

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

VILLAGE OF THIENSVILLE,

Plaintiff-Respondent,

v.

Appeal No. 2015AP576-FT

CONOR B. FISK,

Defendant-Appellant.

APPEAL FROM AN ORDER OF THE
OZAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE PAUL V. MALLOY, PRESIDING

DEFENDANT-APPELLANT'S REPLY BRIEF

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LEGAL ARGUMENT

I. PROPER WRITTEN NOTICE WAS PROVIDED TO THE VILLAGE

A. The Cases Cited by the Village are Inapplicable to this Case

In making its argument that Fisk did not comply with § 800.14, Wis. Stats., the Village cites this Court to three (3) unpublished decisions from the Court of Appeals. Those cases are inapplicable to the issue before this Court. In a nutshell, the facts of those cases are wholly unrelated to the facts of this case. Accordingly, the holdings of each are inapplicable as persuasive authority as relates to this appeal.

In each of the cited cases, no notice whatsoever was provided by the aggrieved party or parties. Briefly, the facts of each case are set forth as follows:

1. In *City of Milwaukee v. Hall*, the action was dismissed by the circuit court because appellant Hall did not provide *any* notice to the Milwaukee City Attorney's Office when appealing from the municipal court.

2. In *Town of Oconowoc v. Hibbard*, each party appealed a split decision from the municipal court to the circuit court. However, neither party provided any notice to the other party after filing its appeal, and the circuit properly dismissed each party's appeal.

3. In *City of West Allis v. Michaels*, the action was dismissed by the circuit court because appellant Michaels did not provide *any* notice to the West Allis

City Attorney's Office when appealing from the municipal court.

The appeal to this court is much different as written notice was provided to the Village's attorney via email transmission (as required by § 800.14(1), Wis. Stats.) in a timely manner.

Also, none of the cases cited to by the Village stands for the proposition that an appeal from municipal court to the circuit court is governed by the applicability of § 801.14(2), Wis. Stats. Each of the cited cases is silent as to the argument put forth by the Village in its substantive response brief. Accordingly, the legal conclusion drawn to by the Village in its brief is not supported by any Wisconsin case law to date.

Lastly, none of the cited cases deal with a scenario where notification was provided by email transmission in a timely manner. It is without question that email notification is the most efficient manner to provide notification to opposing counsel. If the U.S. mail had been used, the Village attorney would have received notification a day or two later. Keeping with the Village's argument, this notification method (although much slower) would have been in compliance with the law. If facsimile transmission had been used, notification would not have been received in as efficient a manner as that utilized in this case. None of the cited cases makes reference to these facts, but they are self-evident in this factual scenario.

B. There is a specific procedure set in place in § 800.14, Wis. Stats.

The Village correctly states at Page 5 of its brief that "Our courts have held

that the provisions of Chapter 801 apply to appeals to the circuit court from other lower bodies, so long as a more specific procedure is not in place.” The Village then cites this Court to *Gangler v. Wisconsin Electric Power Co.*, 110 Wis. 2d 649, 329 N.W.2d 186 (1983) in making the argument that the “written notice” requirements of § 801.14(2), Wis. Stats., applies to an appeal from municipal court to circuit court. However, *Gangler* was a case dealing specifically with “condemnation proceedings” and did not pertain to municipal court to circuit court appeals. As such, the holding is not relevant to the facts of this case.

§ 800.14(1), Wis. Stats. simply states that “*written notice of appeal*” must be provided within 20 days to the other party. The legislature did not see fit to add any additional provisions to the statute as it did in § 801.14(2), Wis. Stats. As this Court is well aware, the procedures established in municipal court are much more laid back and simpler than in circuit court. This is due in large part because municipal court is better served as the people’s court where many litigants are unrepresented by counsel. The legislature saw fit to make the provisions much easier. If the legislature wanted to add in the same provisions as in § 801.14(2), Wis. Stats., it would have done so. The legislature chose not to do so.

As such, the procedure of “written notice” as set forth in § 800.14(1), Wis. Stats., was complied with once the written notice of appeal was emailed to the Village attorney on the 20th day.

II. THE VILLAGE WAS NOT DEMONSTRABLY HARMED

The Village claims at Page 8 of its Brief that Fisk's method of notification made it impossible for the Village to file a cross-appeal. However, the Village, in citing to the circuit court e-filing system set forth in Chapter 801 makes note that a party gets an extra day to file a document if it is served using e-filing between 5:00 p.m. and 12:00 midnight. Fisk concedes that he did not use the circuit court e-filing system. However, that system provides for an extra day if such is the mode of notification.

Rather than attempt to file its cross-appeal the next day and make a claim that the mode of notification used by Fisk mirrored that of the circuit court e-filing system established in §801.17, Wis. Stats., the Village did absolutely nothing. It did not file anything, waited for the appeal to make its way into circuit court and then filed a motion to dismiss for lack of jurisdiction. Although the Village could have attempted to make a cross-appeal filing, it chose not to make any such filing in order to preserve its ability to bring the OWI case into the circuit court.

Even utilizing the Village's own argument, it could have attempted to file a cross-appeal the next day, on Wednesday, November 26, 2014. It chose not to do so. It could have filed a cross-appeal and argue that it had an extra day to make such a filing. The argument would have been exactly the same as the argument it has made to this Court. However, the Village thought it best to make no filing and wait to file a

motion to dismiss. Simply stated, the Village had an avenue of relief but simply chose not to take it.

Accordingly, there was no demonstrable harm to the Village as an avenue of relief was available to it.

CONCLUSION

Based upon the arguments contained in both briefs, Fisk moves the Court to reverse and remand this matter back to the trial court for entry of an Order that the circuit court had jurisdiction to hear the appeal taken directly from the municipal court.

Dated this 24th day of July, 2015

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BRIEF CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c), as modified by this Court's order dated April 7, 2015, for a reply brief produced with a proportional serif font. The length of the brief is 1,161 words. This brief was prepared using Microsoft Word word processing software. The length of the brief was obtained by use of the Word Count function of the software.

Dated this 24th day of July, 2015

Attorney Christopher J. Cherella

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of sec. 809.19(12), Wis. Stats. I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 24th day of July, 2015

Attorney Christopher J. Cherella