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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT I

Case No. 2018AP002186-CR

CITY OF MILWAUKEE,

Plaintiff-Respondent,

v.

DAVID MUNZINGER,

Respondent-Appellant.

On Appeal from a Judgment Dismissing Municipal Court
Appeal Entered in Milwaukee County Circuit Court, the
Honorable Hannah C. Dugan Presiding

BRIEF AND APPENDIX OF
RESPONDENT-APPELLANT

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TABLE OF CONTENTS

	<u>Page</u>
ISSUE PRESENTED	1
STATEMENT ON ORAL ARGUMENT	1
STATEMENT ON PUBLICATION	1
STATEMENT OF CASE	1
ARGUMENT	5
CONCLUSION	8

TABLE OF AUTHORITIES

Wisconsin Statutes Section 800.14	5, 6, 8
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ISSUE PRESENTED FOR REVIEW

Did the circuit court err in dismissing Appellant's Municipal Court appeal for failure to provide written notice to City Attorney.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The sole issue on appeal is derived from well-settled law. Oral argument is unnecessary since the record and briefs on appeal will adequately present the issue and relevant legal authorities so as to obviate the need for oral argument. Further, oral argument is unlikely to aid the Court in its analysis. *See* Wis. Stat. § 809.22.

Since the sole issue involves no more than applying well-settled rules of law to a recurring fact situation, publication is not requested nor is it warranted. *See* Wis. Stat. § 809.23.

STATEMENT OF CASE

This is an appeal from a Final Order to Dismiss Appeal and Remand entered October 16, 2018 in Milwaukee

County Circuit Court. The Honorable Hannah Dugan granted Assistant City Attorney's motion to dismiss for failure to provide written notice of appeal to City Attorney.

STATEMENT OF RELEVANT FACTS

On Sunday, May 7, 2017, at approximately 6:45 PM, David Munzinger sustained severe head injuries as a result of falling off his motorcycle after attempting to avoid being struck by another vehicle traveling at a high rate of speed. Milwaukee Fire and Milwaukee Police personnel arrived on scene. According to the Wisconsin Motor Vehicle Crash Report, Mr. Munzinger "had blood coming out of his ear and seemed dazed and confused. He seemed to have glassy bloodshot eyes, was unsteady on his feet and fire personnel stated he smelled of alcohol." He was transported to Froedtert Hospital and admitted to the Surgical Intensive Care Unit. He consented to a blood draw, and at some point, was issued an Operating While Under the Influence citation.

There was some delay from the time his blood was collected on May 7, 2017, until the results of his blood draw

were made available by the Wisconsin State Laboratory of Hygiene (hereafter Hygiene Lab). The results of the Hygiene Lab report dated October 30, 2017 indicated Mr. Munzinger's blood alcohol concentration was under the .08 limit at the time of his blood draw on May 7, 2017. (App. at 56-57).

As a result, the City Attorney attempted to resolve the matter by amending the Operating While Under the Influence citation down to a Reckless Driving citation. (Id.).

The Municipal Court judge, however, rejected the amendment. Ultimately, a court trial concluded on April 24, 2018 and Mr. Munzinger was found guilty of Operating While Under the Influence.

On May 4, 2018, Mr. Munzinger, through counsel, filed a Notice of Appeal with the Municipal Court using the Municipal Court's Notice of Appeal Form Summary and Notice of Appeal Form. (App. at 3-4). When the Notice of Appeal Form was filed with the Municipal Court on May 4, 2018, the matter was immediately sent before the Municipal Court judge at that time. Before calling the case on-the-record

on May 4, 2018, the Assistant City Attorney who handled the case was summoned to court. With the Assistant City Attorney present in court, the case was called and the Municipal Court noted a timely Notice of Appeal for a New Trial – Six Person Jury. (App. at 65). The Municipal Court also noted the appeal fee and bond must be paid by May 14, 2018. (Id.).

On May 14, 2018, Mr. Munzinger, through counsel, paid the appeal fee (\$184) and bond (\$861). (App. at 54-55). In a letter addressed to the Assistant City Attorney who handled the case and was present in court on May 4, 2018, Mr. Munzinger, through counsel, provided copies of the payment receipts for the appeal fee and bond and wrote the following:

“Dear ACA Unora:

As you know from our brief hearing on Friday, May 4, 2018, Mr. Munzinger has appealed the Judgment/Order in this case. I acknowledge the parties have tried to resolve this matter on a number of occasions. Now that it will be moved to Circuit Court, I am hopeful the same spirit to resolve this case follows.” (App. at 53-55).

