

FILED
09-13-2022
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 22AP1065

COUNTY OF GRANT,

Plaintiff-Respondent,

vs.

BRAD A. HOCHHAUSEN,

Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM A FINAL ORDER ENTERED IN
CIRCUIT COURT CASE NUMBER 22TR274 ON JUNE 16, 2022,
IN THE CIRCUIT COURT FOR GRANT COUNTY, BRANCH II,
THE HON. CRAIG DAY PRESIDING.

Respectfully submitted,

BRAD A. HOCHHAUSEN,
Defendant-Appellant

JOHN HOLEVOET, SBN: 1074251
Attorney for the Defendant-Appellant
Johnen & Holevoet
316 W. Washington Avenue, Suite 225
Madison, WI 53703
(608) 620-3442

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Authorities	3
Statement of Issues	4
Statement on Oral Argument and Publication	5
Statement of the Case	6
Argument	
I. THE 15-DAY MANDATORY SUSPENSION OF A PERSON’S OPERATING PRIVILEGES UNDER WISCONSIN STATUTES SECTION 343.30(1n) SHOULD NOT APPLY TO PEOPLE CONVICTED OF VIOLATING WISCONSIN STATUTES SECTION 346.57(5).	8
Conclusion	10
Certifications	11

TABLE OF AUTHORITIES

	<u>PAGE</u>
Cases Cited	
<i>Bruno v. Milwaukee County</i> , 2003 WI 28, 260 Wis. 2d 633, 660 N.W.2d 656.	8-9
<i>Seider v. O'Connell</i> , 2000 WI 76, 236 Wis. 2d 211, 612 N.W.2d 659.	8-9
<i>State ex rel. Kalal v. Circuit Court for Dane County</i> , 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110	8
<i>State v. Pratt</i> , 36 Wis. 2d 312, 153 N.W.2d 18, 20 (1967).	8
Statutes Cited	
Wis. Stat. § 343.30(1n) (2022).	4, 6-10
Wis. Stat. § 346.57(4)(gm) (2022).	9
Wis. Stat. § 346.57(4)(h) (2022).	6, 9
Wis. Stat. § 346.57(5) (2022).	4, 6-9

STATEMENT OF ISSUES

- I. DOES A SPEEDING VIOLATION UNDER WISCONSIN STATUTES SECTION 346.57(5) REQUIRE A MANDATORY FIFTEEN-DAY SUSPENSION OF A DEFENDANT'S OPERATING PRIVILEGES PURSUANT TO WISCONSIN STATUTES SECTION 343.30(1n)?

THE COURT ANSWERED YES.

STATEMENT ON PUBLICATION

Defendant-appellant recognizes that this appeal, as a one-judge appeal, does not qualify under this Court's operating procedures for publication. Hence, publication is not sought.

STATEMENT OF ORAL ARGUMENT

Oral argument would be appropriate in this case only if the Court concludes that the briefs have not fully presented the issues being raised on appeal.

STATEMENT OF THE CASE

On February 25th, 2022, Mr. Hochhausen was cited for speeding by Grant County Deputy Jerry Vesperman. R. 1. Deputy Vesperman originally cited Mr. Hochhausen violating Wisconsin Statutes section 346.57(4)(h). Id. He was alleged to have been driving 86 miles per hour (mph) in a 55-mph zone (31 mph over the limit) on U.S. Highway 61 in Grant County. Id.

On April 27, 2022, Mr. Hochhausen filed a motion to dismiss because Wisconsin Statutes section 346.57(4)(h) applies only in the absence of any other fixed limits or the posting of limits. R. 10. However, there are posted signs on Highway 61 indicating a speed limit of 55 mph. Id. Attorney John Holevoet argued the defendant's motion to dismiss at a hearing on May 19, 2022. R. 25. At that hearing, the Court agreed that dismissal was warranted, but allowed the County the opportunity to amend. Id. at 7. The County did amend the citation to a violation of Wisconsin Statutes section 346.57(5). Id. There was also a discussion at that hearing about whether the mandatory 15-day suspension of a defendant's operating privilege under Wisconsin Statutes section 343.30(1n) would apply for those convicted of violating Wisconsin Statutes section 346.57(5). Id. at 6-10.

