

STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT IV

For Official Use

CITY OF VERONA.

Represented by attorney KYLE ENGELKE

Plaintiff-Respondent

-vs-

EDWARD A SIEVERDING

Defendant-Appellant

Appeal No. 2017AP001813

Case No. :

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DEC 08 2017

CLERK OF COURT OF APPEALS
OF WISCONSIN

ON APPEAL FROM THE CIRCUIT COURT FOR DANE

COUNTY,

THE HONORABLE NICHOLAS J McNAMARA

, PRESIDING

Appellant Appendix

*

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TABLE OF CONTENTS

1. Brief cover (p1)
2. Table of contents (p2)
3. Statement of issues presented (p3)
4. Statement of case and relevant facts (p3-4)
5. Standard of review (p4)
6. Legal argument (p4-p10)
 - a. First Argument, Sieverding Complied With the Requirements of § 800.14(1), Wis. Stats. (p4-p9)
 - b. Second Argument, Pursuant to Wis. Stats § 807.07, the city waived its right of all objections to the regularity or sufficiency of the appeal or to the jurisdiction over the parties by not filing a motion to dismiss such appeal before taking or participating in the circuit court's proceedings. (p9-10)
7. Conclusion (p10)
8. Table of authorities (p11-p12)
9. Certification of mailing (P13)
10. Form and length certification (P14)

ISSUE PRESENTED

Did the trial court error as a matter of law in ruling that it had no jurisdiction to hear the appeal filed from the municipal court judgment of conviction?

ANSWERED BY THE TRIAL COURT: No. The Court ruled it had no jurisdiction to hear the appeal as a result of a lack of jurisdiction.

STATEMENT OF THE CASE AND RELEVANT FACTS

A court trial was concluded in the City of Verona Municipal Court on March 23, 2017 on citations alleging (1) Operating after Suspension; (2) Operating without Insurance; (3) First Offense Operating while under the Influence ("OWI"); and (4) First Offense Operating with a Prohibited Blood Alcohol Content. After trial the court entered an order on the same day finding the defendant-appellant, Edward Sieverding guilty on all four counts (see R: 1-2,3,4,5). On April 7th, 2017, the defendant-appellant filed a timely Notice of Appeal with the municipal court clerk using "appeal form 23"; supplied by the municipal court after the trial. (R: 1-1) The form did not instruct the appellant to mail, fax, or hand in person a copy of the notice the city attorney. The form included "CC Municipal attorney" at the bottom of the page. On April 11th, 19 days after the trial, the Municipal court clerk provided the Municipal attorney notice of appeal via an Emailed digital carbon copy (scanned image) or CC (R: 6-6,7,8,9).

On April 18, 2017, the municipal court file was transmitted and filed with the Circuit Court of Dane County (R: 1 - 1-6). On June 26th, the City of Verona filed its first motion which included copy of Edward Sieverdings "written notice of appeal" (R : 2). A final pretrial was held on June 27th where the City of Verona, attorney Kyle Engleke requested a disclosure of witnesses deadline, and Edward Sieverding was given until July 28th to hire a lawyer to represent himself (see circuit court docket, (A: p3-7). On July 14th the City of Verona filed it's witness list (R: 4) On July 21, 2017, the City of Verona filed a Motion to Dismiss served to Edward Sieverding alleging that the appeal was defective for failure to provide proper written notice of appeal to the City of Verona (R: 6). On July 27th, 2017, the trial court held a hearing wherein both sides presented oral argument on the jurisdictional issue

(R: 17). The trial court issued an oral decision granting the City's motion and dismissing the appeal for lack of jurisdiction on July 28th, 2017 (See docket, A: 3-7). On August 15, Edward Sieverding filed a motion for reconsideration which included a copy of madison's municipal appeal form. (See docket, A: 3-7)

A timely notice of appeal was filed on September 7th, 2017. The matter is now before this Court for briefing (R: 15).

LEGAL ARGUMENT

I. THE TRIAL COURT HAD PROPER JURISDICTION TO HEAR THE APPEAL FROM THE MUNICIPAL COURT CONVICTION

A. Standard of Review

Whether Sieverding complied with Wis. Stat. § 800.14 when seeking to appeal presents a question of law which the appellate court reviews de novo. See Wellin v. American Family Mut. Ins. Co., 2006 WI 81, ¶ 16, 292 Wis. 2d 73, 717 N.W.2d 690 (the interpretation and application of statutes and case law to facts of a particular case present questions of law which appellate courts decide de novo.) Accordingly, this Court conducts a de novo review of the trial court's decision on an issue of this nature.

