

FILED
09-11-2023
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

TOWN OF DUNN,

Plaintiff-Respondent,

vs.

Appeal Nos.: 23AP1529, 23AP1530, 23AP1531
Circuit Court Case Nos.: 22TR11268, 22TR11269, 22TR011270

BRIAN S. LAFLEUR,

Defendant-Appellant.

MOTION TO DISMISS

Mr. LaFleur, by counsel from TRACEY WOOD AND ASSOCIATES, hereby moves the Court, pursuant to Wis. Stats. §§ 808.04 (1) and 809.10 (1), for an order dismissing the Town of Dunn's appeal due to it not being filed timely, thereby depriving this Court of jurisdiction.

FACTS AND PROCEDURAL HISTORY

On January 18, 2023, Mr. LaFleur, through counsel, filed a Motion to Suppress Evidence in Dane County Circuit Court for the above referenced cases. A hearing was held on May 17, 2023, where the Court took testimony and admitted exhibits into the record. After the evidence was admitted and the parties made arguments, the Trial Court ruled that that initial stop was made in violation of Mr. LaFleur's Constitutional rights and suppressed all evidence resulting therefrom. A written order was prepared and filed the same day as the hearing.¹ Both parties received the written order on May 17, 2023.

¹ See Memorandum and Order from trial Court filed on May 17, 2023 (Attached Exhibit 1).

On June 21, 2023, the Town of Dunn filed a Motion to Dismiss² along with a Proposed Order to Dismiss. The Circuit Court signed the Order the same day that it was filed.³ The Town of Dunn subsequently filed a Notice of Appeal with the Circuit Court on August 18, 2023.⁴ The Court of Appeals initially rejected the Appellant's filing for failure to sign the Notice. The rejection of the initial Notice of Appeal was accompanied by a letter signed by the Clerk of the Court of Appeals dated August 22, 2023. In that letter, this Court explained the rejection of the filing and referred the Appellant to Wis. Stat. § 808.04, to review the time limits for an appeal. A signed Notice of Appeal was filed by the Appellant that same day.⁵

Finally, the Appellant also moved to consolidate all the matters related to the trial Court's decision on August 22, 2023. The Motion to Consolidate was granted on August 23, 2023.

APPLICABLE LAW

Wis. Stat. § 809.10 (1) (e) is the applicable statute for time limits and the requirement that they be followed in order to give the Court jurisdiction. The Statute states: "Time for filing. The notice of appeal must be filed within the time specified by law. The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal."⁶

The time limits that allow for the Court of Appeals to have jurisdiction in this case are prescribed by Wis. Stat. § 808.04 (1).

"Initiating an appeal. An appeal to the court of appeals ***must be initiated within 45 days of entry of a final judgment or order*** appealed from if written notice of the entry of a final judgment or order is given within 21 days of the final judgment or order as provided in s. 806.06(5), or within 90 days of entry if notice is not

² See Motion to Dismiss file on June 21, 2023 (Attached Exhibit 2).

³ See Court Order for Dismissal dated June 21, 2023 (Attached Exhibit 3).

⁴ See Notice of Appeal filed on August 18, 2023 (Attached Exhibit 4).

⁵ See Letter from Court of Appeals dated August 22, 2023 (Attached Exhibit 5).

⁶ Wis. Stat. § 809.10 (1) (e).

given, except as provided in this section or otherwise expressly provided by law. Time limits for seeking review of a nonfinal judgment or order are established in s. 809.50.”⁷ (*Emphasis Added.*)

ARGUMENT

It is unclear whether the Town of Dunn is seeking review of the final order on May 17, 2023 (93 days before the filing of the Notice of Appeal, on August 18, 2023) or the Order to Dismiss that they drafted and filed themselves on June 21, 2023 (58 days before the filing of the Notice of Appeal, August 18, 2023). Either way, the Town of Dunn is barred from filing this notice under Wis. Stat. § 808.04 (1). According to Wis. Stat. § 809.10 (1) (e), this violation of time limits deprives the Court of jurisdiction to review this matter.

Furthermore, a quick review of the record shows that the Town of Dunn was specifically told about this time limit by this Court. In the Appellant’s first attempt at filing their appeal, their Notice of Appeal was rejected by this Court. The Notice of Appeal was rejected due to the fact that the attorney for the Town of Dunn failed to sign the Notice, but this Court stated at the end of its letter, “Please refer to Wis. Stat. § 808.04 regarding the time limits for filing a notice of appeal.”⁸ It is clear that the Town of Dunn’s attorney did not check Wis. Stat. § 808.04 as directed by this Court.

