

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Case No. 2010-AP-712

FOND DU LAC COUNTY,
Plaintiff-Respondent,
v.

D.T. KEDINGER,
Defendant-Appellant.

**BRIEF AND APPENDIX OF PLAINTIFF-
RESPONDENT**

ON APPEAL FROM ORDERS ENTERED IN THE
CIRCUIT COURT FOR FOND DU LAC COUNTY,
THE HONORABLE STEVEN W. WEINKE, PRESIDING

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STATEMENT OF THE ISSUES

The brief filed by Appellant Kedinger indicates that the issues to be decided on appeal are the following. (Defendant-Appellant's Brief at 2.) Fond du Lac County will address each in this brief.

1. Did the trial court err by failing to provide notice to Appellant of the trial date? Trial court: No.
2. Did the trial court err by having some predisposed conclusion? Trial court did not address.
3. Did the trial court err by denying the Appellant the right to a jury trial? Trial court did not address.
4. Did the trial court err by declining Appellant access to sign interpreters during the course of the case? Trial court: No.

However, Kedinger's Notice of Appeal states that he is appealing from the orders entered January 27 and February 19, 2010, in the Circuit Court for Fond du Lac County. The order entered on January 27, 2010, declined to provide hearing assistance to Kedinger and outlined its reasoning. The order that was entered on February 18, 2010, not February 19, 2010, was a letter from the trial court that denied Kedinger's Request to Stay Enforcement of Judgment and a Motion for Reconsideration, in which Kedinger alleged that the trial court failed to provide him with notice of the trial date.

The only issues properly before the Court are those that were addressed by the trial court in the two orders dated January 27 and February 18, 2010.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary because the issues on appeal can be fully developed in briefs. Publication is also not requested.

STATEMENT OF THE CASE

The trial court called the case for trial on January 29, 2010, on the charge of Speeding in 55 MPH zone (11-15 MPH), in violation of sec. 346.57(4)(h), Wis. Stats., against D.T. Kedinger for a violation that occurred on July 2, 2007. Kedinger did not appear in court at that time; judgment was rendered against him and he was found guilty by default.

While the case has been pending, numerous hearings have been held, and Kedinger has filed frequent motions, notices, and other pleadings.

First, Kedinger asserts in his ADA Accommodation Request that he has an impairment of his hearing such that he requires the services of an interpreter. (R18 at 1.) Fond du Lac County objected to the appointment of an interpreter on the grounds that there was credible evidence that Kedinger did not have a hearing impairment requiring an interpreter. During hearings on November 7, 2008, and December 28, 2009, the trial court accepted testimony from individuals who had engaged in normal conversation with Kedinger on other occasions or had observed Kedinger engaging in normal conversations with others. In addition, the trial court took testimony from licensed audiologist Tricia Roh who said that Kedinger deliberately refused to cooperate with an objective auditory test to determine the extent, if any, of Kedinger's hearing impairment. The trial court subsequently issued an order on January 27, 2010, which outlined its findings of facts and declined to provide a sign interpreter at court hearings for Kedinger. (R78.)

Second, Kedinger also asserts in his "Judicial Notice #7, In Answer of Order, Concerning 1/27/10" that the trial court failed to provide him with notice of the trial date and he requested that the judgment on the speeding charge entered against him be reconsidered. (R84 at 1.) The trial court issued an order in letter form on February 18, 2010, that denied Kedinger's Request to Stay Enforcement of Judgment and Motion for Reconsideration. (Appendix at 2.)

ARGUMENT

1. THE TRIAL COURT DID NOT ERR WITH REGARD TO NOTICE OF THE TRIAL DATE TO KEDINGER.

Whether the Circuit Court sent out a notice of the trial to Kedinger is an issue of fact. The Circuit Court record in this case shows that the Court sent out a notice of the trial date to all parties on January 8, 2010, for a court trial on January 29, 2010, at 3:30 pm. (Appendix at 1.) The notice shows that a copy was mailed to Kedinger at the address that he lists on his own brief as well as to the District Attorney's Office, the Corporation Counsel Office, and the Fond du Lac County Sheriff's Department. (*Id.*)

The trial court addressed this issue in a letter dated February 18, 2010, which responded to Kedinger's Motion for Reconsideration. (Appendix at 2.) Judge Weinke indicated that that the notice was sent out on January 8, 2010, and that it was not returned to the Court as undeliverable. (*Id.*)

Kedinger failed to appear on January 29, 2010, and a default judgment was entered against him, pursuant to sec. 345.36(2)(b), Wis. Stats. The issue that the trial court failed to provide notice of the trial is inadequately briefed by Kedinger. The sole argument in Kedinger's brief on the issue consists of two sentences, including the one-sentence summary of the argument.¹ (Kedinger's Brief at 6.)