It should not be necessary for oral arguments to be presented to the court unless the court has questions and requests a conferences. It is requested that the findings of this court are not published.

B. Argument

1. Sieverding Complied With the Requirements of § 800.14(1), Wis. Stats.

The city claimed, and the trial court found, that Sieverding did not comply with §800.14 (1), Wis. Stats., finding that he did not give proper written notice of appeal when appealing from the municipal court to the circuit court. (r :10)

Wis. Stats. § 800.14(1), states as follows:

"Appeals from judgments, decisions on motions brought under s. 800.115, or determinations regarding whether the defendant is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d), may be taken by either party to the circuit court of the county where the offense occurred. The appellant shall appeal by giving the municipal judge and other party written notice of appeal within 20 days after the judgment or decision. No appeals may be taken from default judgments."

In this statute, the legislature wanted to make it clear that appellant must provide notice to the judge and the other party so that the "other party" is not left in the dark and has time to prepare for the appeal. Here the the evil to be remedied was complied with as the other party, Verona city attorney Kyle Engleke acknowledges that he received the email transmission on April 11th(R: 6-6,7,8,9). The effectiveness of the notification can be verified as the city attorney was able to file its first motion on June 26th 2017, the day before the parties first appearance in circuit court (R :2). This motion included a copy of Mr. Sieverdings "Written notice of appeal". On June 27th, the city was prepared with numerous requests from the court including suggesting that the court require a witness list be presented by both parties (See docket, A: 3-7). The city filed its witness list on July 14th, then a week later, on july 21st the city filed two additional motions (R: 6. R: 7). The city did not asked for more time, nor did say it was unaware, unprepared, or caught off guard by Mr Sieverdings appeal.

During the motion hearing of july 28th 2017, the city attorney presented the argument that 801.11(4)(a)(3) should be referred to in order to determine who can receive notice on behalf of the city. (R: 17-7) Edward Sieverding is not arguing that the municipal court clerk should be considered "the other party" referenced in 800.14(1), nor is Edward suggesting municipal court clerk received notice on the behalf of the city. April 7th satisfied the requirements of notifying the judge. The "other party" wasn't notified until april 11th, when Jane Hesh, the court clerk acted as an intermediary, and voluntarily transmitted

Edward Sieverding's "written notice of intent to appeal" to the city attorney.

It appears that the circuit court judge made his decision to dismiss the appeal based on Edward Sieverdings testimony regarding the delivery of the April 7th document and whether or not it was Edward's intention to give a copy of that document to the "city clerk" as well as or oppose to the "municipal clerk" (R : 17 - 23). It is not clear if Edwards perceived intention regarding notice to the "city clerk" is a valid reason to dismiss the case. Intention is not a requirement of Wisconsin Stat. § 800.14(1), In Theory, Mr Sieverding could have inadvertently supplied the city with his written notice of appeal and the result would be same. The court did not settle the question as to if there was a legal reason why the April 11th Email to the City Attorney, with a PDF copy of Sieverdings written notice of appeal, could not fulfill the requirements of Wisconsin Stat. § 800.14(1) in regards to the "other party".

In the motion for dismissal (R : 6), one of the city attorney's arguments was that the municipal clerk would have to be considered an agent of the defendant in order or the notice to be considered valid. This argument has no legal basis in the statutes. Wisconsin Stat. § 800.14(1) places no requirements on the method of delivery for a written notice of appeal nor does it say that notice needs to be given *directly* from the appellant to the other party.

There are other Wisconsin statutes that refer to written notice that do not directly apply to appeals from municipal courts such as Wis. Stat. § 801.14(2). Wis. Stat. § 801.14(2) gives specific requirements on the method of delivery. It is presumed that when the legislature has chosen to exclude words from a statute, that it has excluded them for a purpose. C. Coakley Relocation Sys., Inc. v. City of Milwaukee, 2008 WI 68, ¶24 n.10, 310 Wis. 2d 456, 750 N.W.2d 900. Therefore it can be reasoned that the legislature did not want for there to be restrictions on the method delivery.

Wisconsin statute § 801.14(2) has more specific requirements than 800.14(1) which has no requirements on the method of delivery. Thus the methods of delivery for

800.14(1) would include but are not limited to the methods of delivery allowed in 801.14(2). Part of statute 801.14(2) reads "Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last-known address, or, if no address is known, by leaving it with the clerk of the court". Here we see that legal notices can be sent using the court clerk as a proxy or intermediary. The court clerk does not need to be "hired" or pronounced a "legal agent of the defendant".

