

RECEIVED

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

10-27-2017

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

EAU CLAIRE CITY,
Plaintiff-Appellant,

v.

Appeal No. 2017AP1527

DEBORA ANN WEST,
Defendant-Respondent.

BRIEF OF PLAINTIFF-APPELLANT EAU CLAIRE CITY

ON APPEAL FROM THE EAU CLAIRE CIRCUIT COURT
CASE NO. 2016TR011930
THE HONORABLE WILLIAM M. GABLER, SR., PRESIDING

Jenessa Stromberger
Eau Claire Assistant City Attorney
State Bar No. 1090100
203 S. Farwell Street
Eau Claire, WI 54701
(715) 839-6006
jenessa.stromberger@eauclairewi.gov

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF THE CASE AND STATEMENT OF THE FACTS	2
ISSUES PRESENTED FOR REVIEW	3
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	3
STANDARD OF REVIEW	3
ARGUMENT	4
I. The circuit court’s not guilty verdict contradicts the clear language of Wis. Stat. § 346.675 and must be reversed.....	4
a. Where a statute is clear on its face, no further interpretation is appropriate and the court’s inquiry must end.....	4
b. By looking beyond the ordinary meaning of the statute, the court decided in error that a statutory defense was applicable to West.....	5
II. There are only two statutory elements that must be met to result in a finding of guilt under Wis. Stat. § 346.675(1).....	7
III. The trial court’s determination results in judicial nullification.....	8
CONCLUSION	9
CERTIFICATION OF FORM AND LENGTH.....	10
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)	11
CERTIFICATION OF MAILING	12
CERTIFICATION OF APPENDIX	13
APPENDIX	14
PLAINTIFF-APPELLANT APPENDIX TABLE OF CONTENTS	15

TABLE OF AUTHORITIES

Cases

<i>Bruno v. Milwaukee Cty.</i> , 2003 WI 28, 260 Wis. 2d 633, 660 N.W.2d 656.....	4, 5
<i>Flynn v. Dep’t of Admin.</i> , 216 Wis. 2d 521, 576 N.W.2d 245 (1998)	8
<i>In re P.A.K.</i> , 119 Wis. 2d 871, 350 N.W.2d 677 (1984)	4
<i>In re R.H.L.</i> , 159 Wis. 2d 653, 464 N.W.2d 848 (1990)	4
<i>Seider v. O’Connell</i> , 2000 WI 76, 236 Wis. 2d 211, 612 N.W.2d 659	4
<i>Sorrels v. U.S.</i> , 287 U.S. 435, 53 S.Ct. 210 (1932)	8
<i>State ex rel. Kalal v. Circuit Court for Dane Cty.</i> , 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110	4
<i>State v. Beasley</i> , 165 Wis. 2d 97, 477 N.W.2d 57 (Ct. App. 1991)	3
<i>State v. Michels</i> , 141 Wis. 2d 81, 414 N.W.2d 311 (Ct. App. 1987)	3

Statutes

Wis. Stat. § 346.675	1, 2, 4
Wis. Stat. § 346.675(1).....	passim
Wis. Stat. § 346.675(4)(b)	6
Wis. Stat. § 346.68	1, 5, 7
Wis. Stat. § 809.19(8)(c)	10

INTRODUCTION

The circuit court's decision contradicts the clear, unambiguous language of Wis. Stat. § 346.675 which governs owner's liability for hit and run to an unattended vehicle. The City of Eau Claire satisfied every element of Wis. Stat. § 346.675(1) during a court trial. Wis. Stat. § 346.675(1) contains the following elements: (1) that the person cited be the owner of the vehicle; and (2) that the vehicle was operated in violation of Wis. Stat. § 346.68 (hit and run to an unattended vehicle).

The following facts were undisputed at trial: a parked vehicle was struck by the operator of a vehicle owned by Debora West, the parked vehicle was unattended, the West-owned vehicle caused significant damage to the unattended vehicle and left pieces of the unattended vehicle in the public right-of-way; and the driver of the West-owned vehicle left the scene of the accident without contacting the unattended vehicle's owner or reporting the incident to the police. The City of Eau Claire thus satisfied every element of Wis. Stat. § 346.675(1) during a court trial.

