

CHAPTER 808

APPEALS AND WRITS OF ERROR

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808.01 Definitions. In this chapter:

(1) "Appeal" means a review in an appellate court by appeal or writ of error authorized by law of a judgment or order of a circuit or county court.

(2) "Appellate court" means the supreme court under ch. 751 or the court of appeals under ch. 752.

History: 1977 c. 187.

A party which accepts the benefits of a judgment does not waive the right to take an appeal which does not involve a reversal of that part of the judgment under which the benefit was received. *Estreen v. Bluhm*, 79 W (2d) 142, 255 NW (2d) 473.

808.02 Writ of error. A writ of error may be sought in the court of appeals.

History: 1977 c. 187.

808.03 Appeals to the court of appeals.

(1) APPEALS AS OF RIGHT. A final judgment or a final order of a circuit court or county court may be appealed as a matter of right to the court of appeals unless otherwise expressly provided by law. A final judgment or final order is a judgment or order entered in accordance with s. 806.06 (1) (b) or 807.11 (2) which disposes of the entire matter in litigation as to one or more of the parties, whether rendered in an action or special proceeding.

(2) APPEALS BY PERMISSION. A judgment or order not appealable as a matter of right under sub. (1) may be appealed to the court of appeals in advance of a final judgment or order upon leave granted by the court if it determines that an appeal will:

(a) Materially advance the termination of the litigation or clarify further proceedings in the litigation;

(b) Protect the petitioner from substantial or irreparable injury; or

(c) Clarify an issue of general importance in the administration of justice.

History: 1977 c. 187.

808.04 Time for appeal to the court of appeals. (1) INITIATING AN APPEAL. An appeal to the court of appeals must be initiated within 45 days of entry of judgment or order appealed from if written notice of the entry of judgment or order is given, or within 90 days of entry if notice is not given, except as provided in this section or otherwise expressly provided by law.

(2) EXCEPTIONS. (a) Subsection (1) does not apply to an appeal for which a specific time period for initiating an appeal is expressly provided by law. Appeals for which special time periods are provided include: s. 9.10 (4) (a) (recall), 30.30 (3) (c) (harbor improvements), 32.05 (13) (condemnation), 32.06 (13) (condemnation), 48.911 (adoption proceedings), 62.075 (4) (detachment of farm lands), 66.014 (7) (b) (municipal incorporation), 66.021 (10) (b) (annexation), 66.05 (8) (c) (razing buildings), 66.435 (4) (b) (urban renewal act), 87.16 (flood control projects), 88.09 (2) (drainage of lands), 102.25 (1) (worker's compensation), 111.07 (7) (employment relations commission), 117.03 (5) (school district reorganization), 128.15 (1) (objections to creditors' claims), 128.20 (2) (settlement of receiver's or assignee's accounts), 182.60 (10) (b) (special economic improvement districts), 186.29 (5) (reevaluation of credit union shares), 215.32 (12) (reevaluation of savings and loan accounts), 227.21 (review of administrative agency decisions), 227.26 (enforcement of laws attacked in federal court), 289.29 (log liens), 296.03 (conveyance: specific performance), 808.07 (6) (eviction actions), 879.27 (3) (probate court), 879.31 (extension of probate court appeals) and 974.02 (criminal, juvenile, youthful offender and mental commitment cases).

(b) A person imprisoned on a criminal sentence against whom a civil final judgment or order is rendered has 120 days in which to appeal the civil judgment or order.

(c) When a party to an action or special proceeding dies during the period allowed for

appeal, the time to appeal is the time permitted by law or 120 days after the party's death, whichever is later. If no personal representative qualifies within 60 days after the party's death, any appellant may have a personal representative appointed under s. 856.07 (2).

History: 1977 c. 187.

808.05 Bypass. The supreme court may take jurisdiction of an appeal or any other proceeding pending in the court of appeals if:

(1) It grants direct review upon a petition to bypass filed by a party;

(2) It grants direct review upon certification from the court of appeals prior to the court of appeals hearing and deciding the matter; or

(3) It, on its own motion, decides to review the matter directly.

History: 1977 c. 187.