The dismissal motion filed by city attorney, Kyle Engelke, referenced that "an unpublished decision, the court of appeals has found that service requirements under 801.14(2) do not apply to appeals of municipal judgments. See *Village of Thiensville v. Fisk*, No. 2015AP576, ¶ 3, unpublished slip op. (Wis. Ct. App. Aug. 26, 2015)." This was an odd thing for City Attorney, Kyle Engelke, to bring to our attention, as the outcome and findings of this case are greatly in favor of the defendant. In this case, the legal counsel of the defendant, Conor B Fisk, sent notice to the Village of Thiensville by means of an Emailed written notice of appeal. The opposing attorney argued the more defined requirements of 801.14(2) should be applied. The Wisconsin court of appeals ordered the circuit court to reverse the dismissal stating that:

"Wisconsin Stat. § 800.14(1) places no requirements on the method of delivery for a written notice of appeal. That is not changed by the fact that Wis. Stat. § 801.14(2) and (4) has more specific service requirements generally applied to civil actions in circuit courts. See Wis. Stat. § 801.01(2) (Wis. Stat. chs. 801 to 847 govern procedure and practice "in circuit courts of this state in all civil actions ... except where different procedure is prescribed by statute or rule"). We presume that when the legislature has excluded words from a statute, that it has excluded them for a purpose. C. Coakley Relocation Sys., Inc. v. City of Milwaukee, 2008 WI 68, ¶24 n.10, 310 Wis. 2d 456, 750 N.W.2d 900. The legislature did not prescribe in § 800.14(1) that written notice of an appeal of a municipal court judgment had to be delivered by hand, fax, or mail to the opposing party prior to being filed with the municipal court, and we will not do so here. Fisk provided written notice of his appeal to the Village pursuant to § 800.14(1) when he emailed a copy of that notice twenty days after the

municipal court judgment. That is all that the law requires."

The rules and laws governing municipal courts are outlined in section 800 of the wisconsin state legislature. Individual municipalities are allowed a fair amount of freedom and discretion within the statutes. There are no rules that prevent a municipal court from choosing to accept motions by email, or allow the municipal clerk to relay an appeal notice to the other party (as a courtesy). Verona for example has chosen to accept emailed communications and motions to the court.

The city attorney claimed that "the municipal court clerk warned the defendant on at least three occasions to copy the City on all communications with court." (R: 6 -4) This statement is false. Verona municipal court never asked Edward Sievering to copy the city of verona himself. However, on at least three occasions, Edward Sieverding was told that the city attorney would be copied with every communication. Infact, Edward Sieverding was able to file for a continuance by sending an Email to the municipal court clerk of verona. The clerk copied the city attorney by email who responded to the "motion for continuance" by email (also in R:6) Other municipalities might not have accepted motions by email and may have insisted that Edward Sieverding copy the city attorney by direct postal mail, however Verona did not. This is relevant as it was the city of Verona who, after his trial, supplied Edward Sieverding with appeal "form 23" (R : 1-1).

Verona municipal court Form 23 instructs the appellant to provide notice only to the municipal court clerk. Whereas Madison's municipal appeal form clearly provides the address of, and instructs the appellant to, mail a copy of the notice to Madison's city attorney (see attachment at the end of Mr Sieverdings motion for reconsideration). The absence of instructions to copy the City attorney suggests that the municipal court of verona might have chosen not to require appellants to send notice directly to the city attorney. Perhaps the court the municipal court planned for the court clerk to copy the city attorney on all notices and for that to meet the notification requirements of 800.14(1). Form 23 is dated from 2009, suggesting the same procedure has been followed for some time.

It is reasonable that based on his email conversation with the court clerk, that Mr Sieverding thought that the city attorney would receive a copy of the communication after it was submitted to the clerk of courts. The document itself clearly states that it is a "written notice of intention to appeal", and "cc municipal attorney" is included in the bottom of the page. When Edward signed the document, it set in writing his legal intention provide notice of intent to appeal to the municipal attorney. The notice of appeal was then transmitted and delivered to the Municipal attorney's electronic mailbox on April 11th. Accordingly, Sieverding has effectively complied with the statute.

2. Pursuant to Wis. Stats § 807.07, the city waived its right of all objections to the regularity or sufficiency of the appeal or to the jurisdiction over the parties by not filing a motion to dismiss such appeal before taking or participating in the circuit court's proceedings.

Statute. § 807.07(1), Wis. Stats., states as follows:

"When an appeal from any court, tribunal, officer or board is attempted to any court and return is duly made to such court, the respondent shall be deemed to have waived all objections to the regularity or sufficiency of the appeal or to the jurisdiction over the parties of the appellate court, unless the respondent moves to dismiss such appeal before taking or participating in any other proceedings in said appellate court. If it appears upon the hearing of such motion that such appeal was attempted in good faith the court may allow any defect or omission in the appeal papers to be supplied, either with or without terms, and with the same effect as if the appeal had been originally properly taken."