However, more information on this issue can be gleaned by reviewing the text earlier in his brief and in certain others of Kedinger's filings. Kedinger makes reference to being "disposed out of state, due to health" in his Statement of the Issues. (Kedinger's Brief at 2.) Although this circumstance is not explained in the brief, in his filing "D.T. Kedinger's

¹ The language is "CONTRARY TO ALL OF THE PAPERS FILED WITHIN, IT COMES DOWN TO NO NOTICE OF TRAIL [*sic*] THAT WAS A PREDISPOSED CONCLUSION LONG BEFORE IT EVER STARTED. This is a fundamental defect which deprived the trial court of jurisdiction to consider the motions and responses to effectively make a proper decision, thus making it a one sided conclusion that denied justice." The brief then continues with a discussion of denial of due process and equitable relief.

Judicial Notice #6, Concerning the Hearing of 1/29/10”, he states that he “[d]id NOT have timely notice of the hearing of January 29th, 2010 and was in Texas”. (R80 at 1.) Kedinger’s “Motion of Conflict, & Request for Adjournment” requests that the hearing scheduled for December 28, 2009, be adjourned “for further proceedings later in the Summer” and cites various vague conflicts with health issues, holidays, travel, and the winter season and its “dampness.” (R74.)

This last-minute request for an adjournment of the December 28, 2009, hearing was denied. Later, after the trial date had passed, Kedinger submits that these same reasons were specific enough for the court to infer that he was unavailable to appear at a trial on January 29, 2010.² (R80 at 1.)

A pending case in a trial court cannot be held hostage to such a vague statement of unavailability. The trial court found that the notice of trial was indeed sent and that no valid reason existed to reopen the case. The trial court’s order was reasonable, and this Court should not reverse it.

2. THE TRIAL COURT DID NOT ERR BY HAVING ANY PREDISPOSED CONCLUSION.

The extent to which this issue is addressed in Kedinger’s Brief is utterly inadequate. The issue is listed in Kedinger’s Statement of the Issues and appears to be argued on page 7 of his brief.

In responding, Fond du Lac County speculates that Kedinger objects to the court having declined to provide a sign interpreter at certain hearings. Kedinger appears to believe that the trial court improperly declined to arrange for sign interpreters to be at court hearings *before* it concluded that Kedinger was not hearing-impaired enough to require an interpreter. Without references to the record and transcripts, Fond du Lac County cannot respond to this allegation but believes that the trial court exercised its discretion appropriately.

² The language that Kedinger used was “...as *Noted by papers Filed Dec 23rd, 2009*, I would NOT be available.” (Emphasis duplicated.)

3. THE TRIAL COURT DID NOT IMPROPERLY DENY
KEDINGER THE RIGHT TO A TRIAL BY JURY

This issue is not properly before the Court of Appeals because it is not raised in any order that Kedinger is appealing. Kedinger's Notice of Appeal requests review of orders entered January 27 and February 19, 2010. The order entered on January 27, 2010, was an order declining to provide a hearing assistive device for Kedinger. The order entered on February 18, 2010, denied a postjudgment motion for reconsideration. Kedinger's Motion for Reconsideration and supporting affidavit contain no discussion of the right to a jury trial. For this reason the Court of Appeals should not address the issue.

4. THE TRIAL COURT DID NOT COMMIT ANY ERROR
INVOLVING ACCESS TO SIGN INTERPRETERS

The trial court issued a thorough order dated January 27, 2010, detailing its findings regarding Kedinger and the exhaustive efforts made to determine the level of Kedinger's need for sign interpreters. Kedinger indicates that he is appealing the order but addresses the issue in his Brief inadequately. The issue is listed in Kedinger's Statement of the Issues and appears to be addressed on page 9 of his brief. His argument contains no references to the record or to any transcript.

The trial court's order cites references to having heard testimony from eight people during hearings on November 7, 2008, and December 28, 2009, and bases its findings of fact on that evidence. (R78 at 1.) Kedinger does not provide a clear explanation of what is wrong with the trial court's order and why the Court of Appeals should reverse it.

Without references to the record and transcripts, Fond du Lac County again cannot respond to Kedinger's allegation but believes that trial court exercised its discretion appropriately.

CONCLUSION

The trial court correctly ruled on the issues that Kedinger presents on appeal. Based on the foregoing, the State respectfully requests that all of the trial court's rulings be affirmed.

Dated this ____ day of October, 2010.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certifies that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief with a proportional font. The length of this brief is 1,982 words plus appendix.

Dated this ____ day of October, 2010.

Respectfully submitted,

Andrew J. Christenson
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APPENDIX

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CERTIFICATION AS TO APPENDIX

I hereby certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this ____ day of October, 2010.

Respectfully submitted,

Andrew J. Christenson
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ELECTRONIC FILING CERTIFICATION

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of s. 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the corrected brief filed as of this date. I further certify that a copy of this certificate has been served with the court and served on all opposing parties.

Dated this ____ day of October, 2010.

Respectfully submitted,

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