STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

CITY OF EAU CLAIRE,
Plaintiff-Appellant,

v.

Appeal No. 2015AP000869

MELISSA BOOTH,
n/k/a/ MELISSA M. BOOTH BRITTON,
Defendant-Respondent,

REPLY BRIEF OF PLAINTIFF-APPELLANT CITY OF EAU CLAIRE

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT
OF EAU CLAIRE COUNTY CASE NO 2014GF804
THE HONORABLE WILLIAM M. GABLER PRESIDING

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I. Statutory limitations on court authority implicate court competency rather than subject matter jurisdiction.

Statutory limitations on court authority implicate court competency rather than subject matter jurisdiction. The most recent Court of Appeals case examining the issues raised in this case, *State v. Navrestad*, No. 2014AP2273, 2015 WL 3997004 (Wis. Ct. App. July 2, 2015) (unpublished and cited for persuasive authority only), correctly applied existing case law and the Wisconsin Constitution. The facts in *Navrestad* are almost identical to the facts of this case.

The Court should apply *Navrestad* as persuasive authority to the present case and reverse the circuit court decision in this case. Similar to the present case, the defendant in *Navrestad* moved to vacate a 22 year old Wisconsin OWI 1st offense based on the existence of a prior (apparently unknown) out-of-state OWI conviction. *Navrestad* concluded that *Mikrut* superseded *Rohner* regarding the subject matter jurisdiction issue relevant to this case.

Booth Britton's argument, that the 1992 Eau Claire OWI 1st offense civil judgment is void, is inconsistent with Wis. Const. art VII § 8 which grants circuit courts broad subject matter jurisdiction. Booth Britton's argument also contradicts a wide body of case law which holds that statutory limitations on court authority implicate court competency rather

than subject matter jurisdiction. Consequently, the judgment was not, as Booth Britton asserts, "void." To the extent there is any statutory infirmity with the 1992 Eau Claire OWI 1st offense civil judgment the statutory infirmity implicates court competency, and Booth Britton has long since waived or forfeited the right to challenge the Court's loss of authority to enter the 1992 civil judgment.

2. An OWI 1st offense is "an offense known at law."

An OWI 1st offense is "an offense known at law." Booth Britton's characterization of the OWI 1st offense in this case as "a second offense criminal OWI charged as a first offense civil OWI" demonstrates a fundamental misunderstanding of the legal issues presented in this case. A court lacks subject matter jurisdiction if it lacks authority to hear the *kind* of case in front of it. A court lacks competency if it lacks authority to hear the *specific* case in front of it. There is no question that circuit courts have authority to hear both OWI 1st offense and OWI 2nd offense cases. Consequently, to the extent the Eau Claire lacked authority to enter Booth Britton's *specific* 1992 civil judgment the court lacked competency rather than subject matter jurisdiction.

3. Booth Britton's interpretation of Wis. Const. art VII § 8 is inconsistent with Wisconsin law.

Booth Britton's interpretation of Wis. Const. art VII § 8 is inconsistent with Wisconsin law. Booth Britton correctly points out that

this constitutional provision provides that "except as otherwise provided at law" Wisconsin circuit courts shall have jurisdiction over all civil and criminal matters. Booth Britton neglects to point out, however, that Wisconsin courts have clearly held that general statutory limitations on circuit court authority implicate court competency rather than subject matter jurisdiction. Additionally, Booth Britton neglects to point to a single case that concludes that "except as otherwise provided at law" means anything other than the exceptions listed in the City's initial brief (i.e. cases involving the federal supremacy clause or facial constitutional challenges). Booth Britton also neglects to explain why Wisconsin courts have permitted "as applied" constitutional challenges to be waived, but should not permit statutory challenges to court authority to be waived.

4. Booth Britton did not request relief under Wis. Stat. § 806.07(1)(h) at the trial level and has thus waived the right to assert this subsection.

Booth Britton did not request relief under Wis. Stat. § 806.07(1)(h) at the trial level. Booth Britton's request for relief was entirely premised on the 1992 Eau Claire judgment being "void" and thus sought relief under § 806.07(1)(d) only. Although the argument that justice somehow entitles Booth Britton to relief after waiting 22 years to bring this challenge is clearly meritless, nevertheless Booth Britton's failure to raise this issue at the trial level precludes the Court from considering it.

CONCLUSION

For all the foregoing reasons, the Court should reverse the decision of the circuit court.

Dated: 21st day of July, 2015

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CERTIFICATION OF FORM AND LENGTH

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(c) for a brief produced using the following font:

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Dated this 21st day of July, 2015

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A copy of this certificate is being filed with the court and served on all opposing parties as of this date.

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I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on July 21, 2015

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