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**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT III**

April 17, 2018

To:

Hon. Nancy J. Krueger  
Circuit Court Judge  
Outagamie County Courthouse  
320 S Walnut St.  
Appleton, WI 54911

Barb Bocik  
Clerk of Circuit Court  
Outagamie County Courthouse  
320 S. Walnut St.  
Appleton, WI 54911

Joseph M. Nicks  
Godfrey & Kahn, S.C.  
200 S. Washington St., Suite 100  
Green Bay, WI 54301

Gary J. Schmidt  
Le Grand Kaukaulin Law Firm, LLC  
Zuelke Building  
103 West College Ave., Suite 702  
Appleton, WI 54911-5770

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

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2016AP2122

John B. Simonson v. Humana Insurance Company  
(L. C. No. 2014CV431)

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

John Simonson appeals an order denying his motion for reconsideration of a summary judgment dismissing his claims against Humana Insurance Company. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We dismiss the appeal for lack of jurisdiction.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

On October 25, 2016, Simonson filed a notice of appeal from what he identified as an April 5, 2016 summary judgment granted in favor of Humana and a July 28, 2016 order denying Simonson's motion for reconsideration. The record shows that although the circuit court entered an order granting Humana's motion for summary judgment on April 5, a final judgment dismissing the action against Humana was ultimately entered May 5, 2016, and an amended judgment adding costs and disbursements was entered May 25, 2016.<sup>2</sup>

In an earlier order, this court determined we lack jurisdiction to review either the May 5 summary judgment or the May 25 amended judgment because Simonson's notice of appeal was not timely filed as to those judgments. *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 notice of appeal is not timely filed).

Although the notice of appeal was timely filed as to the July 28, 2016 order denying reconsideration, we noted 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. *See Silvertown Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a motion for reconsideration is not to be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; *see also Ver Hagen v.*

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<sup>2</sup> An order or judgment is final if it disposes of the entire matter in litigation as to one or more of the parties. WIS. STAT. § 808.03(1). An order "that merely grants a motion for summary judgment does not suffice to dispose of an entire matter in litigation." *See Wambolt v. West Bend Mut. Ins. Co.*, 2007 WI 35, ¶35 n.14, 299 Wis. 2d 723, 728 N.W.2d 670; *see also Kenosha Prof'l Firefighters, Local 414, IAFF, AFL-CIO v. City of Kenosha*, 2009 WI 52, ¶28, 317 Wis. 2d 628, 766 N.W.2d 577 (circuit court must do more than deny or grant motion; it must take "the additional step necessary to dispose of the entire matter").

*Gibbons*, 55 Wis. 2d 21, 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 an appeal from the May judgments, 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.

In his brief, Simonson identifies no issue from his motion for reconsideration that could not have been raised in an appeal from the original and amended judgments. Rather, he contends that the circuit court’s delay in deciding his reconsideration motion should serve to extend the time for him to appeal the original and amended judgments. Under WIS. STAT. § 805.17(3), the filing of a reconsideration motion within twenty days of the entry of judgment alters the appeal deadlines for appellate review of the judgment and delays the periods within which an appeal must be commenced. As an initial matter, the reconsideration motion in this case was filed April 29, 2016—more than twenty days after entry of either the original or amended judgment. In any event, as noted in this court’s earlier order, the appeal deadlines were not altered pursuant to § 805.17(3) because Simonson’s reconsideration motion was not filed after a trial to the court or other evidentiary hearing.<sup>3</sup> See *Continental Cas. Co. v. Milwaukee Metro. Sewerage Dist.*, 175 Wis. 2d 527, 533-35, 499 N.W.2d 282 (Ct. App. 1993) (section 805.17(3) does not apply to reconsideration motions in a summary judgment context).

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<sup>3</sup> In addition to advancing a tolling argument that is contrary to settled law, Simonson’s brief made numerous assertions of fact without citation to the record, contrary to our appellate rules. See WIS. STAT. RULE 809.19(1)(d), (e). We admonish Simonson’s counsel that failure to follow our appellate rules in the future may result in sanctions.

Because Simonson fails to establish that his reconsideration motion presented any issues that could not have been raised in an appeal from the underlying judgments, we lack jurisdiction to review the order denying reconsideration. *See Silvertown Enters.*, 143 Wis. 2d at 665. Because we lack jurisdiction to review the only order from which Simonson timely appealed, we must dismiss this appeal.

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.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*