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DISTRICT I

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COURT OF APPEALS

February 7, 2024

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

2024AP166

League of Women Voters of Wisconsin v. Wisconsin Elections
Commission (L.C. # 2022CV2472)

Before Donald, P.J., Geenen and Colón, JJ.

This case contains an appeal and cross-appeal from the Dane County Circuit Court's January 30, 2024 declaratory judgment and permanent injunction, which required the Wisconsin Elections Commission to issue guidance "such that no absentee ballot may be rejected based upon witness certification bearing witness-address information meeting any of" four sets of

criteria. In this order, we address respondent-cross-appellant Wisconsin State Legislature's motion to dismiss the League of Women Voters of Wisconsin's appeal and the Legislature's motion for relief pending appeal, which seeks a stay of the circuit court order. For the reasons that follow, the motion to dismiss is denied, and we set forth an expedited deadline for the League to answer the motion for relief.

An appeal as a matter of right can only be taken from a final judgment or order. *See* WIS. STAT. § 808.03(1) (2021-22).¹ A judgment or order is final if it “disposes of the entire matter in litigation as to one or more of the parties.” *See id.* The Legislature moves to dismiss the League's appeal because it contends that the January 30 judgment is not final as to the League.²

The League's complaint underlying this case had three claims: the first related to the definition of the word “missing” as used in WIS. STAT. § 6.87(6d), part of the statute on absent voting procedure; the second related to application of 52 U.S.C. § 10101, the “materiality provision” of the Civil Rights Act, to witness certification requirements on absentee ballots; and the third was a due process argument regarding the right to cure rejected absentee ballots. The circuit court dismissed the first count in March 2023. The third count was dismissed pursuant to the parties' stipulation in June 2023.

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

² The Legislature contends that while the January 30, 2024 judgment is not final, it nevertheless has an appeal of right under WIS. STAT. § 813.025(3) (“If a circuit court ... enters an injunction ... or any other final or interlocutory order suspending or restraining the enforcement of any statute of this state, the injunction ... is immediately appealable as a matter of right.”). Because we conclude that the January 30 judgment is final, we need not address the effect of § 813.025(3).

The Legislature contends that the January 30, 2024 judgment is not final as to the League because it does not mention the first or the third counts and “does not state that it is intended to dispose of this entire matter.” The only matter that remained in litigation on January 30 related to the League’s second claim, and the judgment disposed of that claim entirely by making a declaration of relief and granting an injunction. Further, a final document is not required to state that it is “intended to dispose of [the] entire matter,” only that is “final for purposes of appeal.” *Wambolt v. West Bend Mut. Ins. Co.*, 2007 WI 35, ¶¶44-46, 299 Wis. 2d 723, 728 N.W.2d 670. In any event, “[t]he 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.” *Admiral Ins. Co. v. Paper Converting Machine Co.*, 2012 WI 30, ¶29, 339 Wis. 2d 291, 811 N.W.2d 351.

Turning to the motion for relief pending appeal, we conclude that a response is desirable. However, while the League has requested a response deadline of February 12, 2024, under the circumstances we direct the League to file a response by 12:00 p.m. (noon) on Thursday, February 8, 2024. A reply from the Legislature is not anticipated.

Upon the foregoing,

IT IS ORDERED that the motion to dismiss and transfer venue is denied.

IT IS FURTHER ORDERED that the League of Women Voters of Wisconsin shall file a response to the Legislature’s motion for relief pending appeal by 12:00 p.m. (noon) on Thursday, February 8, 2024.

Samuel A. Christensen
Clerk of Court of Appeals