Despite the circuit court's findings to the effect that statutory requirements were satisfied, the circuit court ruled West not guilty of the citation. The circuit court's decision contradicts the clear language of Wis. Stat. § 346.675(1), erroneously applies statutory defenses to West, and results in judicial nullification

that has no place in the judicial system. The circuit court's decision must be reversed.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

On December 19, 2016, Samantha Wensel's vehicle was struck, which caused major front-end damage to her vehicle. (R. 11: 9-11) As a result of the accident, a license plate was left on Wensel's vehicle. (R. 11: 6, 10) The detached license plate was registered to a vehicle owned by Debora West. (R. 11: 13) Wensel was not contacted by either the driver or West, as the owner of the vehicle. (R. 11: 11) West was issued a citation for owner's liability for hit and run to an unattended vehicle. (R. 11: 15)

The circuit court made the following finding of facts following a court trial on May 8, 2017:

"The evidence shows that sometime on December 19th of 2016, a vehicle owned by Samantha Wensel...was parked lawfully on Omaha Street, was struck by a person who was operating Debora West's motor vehicle. The reason we know that the vehicle owned by Debora West...was involved in this drive-off incident was that the front license plate of the alleged vehicle was left on the scene. So the striking vehicle, which was at the time the citation was issued...was owned by Debora West. ...[S]he, Debora West, as the registered owner, was given a citation...". (R. 11: 25)

Despite the above finding of facts, the circuit court ruled West not guilty and dismissed the citation. (R. 11: 29) The circuit court determined the statute, Wis. Stat. § 346.675, "was not meant to cover this...situation." (R. 11: 28-29) The City of Eau Claire appealed.

ISSUES PRESENTED FOR REVIEW

Issue 1: Did the City satisfy the elements of Wis. Stat. § 346.675(1), that creates owner's liability for hit and run to an unattended vehicle?

Trial court answered: Yes. The circuit court's findings of fact demonstrate the City proved the elements of Wis. Stat. § 346.675(1).

Issue 2: Does a circuit court have discretion to find a defendant not guilty of owner's liability for hit and run to an unattended vehicle when all of the elements of the statute were satisfied?

Trial court answered: Yes. The statute was not intended to apply to a situation like the case at hand, and thus the circuit court had discretion to find the defendant not guilty of the citation despite the City satisfying the elements of the offense.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiff-Appellant does not recommend oral argument or publication. The issues raised in this appeal are largely matters of settled law.

STANDARD OF REVIEW

Statutory interpretation is a question of law that is reviewed de novo. *State v. Beasley*, 165 Wis. 2d 97, 99, 477 N.W.2d 57, 58 (Ct. App. 1991), citing *State v. Michels*, 141 Wis. 2d 81, 87, 414 N.W.2d 311, 313 (Ct. App. 1987).

ARGUMENT

I. The circuit court's not guilty verdict contradicts the clear language of Wis. Stat. § 346.675 and must be reversed.

The circuit court's not guilty verdict contradicts the clear language of Wis. Stat. § 346.675 and must be reversed. If a statute is clear on its face, any further interpretation is inappropriate and all inquiry must end. By looking beyond the plain meaning of the statute, the court decided in error that a statutory defense applied to West.

a. Where a statute is clear on its face, no further interpretation is appropriate and the court's inquiry must end.

Where a statute is clear on its face, no further interpretation is appropriate and the court's inquiry must end. *In re R.H.L.*, 159 Wis. 2d 653, 657, 464 N.W.2d 848 (1990), citing *In re P.A.K.*, 119 Wis. 2d 871, 878, 350 N.W.2d 677 (1984); *see also State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶43, 271 Wis. 2d 633, 681 N.W.2d 110, citing *Seider v. O'Connell*, 2000 WI 76, ¶43, 236 Wis. 2d 211, 612 N.W.2d 659.

Only if the statute is ambiguous does the court look beyond the words of the statute. *Id.* A statute is ambiguous if “‘well-informed persons *should have* become confused,’ that is, whether the statutory language *reasonably* gives rise to different meanings.” *Kalal*, 2004 WI 58, ¶47, citing *Bruno v. Milwaukee Cty.*, 2003 WI 28, 260 Wis. 2d 633, 660 N.W.2d 656.