808.07 Relief pending appeal. (1) EFFECT OF APPEAL. An appeal does not stay the execution or enforcement of the judgment or order appealed from except as provided in this section or as otherwise expressly provided by law.

(2) **AUTHORITY OF A COURT TO GRANT RELIEF PENDING APPEAL.** (a) During the pendency of an appeal, a trial court or an appellate court may:

1. Stay execution or enforcement of a judgment or order;

2. Suspend, modify, restore or grant an injunction;

3. Make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered; or

4. Hear and determine a motion filed under s. 806.07.

(b) Relief under this subsection may be conditioned upon the filing of an undertaking in the trial court.

(3) **UNDERTAKING FOR COSTS.** An undertaking for costs is not required unless specifically required by statute, or by the trial court acting in its discretion.

(4) **PROCEEDINGS AGAINST A SURETY.** A surety on an undertaking is subject to the jurisdiction of the trial court and irrevocably appoints the clerk of that court as the surety's agent for service of any papers affecting his or her liability on the undertaking. A person may seek to enforce the surety's liability by filing a motion in the action or proceeding in the trial court in which the undertaking was filed.

(5) **PUBLIC OFFICIALS.** A person or agency suing or being sued in an official public capacity is not required to execute an undertaking as a condition for relief under this section unless required by the court in its discretion.

(6) **SURETIES ON UNDERTAKINGS.** A surety shall file with the undertaking an affidavit that the surety has a net worth in property within this state not exempt from execution which exceeds the amount of the undertaking, except as provided in s. 204.07. The respondent may by motion object to the sufficiency of a surety within 10 days after service of a copy of the undertaking.

(7) **EVICITION ACTIONS.** In all eviction actions except those tried to a jury of 12, the time for service and filing of the notice of appeal is limited to 10 days after mailing of notice of entry of judgment. No such appeal by a defendant may stay proceedings on the judgment unless the appellant serves and files with the notice of appeal an undertaking to the plaintiff, in an amount and with surety approved by the judge who ordered the entry of judgment, to the effect that the appellant will pay all costs and disbursements of the appeal which may be taxed against the appellant, obey the order of the appellate court upon the appeal and pay all rent and other damages accruing to the plaintiff during the pendency of the appeal. Upon service and filing of this undertaking, all further proceedings in enforcement of the judgment appealed from are stayed pending the determination of the appeal. Upon service by the appellant of a copy of the notice and appeal and approved undertaking upon the sheriff holding an issued but unexecuted writ of restitution or of execution, the sheriff shall promptly cease all further proceedings thereon pending the determination of the appeal.

History: 1977 c. 187.

808.08 Further proceedings in trial court. When the record and remittitur are received in the trial court:

(1) If the trial judge is ordered to take specific action, the judge shall do so as soon as possible.

(2) If a new trial is ordered, the trial court, upon receipt of the remitted record, shall place the matter on the trial calendar.

(3) If action or proceedings other than those mentioned in sub. (1) or (2) is ordered, any party may, within one year after receipt of the remitted record by the clerk of the trial court, make appropriate motion for further proceedings. If further proceedings are not so initiated, the action shall be dismissed except that an extension of the one-year period may be granted, on notice, by the trial court, if the order for extension is entered during the one-year period.

History: 1977 c. 187.

808.09 Reversal, affirmance or modification of judgment. Upon an appeal from a

judgment or order an appellate court may reverse, affirm or modify the judgment or order as to any or all of the parties; may order a new trial; and, if the appeal is from a part of a judgment or order, may reverse, affirm or modify as to the part appealed from. In all cases an appellate court shall remit its judgment or decision to the court below and thereupon the court below shall proceed in accordance with the judgment or decision.

History: 1977 c. 187.

808.10 Review by the supreme court. A decision of the court of appeals is reviewable by the supreme court only upon a petition to appeal

granted by the supreme court. The petition to appeal shall be filed in the supreme court within 30 days of the date of the decision of the court of appeals.

History: 1977 c. 187

808.11 Printing specifications. Briefs and appendices in cases before the supreme court shall be printed, typed, duplicated or reproduced clearly on paper of permanent quality, and in conformity with such rules as the court may prescribe with regard to organization, binding, color of print, and size of print, paper and margin.

History: 1975 c. 160; 1977 c. 187 s. 83