could not be appealed as of right. The appellate courts do not wish to interrupt the operation of circuit court proceedings or to consider "piecemeal appeals from interlocutory orders." Id.

On the other hand, in ACLU v. Thompson, 155 Wis. 2d 442, 455 N.W.2d 268 (Ct. App. 1990), a judgment on the merits in a federal civil rights action was final for the purpose of appeal, even though the plaintiff's § 1983 claim for attorney's fees remained unresolved. Similarly, in Laube v. City of Owen, 209 Wis. 2d 12, 561 N.W.2d 785 (Ct. App. 1997), the court held that an order on the merits in a condemnation action was final, even though a party's statutory request for litigation expenses was still pending.

The rationale is that the trial result is "uniquely separable" from the issue as to attorneys fees and expenses. Northwest Wholesale Lumber, Inc. v. Anderson, 191 Wis.2d 278, 528 N.W.2d 502 (Wis. App., 1995).

In order to be considered final, the judgment or order also must be recorded. For standard circuit court cases, recording occurs by entry of the order in the office of the clerk of courts. Wis. Stat. § 808.03(1)(a). Final judgments or orders in small claims, traffic or municipal ordinance violation cases may be recorded via corresponding docket entries. Wis. Stat. § 808.03(1)(b), (c), and (d).

As a practical matter, a trial attorney should carefully review a final judgment or order for any remaining actions that may need to be taken by the court. If substitutive issues remain, the judgment or order might not be considered final upon closer inspection, even if so designated.

Similarly, when a court issues a spate of orders, such as when considering cross dispositive motions or deciding fact and law separately, it is critical to be able to identify which of the orders is the final order (or, in some cases, the first final order), in order to be able to accurately assess the deadline to file a notice of appeal.{ http://wislawjournal.com /2013/10/28/what-to-do-when-you-lose-at-circuit-court/}

In some instances, it may be necessary to request that the court clarify its holding in order to resolve any lingering substantive or procedural issues and thereby reduce the number of possible issues on appeal.

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ONE COMMENT

HeLP Please
August 17, 2014 at 9:23 am

I need help. My husband who is on extended supervision has been held on a PO hold since May 31st 2014 on 4 allegations for a incident that did not involve him. On June 1st, we went before the DA & they listened to what occurred & decided not to Charge him & the state as decided NOT to pick up the charges. However, his PO who HATES my husband to the CORE decided to put a PO hold on him to do his own investigation & decided to recommend 3yrs for revocation (no surprise) and of course my husband wanted a hearing. So on July 16th, we went before a ALJ and both sides told happened. On July 20th the ALJ decided to NOT REVOKE. So of course his bitter PO waited until the last business day to file an Appeal. So it went to the Administrator in Madison for an appeal decision. And last week the Administrator also gave a decision to NOT REVOKE. The PO & his supervisor still want release my husband. What can I do?