MOTION FOR SANCTIONS: ATTORNEY’S FEES

Mr. LaFleur further moves this Court for the imposition of Attorney’s fees in the amount of \$1,500.00. Mr. LaFleur makes this request pursuant to Wis. Stat. §§ 802.05(2)(b), which states:

2) Representations to court. By presenting to the court, whether by signing, filing, submitting, or later advocating a pleading, written

⁷ Wis. Stat. § 808.04 (1).

⁸ See Letter from Court of Appeals dated August 22, 2023 (Attached Exhibit 5).

motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following:

b) The claims, defenses, and other legal contentions stated in the paper ***are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. (Emphasis Added)***

The Notice of Appeal was clearly filed outside the deadline prescribed in Wis. Stat. § 808.04. Furthermore, it is clear that despite having their attention clearly called to the rules for time limits in filing their appeal, the Appellant still proceeded in filing their appeal. This action has required Mr. LaFleur to re-hire counsel to fight this matter, and now he respectfully requests that this Court order the Appellant to justly compensate him for expenses incurred for fighting an appeal where the Court lacks jurisdiction.

Dated at Middleton, Wisconsin, September 11, 2023.

Respectfully submitted,

BRIAN LAFLEUR, Defendant.

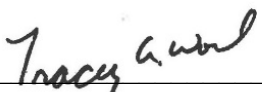
TRACEY WOOD & ASSOCIATES
Attorneys for the Defendant
6605 University Avenue, Suite 101
Middleton, Wisconsin 53562
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BY:



SCHUYLER BOGGIO
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BY:



TRACEY A. WOOD
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FILED

05-17-2023

CIRCUIT COURT

DANE COUNTY, WI

2022TR011268

BY THE COURT:

DATE SIGNED: May 17, 2023

Electronically signed by David Conway
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 17

DANE COUNTY

TOWN OF DUNN,

Plaintiff,

MEMORANDUM AND ORDER

v.

Case Nos. 2022TR011268

2022TR011269

BRIAN S. LAFLEUR,

2022TR011270

Defendant.

Before the Court are the defendant's motions to suppress. 22TR11268, Dkt. 11; 22TR11269, Dkt. 11; 22TR11270, Dkt. 11. The Town has cited the defendant for three non-criminal traffic violations: (1) operating while under the influence (1st offense); (2) operating with a prohibited alcohol concentration (1st offense); and (3) failure to obey a traffic sign in a work area. In his motion, the defendant asks the Court to suppress evidence because law enforcement lacked reasonable suspicion to initiate his traffic stop. The Court held an evidentiary hearing on May 17, 2023, at which the Town appeared by Attorney Jacob Wise, and the defendant appeared in person with Attorney Schuyler Bogio. During the hearing, the Court heard testimony from Dane County Sheriff Deputy Nathan Katzenmeyer, as well as argument from the parties. The Court recited the law and made findings of fact on the record.

For the reasons set forth on the record, the Court will GRANT the defendant's motion to suppress. All evidence and observations obtained by law enforcement as a result of the defendant's unlawful traffic stop are excluded from use at trial.

SO ORDERED.

Exhibit 1

FILED
06-21-2023
CIRCUIT COURT
DANE COUNTY, WI
2022TR011268

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

TOWN OF DUNN,

Plaintiff,

Case No. 22TR11268

Case No. 22TR11269

Case No. 22TR11270

v.

BRIAN S. LAFLEUR

Defendant.

PLAINTIFF'S MOTION TO DISMISS

TO: Brian S. LaFleur
c/o Attorney Tracy A. Wood
Tracy Wood & Associates
6605 University Avenue, #101
Middleton, WI 53562

NOW COMES the Plaintiff, by their attorneys Murphy Desmond S.C. by Jacob Wise,
will move the Court for an order dismissing the above-captioned matter.

AS GROUNDS for this motion, Plaintiff states the following:

1. Pursuant to the Court's Order suppressing evidence, Plaintiff lacks evidence to
prove essential elements of the offense and cannot meet its burden of proof in this case.

2. Plaintiff reserves its right to appeal.

THEREFORE, Plaintiff respectfully moves this Court for an Order dismissing this
matter.

Dated this 21th day of June, 2023.

MURPHY DESMOND S.C.