SUMMARY OF ARGUMENT

Mr. Munzinger provided Attorney written notice of Appeal, as required under Wisconsin Statute Section 800.14, when he emailed Assistant City Attorney on May 14, 2018. Further, Assistant City Attorney had actual notice and knowledge of Mr. Munzinger's appeal as of May 4, 2018 when the Municipal Court judge summoned him to appear in court before docketing timely Notice of Appeal. *See Wis. Stat. § 809.22.*

ARGUMENT

I. Mr. Munzinger provided City Attorney written notice of appeal.

A. May 14, 2018 Email to Assistant City Attorney

On May 14, 2018, Mr. Munzinger, through counsel, emailed Assistant City Attorney a letter stating the following:

“Dear ACA Unora:

As you know from our brief hearing on Friday, May 4, 2018, Mr. Munzinger has appealed the Judgment/Order in this case. I acknowledge the parties have tried to resolve this matter on a number of occasions. Now that it will be moved to Circuit Court, I am hopeful the same spirit to resolve this case follows.” (App. at 53).

Attached to the May 14, 2018 email were two payment receipts. The first receipt was for \$184 with a computer-generated notation “to appeal/jury fees” printed on the receipt. (App. at 54). The second receipt was for \$861 with a computer-generated notation “to case forfeiture/fees” printed on the receipt. (App. at 55).

The May 14, 2018 email and attachments provided the “other party” written notice of appeal as required under Wisconsin Statutes Section 800.14. The statute does not specify an obligatory method of delivery of the written notice required under Wisconsin Statutes Section 800.14. All it requires is that written notice be provided to the other party, and it was. *See* Wis. Stat. § 800.14.

The Assistant City Attorney does not dispute receiving the May 14, 2018 email. (Tr. 6:18-22; App. at 10). Rather, he argues that to effectuate notice, a “municipal court appeal document” should have been forwarded to his office. (Tr. 6:13-17; App. at 10; Tr. 9:22-25; App. at 13; Tr. 15:20-21; App. at 19; Tr. 22:7-11; App. at 26). Apparently, he conflates

and confuses the “Notice of Appeal” Form to be filed in Municipal Court *with* the “written notice” to “other party” required under Wisconsin Statutes Section 800.14.

Contrary to the Assistant City Attorney’s argument and circuit court’s belief, the Municipal Court “Notice of Appeal” Form was not required to be forwarded to the City Attorney. (Tr. 29:11-13; App. at 33; Tr. 29:21; App. at 33; Tr. 29:23; App. at 33; Tr. 30:2-3; App. at 34; Tr. 31:4-8; App. at 35; and Tr. 31:22-23; App. at 35). The statute requires written notice be provided to the other party that a matter has been appealed to circuit court, and it was.

II. Mr. Munzinger provided City Attorney actual notice of appeal.

A. May 4, 2018 Court Appearance

On May 4, 2018, Mr. Munzinger, through counsel, provided City Attorney actual notice of his Municipal Court appeal. When the “Notice of Appeal” Form was filed with the Municipal Court on May 4, 2018, the matter was immediately sent before the Municipal Court judge at that time. The case was not called until the Assistant City Attorney was present

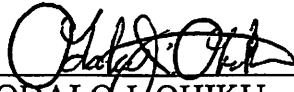
in court. At which time, the court docketed timely Notice of Appeal. The Assistant City Attorney acknowledges being present in court on May 4, 2018 when the court docketed timely Notice of Appeal. (Tr. 11:12-14; App. at 15). He also acknowledges interacting with Mr. Munzinger's counsel in court on May 4, 2018 (Resp. Br. in Supp. of Pl. [']s] Mot. to Dismiss 2; App. at 42). Collectively, this constitutes *notice* and vitiates against claims that the City Attorney lacked actual notice and knowledge of the municipal court appeal.

CONCLUSION

Mr. Munzinger provided written notice of appeal to the other party as required under Wisconsin Statutes Section 800.14. The circuit court erred in dismissing his appeal. This matter should be remanded to circuit court for a new trial – six person jury.

Dated this 12th day of March, 2019.

Respectfully submitted,



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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,367 words.

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 § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after 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 12th day of March, 2019.

Signed:



Odalo J. Oniku

CERTIFICATION AS TO APPENDIX

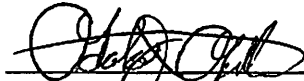
I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

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 one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically 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 12th day of March, 2019.

Signed:



Odalo J. Ohiku