Applying the ambiguity test to Wis. Stat. § 346.675(1), the statute does not reasonably give rise to different meanings, and even uninformed persons should not become confused in a reading of the statute. Wis. Stat. § 346.675(1) is clear on its face, stating that, "...the owner of a vehicle operated in the commission of a violation of...s. 346.68...*shall* be liable for the violation...". (emphasis added) All words in the statute have a common, generally understood definition, and "[s]tatutory language must be given its common, ordinary, and accepted meaning." *Bruno*, 2003 WI 28, ¶¶ 8, 20.

Giving Wis. Stat. § 346.675(1) its common, ordinary and accepted meaning, the statute requires that the owner whose vehicle is involved in a hit-and-run accident described in Wis. Stat. § 346.68 be found guilty of Wis. Stat. § 346.675(1). The circuit court's findings of fact and the uncontradicted testimony at trial demonstrate these elements were met. (R. 11: 10-11, 25)

Consequently, the court erred and did not give Wis. Stat. § 346.675(1) its ordinary meaning; rather, the court looked beyond the words of the statute and determined the statutory language served to exempt West from liability. (R. 11: 27-28)

b. By looking beyond the ordinary meaning of the statute, the court decided in error that a statutory defense was applicable to West.

By looking beyond the ordinary meaning of the statute, the court decided in error that a statutory defense was applicable to West. In fact, none of the statutory

defenses provided in Wis. Stat. § 346.675(4)(b) are applicable to West. In finding West not guilty, the trial court relied on the defenses found in Wis. Stat. § 346.675(4)(b), specifically Wis. Stat. § 346.675(4)(b)2.

For the defense to apply, the plain language of Wis. Stat. § 346.675(4)(b)2. requires that the owner provide the name and address of the person operating the vehicle at the time the accident occurred. Why the court relied on this particular defense is unclear; but whatever the reason, the reliance was misplaced. West did not provide Officer Zurbuchen with either the name or address of the person operating the vehicle at the time of the accident, as Wis. Stat. § 346.675(4)(b)2. requires. (R. 11: 13-15) Wis. Stat. § 346.675(4)(b)2. is therefore wholly inapplicable to West.

None of the other statutory defenses are applicable in this case. There is no evidence to support that the vehicle was stolen, as required by Wis. Stat. § 346.675(4)(b)1. (R. 11) West admitted she owned the vehicle, so Wis. Stat. §§ 346.675(4)(b)3.-4. do not apply. (R. 11: 19) Officer Zurbuchen endeavored to find the operator of the vehicle, yet was unable to do so. (R. 11: 13-15) Therefore, no other person was convicted for the violations as specified in Wis. Stat. § 346.675(4)(b)5. West was properly liable for the citation.

II. There are only two statutory elements that must be met to result in a finding of guilt under Wis. Stat. § 346.675(1).

There are only two statutory elements that must be met to result in a finding of guilt under Wis. Stat. § 346.675(1). Both elements were satisfied in the court trial on May 8, 2017.

The first element is that the person cited be the owner of the vehicle. Wis. Stat. § 346.675(1) requires that "...the owner of a vehicle...shall be liable...". The second required element is that the vehicle was "...operated in the commission of a violation of...s. 346.68...". Wis. Stat. § 346.675(1).

During the court trial on May 8, 2017, the court made the following findings of fact:

"The evidence shows that sometime on December 19th of 2016, a vehicle owned by Samantha Wensel, who...was parked lawfully on Omaha Street, was struck by a person who was operating Debora West's motor vehicle.

The reason we know that the vehicle owned by Debora West...was involved in this drive-off incident was that the front license plate of the alleged vehicle was left on the scene. So the striking vehicle, which was at the time the citation was issued...was owned by Debora West. ...[S]he, Debora West, as the registered owner, was given a citation...". (R. 11: 25)

These findings of fact clearly satisfy the statutory requirements. The court found that Debora West was the owner of the striking vehicle. (R. 11: 25) A person other than West was operating West's vehicle in a drive-off incident (R. 11: 25), which is a violation of Wis. Stat. § 346.68. Where all statutory elements are satisfied, as occurred in this case, the court must make a finding of guilt; it erred in finding West not guilty.

