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DISTRICT III

April 30, 2024

To:

Hon. R. Michael Waterman
Circuit Court Judge
Electronic Notice

S. Michael Murphy
Electronic Notice

Kristi Severson
Clerk of Circuit Court
St Croix County Courthouse
Electronic Notice

Pat Schottler
1479 160th St.
New Richmond, WI 54017

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

2022AP1479

Pat Schottler v. The Department of Transportation Secretary
(L. C. No. 2021CV448)

Before Stark, P.J., Hruz and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Pat Schottler, pro se, appeals an order denying a motion for reconsideration of an order dismissing his petition for judicial review of an action by the Wisconsin Department of Transportation (“the Department”). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We dismiss the appeal for lack of jurisdiction. *See* WIS. STAT. RULE 809.21 (2021-22).¹

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In 2014, the Department received information causing it to question Schottler's ability to safely operate a motor vehicle. The Department consequently ordered Schottler to submit to an examination in accordance with WIS. STAT. § 343.16(6)(a), and it informed Schottler that he needed to have a medical provider complete certain forms within thirty days of the order to ensure that Schottler met the medical standards for licensing to operate a motor vehicle. When Schottler failed to timely provide the medical forms, the Department canceled his Class D driver's license.

Nearly five years later, Schottler petitioned for judicial review of the Department's decision. The circuit court dismissed the petition as untimely, and this court affirmed. *Schottler v. DOT Secretary*, No. 2020AP840, unpublished op. and order (WI App June 22, 2021). In November 2021, Schottler wrote a letter to the Department asserting that the 2014 cancellation of his Class D driver's license was unconstitutional. In a letter dated December 9, 2021, the Department recounted the case history and informed Schottler that it deemed the matter closed. The Department added that Schottler could pursue reinstatement of his driver's license "at any time upon submitting a neurological evaluation and a psychological evaluation" showing his fitness to drive. Schottler then filed the underlying petition for judicial review. The Department moved to dismiss Schottler's petition on five grounds: (1) that the December 9 letter was not a reviewable agency decision; (2) claim preclusion; (3) issue preclusion; (4) sovereign immunity; and (5) misjoinder of claims in a judicial review proceeding. In a decision and order entered on May 12, 2022, the circuit court dismissed the petition. The court noted that it lacked jurisdiction to review agency decisions except as authorized by statute. It further noted that WIS. STAT. § 227.52 provides: "Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to

review as provided” in WIS. STAT ch. 227. The court concluded, however, that the action expressed in the Department’s December 9 letter was not subject to judicial review, as it merely declined Schottler’s invitation to relitigate the 2014 cancellation of his driver’s license. The court added that “[t]he reviewable decision happened in 2014, and Schottler cannot resurrect his right to judicial review seven years later simply by insisting that he is a fit driver and that the [D]epartment’s decision was wrong.” Consistent with *Wambolt v. West Bend Mutual Insurance Co.*, 2007 WI 35, ¶44, 299 Wis. 2d 723, 728 N.W.2d 670, the order specified that it was “a final order for purposes of appeal.”

On May 31, 2022, Schottler moved for reconsideration of the circuit court’s May 12, 2022 decision and order, and the court denied that motion in an order entered August 22, 2022. On August 31, 2022, Schottler filed a notice of appeal. In an order dated November 2, 2022, we noted that we lacked jurisdiction to review the May 12 order dismissing Schottler’s petition for judicial review, as Schottler did not file a notice of appeal within ninety days of that order. *See* WIS. STAT. § 808.04(1) (in a civil matter in which no notice of entry of judgment is given, a notice of appeal must be filed within ninety days after entry of the judgment or order appealed from); *see also* WIS. STAT. RULE 809.10(1)(e) (this court lacks jurisdiction if a notice of appeal is not timely filed).

Although the notice of appeal was timely filed as to the August 22, 2022 order denying reconsideration, we noted that an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be

reconsidered.² See *Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a reconsideration motion should not be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; see also *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25-26, 197 N.W.2d 752 (1972). Because it was unclear from the record whether the motion for reconsideration presented issues that could have been raised in a timely manner from the May 12, 2022 order, we directed the parties to address jurisdiction as the first issue in their appellate briefs. Whether a party’s motion for reconsideration raised a new issue “presents a question of law that this court reviews de novo.” *State v. Edwards*, 2003 WI 68, ¶7, 262 Wis. 2d 448, 665 N.W.2d 136.

Here, Schottler has failed to establish that any of the arguments raised in his motion for reconsideration could not have been raised in a timely appeal from the May 12, 2022 order. As best we can understand, his reconsideration motion challenged the circuit court’s conclusion that it lacked jurisdiction to review the Department’s letter, and, based on his assertion that “time provisions do not start” until a decision is signed, Schottler claimed that review of the “unsigned” 2014 decision cancelling his license was not time barred. Schottler’s reconsideration motion otherwise expressed general dissatisfaction with the dismissal order. These arguments, however, could have been raised in a timely appeal from the May 12 dismissal order and we,

² Although Schottler moved for reconsideration, the motion did not affect the time for appealing because it was not filed after a trial to the circuit court or other evidentiary hearing. See *Continental Cas. Co. v. Milwaukee Metro. Sewerage Dist.*, 175 Wis. 2d 527, 533-35, 499 N.W.2d 282 (Ct. App. 1993).

therefore, do not have jurisdiction to consider them. Because we lack jurisdiction to review the only order from which Schottler timely appealed, we must dismiss this appeal.³

Upon the foregoing,

IT IS ORDERED that the appeal is dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeal

³ Before briefing began in this case, Schottler filed a motion for costs pursuant to WIS. STAT. § 227.485. That statute provides for the award of costs, including attorney fees, to a “prevailing party” challenging an agency action in a contested administrative proceeding and on judicial review unless the agency was “substantially justified in taking its position.” *See* WIS. STAT. § 227.485(2)(f), (3), (5), (6). Even assuming that statute applied to justify costs on appeal, Schottler is not the prevailing party. Therefore, his motion is denied.