COURT OF APPEALS
DECISION
DATED AND FILED

December 21, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP2099 **Cir. Ct. No. 2007CV1392**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

ADMIRAL INSURANCE COMPANY,

PLAINTIFF-APPELLANT,

V.

PAPER CONVERTING MACHINE COMPANY (PCMC),

DEFENDANT-RESPONDENT,

CHUBB CUSTOM INSURANCE COMPANY,

DEFENDANT-CO-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Dismissed; costs denied.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Admiral Insurance Company and Chubb Custom Insurance Company appeal a judgment dismissing their claims against their insured, Paper Converting Machine Company. We initially decided the appeal on the merits, including the following language in a footnote:

> Admiral and Chubb purport to appeal from a judgment entered July 8, 2009 that, "[b]ased on the court's Decision of March 26, 2009, with respect to the parties' cross-motions for summary judgment[,]" dismissed both parties' claims against Paper Converting. However, the March 26, 2009 written "Decision and Order" already explicitly stated that the circuit court denied Admiral's and Chubb's motions for summary judgment, granted Paper Converting's motion for summary judgment and that "[t]he Court hereby orders this case dismissed."
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> Thus, it appears the March 26 Decision and Order was the WIS. STAT. § 808.03(1)(a) appealable final order. *See* ***Wambolt v. West Bend Mut. Ins. Co.***, 2007 WI 35, ¶31, 299 Wis. 2d 723, 728 N.W.2d 670. The time for appeal from that order would have expired no later than June 24, 2009. *See* WIS. STAT. § 808.04(1). Admiral and Chubb did not initiate their respective appeals until August 12 and August 20, 2009. *See* WIS. STAT. RULE 809.10(1).
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> However, because Paper Converting did not object to the untimely filings and filed a response brief, it has waived any issue of our jurisdiction over the appeal. *See* WIS. STAT. § 807.07(1) ("[T]he respondent shall be deemed to have waived all objections … to the jurisdiction over the parties of the appellate court, unless the respondent moves to dismiss such appeal before taking or participating in any other proceedings in said appellate court."); ***State v. Van Duyse***, 66 Wis. 2d 286, 291, 224 N.W.2d 603 (1975) (timeliness of appeal goes to jurisdiction over parties).

However, we withdrew our decision on our own motion.

¶2 In ***Van Duyse***, the supreme court held:

> We conclude the holding in [***Scheid v. State***, 60 Wis. 2d 575, 211 N.W.2d 458 (1973)] is correct insofar as it holds that timeliness of an appeal goes to our jurisdiction. However, it is jurisdiction over the parties that failure to

> file and serve notice of appeal on time calls in question. It does not go to subject matter jurisdiction.

State v. Van Duyse, 66 Wis. 2d 286, 291, 224 N.W.2d 603 (1975). While ***Van Duyse*** has not previously been cited negatively by any court, its holding is no longer good law. Subsequently, in ***State v. Sorenson***, 2000 WI 43, ¶16, 234 Wis. 2d 648, 611 N.W.2d 240, our supreme court indicated, "The timely filing of a notice of appeal is necessary to give the court of appeals *subject matter jurisdiction* over an appeal." (Emphasis added.)

¶3 A court must raise questions of subject matter jurisdiction even if the parties do not, and subject matter jurisdiction cannot be obtained by a party's waiver or consent. ***State ex rel. Skinkis v. Treffert***, 90 Wis. 2d 528, 535-36, 280 N.W.2d 316 (Ct. App. 1979). Therefore, because no party filed a timely appeal from the circuit court's March 26, 2009 final order, we lack subject matter jurisdiction and must dismiss the appeal. No party shall recover their WIS. STAT. RULE 809.25 appellate costs.[1]

By the Court.—Appeal dismissed; costs denied.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

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[1] Wisconsin adopted a new public domain citation scheme in 2000. A decade later, we are now well beyond what might be deemed a reasonable learning curve for attorneys to begin using the mandatory public domain citation. *See* WIS. STAT. RULE 809.19(1)(e); WIS. SCR 80.02. Yet, Paper Converting's brief improperly cites to every case decided since 2000. This places an additional and unnecessary burden on the court. We therefore advise Paper Converting's appellate counsel that future rules violations may incur sanctions under WIS. STAT. RULE 809.83(2).

All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.