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COURT OF APPEALS OF WISCONSIN

DISTRICT 2

TOWN OF WATERFORD,
Plaintiff - Respondent

vs.

Appeal No: 2019AP000737

Circuit Court: 2018CV000828

CHRISTOPHER PYE,
Defendant - Appellant

PLAINTIFF - RESPONDENT'S SUPPLEMENTAL BRIEF

APPEAL FROM CIVIL JUDGMENT ENTERED FEBRUARY 28, 2019 IN
RACINE COUNTY CIRCUIT COURT, BRANCH 10
THE HONORABLE TIMOTHY D. BOYLE, PRESIDING

Anthony J. Kryshak II, SBN 1063950
Attorney for Respondent
Michael F. Dubis, S.C.
208 E. Main St.
Waterford, WI 53185
Tel 262-534-6950
Fax 262-534-7367
anthony@kryshaklawoffice.com

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SUPPLEMENTAL BRIEF OF PLAINTIFF - RESPONDENT

I. Identify any statutory authority for the tolling of the applicable statute of limitations in this case.

The statute of limitations that applies to municipal court citations is found in Wis. Stat. § 893.93(2). Wis. Stat. § 893.93(2) does not have any specific provision with respect to the tolling of the statute of limitations.

Wis. Stat. § 893.13 deals directly with the tolling of statutes of limitation. Wis. Stat. § 893.13(2) states:

A law limiting the time for commencement of an action is tolled by the commencement of the action to enforce the cause of action to which the period of limitation applies. The law limiting the time for commencement of the action is tolled for the period from the commencement of the action until the final disposition of the action.

Plaintiff - Respondent concedes that the municipal court action in this matter was not commenced until more than two years after the underlying violation. As such, it

does not appear there is any statutory authority in this matter for the tolling of the statute of limitations under Wis. Stat. §§ 893.93(2) or 893.13.

II. Identify specific cases, treatises, or any other authority for the application of "equitable tolling" to a statute of limitations when a municipality brings an action seeking a forfeiture or penalty for violation of a municipal ordinance.

Plaintiff - Respondent was unable to find any specific cases, treatises, or other authority in Wisconsin or the 7th Circuit with respect to the specific issue of applying the doctrine of equitable tolling to the statute of limitations for a municipality bringing an action for a municipal ordinance violations. There is such authority on equitable tolling as a broader concept, but nothing when the scope of the issue is limited to only the applicability on statutes of limitation and municipal ordinance violations.

III. Does a municipal court have personal jurisdiction over a defendant when the relevant statute of limitations applicable to a forfeiture or penalty has expired?

Barring unusual or exceptional circumstances, a municipal court would not have personal jurisdiction over a defendant after the relevant statute of limitations has expired.

Plaintiff - Respondent's position is that in this case such circumstances do exist to apply the doctrine of equitable

tolling so the Town of Waterford would have personal jurisdiction over the Defendant.

The only authority Plaintiff - Respondent was able to locate that dealt with personal jurisdiction and municipal courts was *State vs. Kollross*, 388 Wis.2d 135, N.W.2d 263. In that case, a municipal citation was issued for OWI on May 28, 2011 and the matter was dismissed without prejudice on April 17, 2013. The matter was dismissed because the City of West Allis failed to timely produce its witness for trial. While the OWI municipal citation was pending, the defendant in that case was arrested for another OWI offense and convicted of OWI-first on July 11, 2014. The municipal court subsequently dismissed the pending OWI municipal citation for lack of subject matter jurisdiction. On February 5, 2015, the Milwaukee County District Attorney's Office issued a criminal complaint for OWI-second with respect to the May 28, 2011 incident. See generally *State vs. Kollross*.

Kollross is distinguishable from the current case for a number of reasons. First, the issue in *Kollross* was whether the OWI municipal citation that was issued May 28, 2011 tolled the criminal statute of limitations. The applicable criminal statute of limitations in that case is Wis. Stat. § 939.74. Wis. Stat. § 939.74 contains language

specifying various time limits for bringing various criminal actions and also contains internal language specific to tolling those time limits. Again, the only issue in *Kollross* was whether the OWI municipal citation served to toll the criminal statute of limitations pursuant to the tolling language found within Wis. Stat. § 939.74. In this case, the applicable statute of limitations is Wis. Stat. §893.93(2) and there is no internal language with respect to tolling. The issue in this case then becomes whether or not the violation of the statute of limitations can be cured by the doctrine of equitable tolling.

Kollross is also distinguishable from this matter in that in *Kollross* there was delay caused by the municipality in the prosecution of the municipal action. As mentioned above, in *Kollross*, the matter was eventually dismissed because the municipal prosecution was not prepared to move forward at trial. In this case, there was no delay on the part of the Town of Waterford (hereinafter the "Town"). The Town was not informed of or aware of the dismissal of the criminal charges until after the expiration of the two year statutory period. The Town promptly issued the municipal citation upon learning of the dismissal.

CONCLUSION

For the reasons outlined above, the Respondent respectfully asks that the Court of Appeals affirm the decision of the lower court that statute of limitations was equitably tolled for the issuance of the Town of Waterford's municipal citations.

Dated this 20th day of March, 2020.

 /s/ Anthony J. Kryshak II
Anthony J. Kryshak II, SBN 1063950
Attorney for Respondent
Michael F. Dubis, S.C.
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Waterford, WI 53185
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CERTIFICATION REGARDING WIS. STAT. § 809.19(12)

I certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that the electronic brief is identical in content and format to the printed form of the brief as of this date.

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

Dated this 20th day of March, 2020.

/s/ Anthony J. Kryshak II
Anthony J. Kryshak II, SBN 1063950
Attorney for Respondent
Michael F. Dubis, S.C.
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