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**DISTRICT III**

July 25, 2023

To:

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Steven L. Miller  
Electronic Notice

Kerry Feuerhelm  
Clerk of Circuit Court  
Pierce County Courthouse  
Electronic Notice

Joseph Michael Windler  
Electronic Notice

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

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2022AP1529-FT

Mid Iowa Construction, Inc. v. Ventre Investments, LLC  
(L. C. No. 2021CV190)

Before Stark, P.J., Hruz and Gill, 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).**

Mid Iowa Construction, Inc., appeals both an order dismissing its declaratory judgment action against Ventre Investments, LLC, and an order denying its motion for reconsideration of the dismissal order. Pursuant to this court's order of September 22, 2022, and a presubmission conference, this is an expedited appeal under WIS. STAT. RULE 809.17 (2021-22)<sup>1</sup> and the parties have consequently submitted memorandum briefs. Based upon our review of those memoranda and the record, we dismiss the appeal for lack of jurisdiction.

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

Mid Iowa and Ventre own adjacent undeveloped parcels of real property in Pierce County. The parcels are subject to an Assignment and Assumption Agreement that was entered into by the parties' respective predecessors in interest. In relevant part, the agreement provides that the owner of Parcel B (Mid Iowa) will be responsible for reimbursing the owner of Parcel A (Ventre) its fair share of all documented costs incurred by Ventre in connection with the installation of infrastructure improvements on Parcel A that directly or indirectly benefit Parcel B. Mid Iowa's obligation to pay under the agreement constituted a first lien on Parcel B, which could be foreclosed upon in the event of nonpayment.

Mid Iowa filed the underlying suit for declaratory judgment. The complaint alleged that given the lack of any intent to develop Parcel A, "and/or the ambiguous and/or indefinite nature" of the agreement, the circuit court should declare the agreement void, thus nullifying Ventre's right to a first lien on Mid Iowa's property. Ventre moved to dismiss the complaint for failure to state a claim upon which relief could be granted. After a hearing, the circuit court granted the motion to dismiss, concluding that the allegations in the complaint—including what the court described as Mid Iowa's "conclusory" allegation that the agreement was ambiguous—did not state a claim upon which the court could grant relief. A written order granting the motion to dismiss was entered on May 9, 2022.

Mid Iowa moved for reconsideration. In an order entered July 22, 2022, the circuit court denied the reconsideration motion, concluding that Mid Iowa had not established a manifest error of law or otherwise raised any novel arguments that the court had not previously considered.

On September 8, 2022, Mid Iowa filed a notice of appeal from both the order granting the motion to dismiss and the order denying the motion for reconsideration. By order dated

October 18, 2022, this court questioned whether we have jurisdiction to review one or both orders, and we directed the parties to address jurisdiction as the first issue in their briefs.

With respect to the May 9, 2022 order, we noted that order did not state on its face “that it is the document from which appeal may follow as a matter of right under [WIS. STAT.] § 808.03(1),” as required under *Wambolt v. West Bend Mutual Insurance Co.*, 2007 WI 35, ¶45, 299 Wis. 2d 723, 728 N.W.2d 670.<sup>2</sup> The lack of such language, however, is not necessarily determinative of finality. *See Admiral Ins. Co. v. Paper Converting Mach. Co.*, 2012 WI 30, ¶29, 339 Wis. 2d 291, 811 N.W.2d 351 (“The absence of a finality statement cannot be used to create ambiguity when it is unambiguous that the order or judgment disposed of the entire matter in litigation as to one or more of the parties.”). An order or judgment is final if it disposes of the entire matter in litigation as to one or more of the parties. Sec. 808.03(1).

In its brief, Mid Iowa concedes that the May 9, 2022 order granting the motion to dismiss its complaint “in all respects” is a final order, and that the notice of appeal was not timely as to 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). This court therefore lacks jurisdiction to review the May 9 order. *See* 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 22, 2022 order denying reconsideration, an appeal cannot be taken from an order denying a motion for reconsideration that

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<sup>2</sup> WISCONSIN STAT. § 808.03(1) provides that an appeal as of right can be taken only from a final order or judgment.

presents the same issues as those determined in the order sought to be reconsidered. 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). 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.

Mid Iowa claims we have jurisdiction to review the order denying its motion for reconsideration because its motion raised two “new issues.” First, Mid Iowa asserts that because the legal standard for deciding a reconsideration motion differs from the legal standard for deciding a motion to dismiss, the reconsideration motion presented a distinct issue not considered by the court in the original order. Mid Iowa, however, cites no authority to support its claim that analyzing a previously decided issue under a distinct legal standard constitutes a new issue. Moreover, such an interpretation would render the “new issues” test illusory, as every motion for reconsideration would, in effect, extend the statutory deadline for filing a notice of appeal.

Second, Mid Iowa claims it raised a new issue on reconsideration when it requested, as an alternative to dismissal, permission to file an amended complaint. We are not persuaded. On the fifth page of a seven-page reconsideration motion, Mid Iowa noted: “If there are not sufficient facts pled in a Complaint to state a cause of action, a plaintiff can seek to amend the Complaint.” Mid Iowa added that while it did not concede that the complaint failed to state a cause of action, “at the very least, Mid Iowa should be given the option to amend its Complaint to include all transactions that were intertwined with the Assignment and Assumption

Agreement, so the Court has the additional facts that relate to this entire transaction.” We are not convinced that this embedded suggestion to allow a post-judgment amendment to Mid Iowa’s complaint was sufficient, as a matter of law, to constitute a motion to amend the complaint or to otherwise create a new issue for purposes of extending the appeal deadline.

Ultimately, Mid Iowa has failed to establish that the legal issues presented to the circuit court on reconsideration differed from those in the initial order dismissing the complaint. As noted by the court in the order denying reconsideration, Mid Iowa’s argument in the complaint and on reconsideration was that the agreement was ambiguous because its term is indefinite. Accordingly, we lack jurisdiction to review the order denying reconsideration. *See Silvertown Enters.*, 143 Wis. 2d at 665. Because we lack jurisdiction to review both the May 9, 2022 and July 22, 2022 orders, 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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*Samuel A. Christensen*  
*Clerk of Court of Appeals*