III. The trial court's determination results in judicial nullification.

The trial court's determination results in judicial nullification. State statute was nullified when the court determined all statutory elements were satisfied, but nevertheless decided the statute did not apply to the case at hand. The Supreme Court of the United States has made it clear that nullification by judges has no place in the judicial system. *Sorrels v. U.S.*, 287 U.S. 435, 445-46, 53 S.Ct. 210, 216 (1932). When acting within constitutional limits, it is the role of a legislative body, not a court, to determine public policy. *Flynn v. Dep't of Admin.*, 216 Wis. 2d 521, 539, 576 N.W.2d 245 (1998).

Jury nullification is defined in Black's Law Dictionary 7th edition as "A jury's knowing and deliberate [...] refusal to apply the law [...] because the result dictated by the law is contrary to the jury's sense of justice, morality or fairness." If the word "jury" is replaced with "judge", the definition becomes a narrative for the case at hand.

The trial court applied the facts to the law and determined that West owned the vehicle that struck Wensel's car in a drive-off incident. (R. 11: 26-28) While these findings satisfy the statutory requirements of Wis. Stat. § 346.675(1), the trial court felt the statute should not apply to this case, where the court determined the driver was negligent in the keeping of her vehicle. (R. 11: 28)

Interpreting the court's decision may lead one to conclude that lending a vehicle to someone is an acceptable means to avoid responsibility for that vehicle.

The state legislature wants drivers to take responsibility for their vehicles or Wis. Stat. § 346.675(1) would not exist. Taking the trial court's view as applied to the facts sends the public a message that it is perfectly acceptable for one to lend out one's vehicle, fail to keep track of where the vehicle is, who was driving the vehicle, and what happened to the vehicle, and then not take responsibility for damage the vehicle caused to someone's property.

Rather than accepting the legislature's judgment regarding policy, the trial court nullified the statute as applied in this situation and erroneously replaced the legislature's public policy rationale with its own.

CONCLUSION

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

Dated this 25th day of October, 2017.

Attorney for the City of Eau Claire,

BY: /s Jenessa Stromberger
Jenessa Stromberger
State Bar No. 1090100
203 S. Farwell Street
Phone: (715) 839-6006
Fax: (715) 839-6177
jenessa.stromberger@eauclairewi.gov

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:

Proportional serif font: Min. printing resolution of 20 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text. The length of this brief is 2,119 words.

Dated this 25th day of October, 2017.

BY: /s Jenessa Stromberger
Jenessa Stromberger
State Bar No. 1090100

Jenessa Stromberger
Eau Claire Assistant City Attorney
State Bar No. 1090100
203 S. Farwell Street
Phone: (715) 839-6006
Fax: (715) 839-6177
jenessa.stromberger@eauclairewi.gov

CERTIFICATION 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 s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief mailed on October 25, 2017.

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

Dated this 25th day of October, 2017.

BY: /s Jenessa Stromberger
Jenessa Stromberger
State Bar No. 1090100

Jenessa Stromberger
Eau Claire Assistant City Attorney
State Bar No. 1090100
203 S. Farwell Street
Phone: (715) 839-6006
Fax: (715) 839-6177
jenessa.stromberger@eauclairewi.gov

CERTIFICATION OF MAILING

I certify that this brief 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 October 25, 2017.

BY: /s Jenessa Stromberger
Jenessa Stromberger
State Bar No. 1090100

Jenessa Stromberger
Eau Claire Assistant City Attorney
State Bar No. 1090100
203 S. Farwell Street
Phone: (715) 839-6006
Fax: (715) 839-6177
jenessa.stromberger@eauclairewi.gov

CERTIFICATION OF APPENDIX

I certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and contains: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) copies of any unpublished opinions cited under 809.23; and (4) any portions of the record essential an understanding of the issues raised.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further 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.

BY: /s Jenessa Stromberger
Jenessa Stromberger
State Bar No. 1090100

Jenessa Stromberger
Eau Claire Assistant City Attorney
State Bar No. 1090100
203 S. Farwell Street
Phone: (715) 839-6006 Fax: (715) 839-6177

APPENDIX

PLAINTIFF-APPELLANT APPENDIX TABLE OF CONTENTS

1. Transcript of May 8, 2017 Court Trial.....P-App 101