On June 16th, 2022, Mr. Hochhausen entered a plea to the amended charge of violating Wisconsin Statutes section 346.57(5). R. 27 at 3. The County recommended a 15-day suspension of his operating privileges and a civil forfeiture as a punishment. Id. at 4. The Court expressed its view that the mandatory 15-day

suspension under Wisconsin Statutes section 343.30(1n) would apply in this case 346.57(5). *Id.* Ultimately, despite defense arguments to the contrary, the Court did impose a 15-day suspension of Mr. Hochhausen's operating privileges under Wisconsin Statutes section 343.30(1n). *Id.* at 6.

ARGUMENT

II. THE 15-DAY MANDATORY SUSPENSION OF A PERSON'S OPERATING PRIVILEGES UNDER WISCONSIN STATUTES SECTION 343.30(1n) SHOULD NOT APPLY TO PEOPLE CONVICTED OF VIOLATING WISCONSIN STATUTES SECTION 346.57(5).

Wisconsin has a well-established textualist methodology for statutory interpretation. This is underscored by cases like *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. In *Kalal*, the Court emphasized the importance of statutory text when it embraced the principle that a court's role is to determine what a statute means rather than determine what the legislature intended. *Id.* at ¶ 44. The assumption is that the legislature's intent is expressed in the statutory language. *Id.* Therefore, statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *Seider v. O'Connell*, 2000 WI 76, ¶¶ 43, 236 Wis. 2d 211, 612 N.W.2d 659. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 20, 260 Wis. 2d 633, 660 N.W.2d 656. When statutory language is unambiguous, there is no need to consult extrinsic sources, such as legislative history. *Id.* ¶ 7. "In construing or interpreting a statute the court is not at liberty to disregard the plain, clear words of the statute." *State v. Pratt*, 36 Wis. 2d 312, 153 N.W.2d 18, 20 (1967).

If we are to follow these precedents, then there is no misconstruing the statutory meaning of Wisconsin Statutes section 343.30(1n), which states:

A court shall suspend the operating privilege of a person for a period of 15 days upon the person's conviction by the court of exceeding the applicable speed limit as established by s. 346.57(4)(gm) or (h), by 25 or more miles per hour.

The statute is clear that the mandatory 15-day suspension of a person's operating privileges only applies when someone has been convicted of violating Wisconsin Statutes sections 346.57(4)(gm) or (h). That was not the case here; therefore, the Circuit Court erred in imposing a mandatory 15-day suspension on Mr. Hochhausen for violating Wisconsin Statutes section 346.57(5). To decide otherwise would disregard the plain meaning of Wisconsin Statutes section 343.30(1n). Furthermore, as the Court made clear in *Seider* and *Bruno*, additional analysis or speculation about the legislative intent behind section 343.30(1n) is unnecessary and unwarranted when the meaning of the statute is clear from the statutory language alone.

Traffic tickets often appear to be insignificant cases. However, for many people, traffic tickets represent the only interaction they will have with the court system. Therefore, the fair and thoughtful handling of these cases is incredibly important to the public's perception of the justice system and courts. While it is rare that these cases make it to the Court of Appeals, the issues raised here are not meaningless and deserve careful consideration. The impact of a mandatory 15-day

suspension of one's license without the ability to get an occupational license can be life changing. It could mean the loss of employment and significant financial hardship. That is why the correct application of the statutory language of Wisconsin Statutes section 343.30(1n) matters so much. Correcting the Circuit Court's error in this case and clarifying the application of the mandatory 15-day suspension is similarly important.

CONCLUSION

For the reasons stated in this brief, the judgment of the court should be reversed, and this action should be remanded to the Circuit Court with instructions to rescind the 15-day mandatory suspension of Mr. Hochhausen's operating privileges.

Dated this 13th day of September, 2022.

Respectfully Submitted,

Electronically signed by John Holevoet

JOHN HOLEVOET,
State Bar No. 1074251
Attorney for the Defendant-Appellant
P.O. Box 367
Madison, WI 53701-0367
(608) 216-7000

CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 989 words.

I also certify I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wisconsin Statutes section 809.19(12). That electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certification has been served upon both the court and all opposing parties.

Dated this 13th day of September, 2022.

Signed,

Electronically signed by John Holevoet

JOHN HOLEVOET
State Bar No. 1074251