Attorneys for Plaintiff

Electronically Filed By: /s/ Matthew J. Fleming

Matthew J. Fleming

State Bar Number: 1031041

33 East Main Street, Suite 500

P.O. Box 2038

Madison, WI 53701-2038

Phone: (608) 257-7181

Fax: (608) 257-2508

mfleming@murphydesmond.com

FILED
06-21-2023
CIRCUIT COURT
DANE COUNTY, WI
2022TR011268

DATE SIGNED: June 21, 2023

Electronically signed by David Conway
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DANE
COUNTY

TOWN OF DUNN,

Plaintiff,

Case No. 22TR11268

Case No. 22TR11269

Case No. 22TR11270

v.

BRIAN S. LAFLEUR,

Defendant.

ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS

It is hereby ordered that Plaintiffs' Motion to Dismiss is granted, and the above-captioned matter is dismissed.

FILED
08-18-2023
CIRCUIT COURT
DANE COUNTY, WI
2022TR011269

STATE OF WISCONSIN, CIRCUIT COURT, DANE COUNTY

Town of Dunn)
)
)
(party designation) Plaintiff)
)
-vs-)
)
Brian S LaFleur)
)
(party designation) Defendant)

Notice of Appeal

Case No. 22TR11269

Notice is hereby given that (Name of party filing appeal) Town of Dunn
appeals to the Court of Appeals, District IV, from [Choose one] ☒ the whole ☐ a part of the final judgment
or order, entered on (Date) 6/21/2023 in the circuit court for Dane County, the
Honorable (Name of Judge) David Conway, presiding, in
favor of (Name of party opposing appeal) Brian LaFleur, and against
(Name of party filing appeal) Town of Dunn, wherein the court (Describe judgment or order)
Dismissed this Case.

NOTE: If this is an appeal under §809.30 or §809.32, also include the following [see §809.10(1)]:

- If a postconviction motion was not filed, state the date of service of the last transcript or service of a copy of the circuit court case record.
- If a postconviction motion was filed, state the date of the order deciding the postconviction motion(s).
- If the Court of Appeals established any other filing deadline, state it.

If counsel is appointed under ch. 977, a copy of the order appointing counsel should be attached to the notice of appeal.

This [Choose one] ☒ is ☐ is not an appeal within Wisconsin Statutes §752.31(2).
This [Choose one] ☐ is ☒ is not an appeal to be given preference in the circuit court or court of appeals
pursuant to statute.

Date: 08/18/2023

Signature of Filing Attorney or Party /s/ Matthew J. Fleming	Telephone Number (608) 268-5606	State Bar Number (if applicable) 1031041
Name Printed or Typed Matthew J. Fleming	Email Address (if any) mfleming@murphydesmond.com	
Address 33 E. Main Street, Suite 500, Madison, WI 53703		

This completed form must be *filed* with the clerk of the circuit court in which the judgment or order appealed from was entered. In addition, copies of this completed form must be served upon the following:

- Opposing counsel; and
- any other party.

The clerk of circuit court shall forward this form to the Court of Appeals.

Exhibit 4



Samuel A. Christensen
Clerk

WISCONSIN COURT OF APPEALS
OFFICE OF THE CLERK
110 E. Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Telephone: 608-266-1880
TTY: 800-947-3529
Fax: 608-267-0640
FILED <http://www.wicourts.gov>
08-22-2023
CIRCUIT COURT
DANE COUNTY, WI
2022TR011270

COURT ORIGINAL

Town of Dunn v. Brian S. LaFleur

Date: August 22, 2023

District: 4

Appeal No. 2023AP001531

Circuit Court Case No. 2022TR011270

Dear Matthew Fleming :

Our office has received your notice of appeal filed with the circuit court on August 18, 2023. The notice of appeal, however, is not signed by you. Wis. Stat. § 802.05(1) requires that you sign original documents filed in court. If you did not sign the original notice of appeal that you filed with the circuit court, you are required to file a signed version with the circuit court clerk within fourteen days of the date of this notice.

If the notice was electronically filed in the circuit court, Wis. Stat. § 801.18(12)(a) requires an electronic signature, use the format "Electronically signed by" followed by the name of the signatory, and placed where the person's signature would otherwise appear.

Be advised that your appeal may be subject to dismissal for failure to correct the notice of appeal.

Please refer to Wis. Stat. § 808.04 regarding the time limits for filing a notice of appeal.

Samuel A. Christensen
Clerk of Court of Appeals

Distribution:		Address	City	State	Zip Code
Court Original					
Matthew Fleming	Murphy Desmond SC	P.O. 2038 33 East Main Street, Suite 500	Madison	WI	53701-2038
Tracey A. Wood	Tracey Wood & Associates	Suite 101 6605 University Avenue	Middleton	WI	53562
Carlo Esqueda	Clerk of Circuit Court	Electronic Notice			