The statute is reasonable as it would be superfluous for the court and appellant to have spend the time and resources engaging in a proceeding if the respondent is going object to the regularity or sufficiency of the appeal or to the jurisdiction over the parties of the appellate court. Therefore the objection needs to be made in a motion before the proceedings begin.

In 1979, in Northbridge Bank v. Community Eye Care Center, 91 Wis.2d 298, 282 N.W.2d 632, the Wisconsin Supreme Court discussed WI § 807.07(1). Their per curiam opinion stated:

In its analysis, the court of appeals overlooked sec. 807.07(1), Stats., providing in part that after return is duly made to an appellate court and the respondent has objected to the sufficiency of the appeal by motion, "[i]f it appears . . . that such appeal was attempted in good faith the court may allow any defect or omission in the appeal papers to be supplied, either with or without terms, and with the same effect as if the appeal had been originally properly taken." The defect in this case is not one of jurisdiction. The notice of appeal was filed within the time for appeal ... this was a defect in the appeal papers which the court of appeals could and should have permitted to be supplied. It amounts to no more than an inconsequential violation of the rules of appellate procedure. No one was misled in any way... The new rules of appellate procedure were not designed to be a trap for the unwary. In this case, the court of appeals failed to exercise the discretion which was committed to it under sec. 807.07(1), Stats. For this reason, the petition for review is granted. The order of the court of appeals is reversed, and the case is remanded with directions to allow an amendment to the notice of appeal on terms, pursuant to sec. 807.07(1), so that the notice complies with sec. (rule) 809.10(1).

The city would have been required to move to dismiss Mr. Sieverdings appeal of his 4 cases before taking and participating in the circuit court's proceedings, however the city did not file its motion to dismiss until 24 days after the first day in court held on June 26th. At the June 26 appearance the city asked for both parties to be required to submit a witness list. On July 14th the city submitted its witness list. This actions constitute participation in the proceedings well before the July 21st motion to dismiss.

CONCLUSION

Based upon the arguments contained in this brief, Sieverding moves the Court to reverse and remand this matter back to the trial court for entry of an Order that

the circuit court had jurisdiction to hear the appeal taken directly from the municipal court.

Table of Authorities

Cases:

C. Coakley Relocation Sys., Inc. v. City of Milwaukee, 2008 WI 68, ¶24 n.10, 310 Wis. 2d 456, 750 N.W.2d 900

Northbridge Bank v. Community Eye Care Center, 91 Wis.2d 298, 282 N.W.2d 632

Village of Thiensville v. Fisk, No. 2015AP576, ¶ 3, unpublished slip op. (Wis. Ct. App. Aug. 26, 2015)

Wellin v.

American Family Mut. Ins. Co., 2006 WI 81, ¶ 16, 292 Wis. 2d 73, 717 N.W.2d 690

Statutes:

Wis. Stats. § 800.14(1)

(1) Appeals from judgments, decisions on motions brought under s. 800.115, or determinations regarding whether the defendant is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d), may be taken by either party to the circuit court of the county where the offense occurred. The appellant shall appeal by giving the municipal judge and other party written notice of appeal within 20 days after the judgment or decision. No appeals may be taken from default judgments.

Wis. Stats. 801.11(4) (a) (3)

801.11 Personal jurisdiction, manner of serving summons for. A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

(4) (a) (3) . If against a city, the mayor, city manager or clerk thereof;

Wis. Stats. § 801.14(2)

801.14 Service and filing of pleadings and other papers.

(2) Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last-known address, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this section means: handing it to the attorney or to the party; transmitting a copy of the paper by facsimile machine to his or her office; or leaving it at his or her office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service by facsimile is complete upon transmission. The first sentence of this subsection shall not apply to service of a summons or of any process of court or of any paper to bring a party into contempt of court.

Wis. Stats. § 807.07(1)

807.07 Irregularities and lack of jurisdiction over the parties waived on appeal; jurisdiction exercised; transfer to proper court.

(1) When an appeal from any court, tribunal, officer or board is attempted to any court and return is duly made to such court, the respondent shall be deemed to have waived all objections to the regularity or sufficiency of the appeal or to the jurisdiction over the parties of the appellate court, unless the respondent moves to dismiss such appeal before taking or participating in any other proceedings in said appellate court. If it appears upon the hearing of such motion that such appeal was attempted in good faith the court may allow any defect or omission in the appeal papers to be supplied, either with or without

terms, and with the same effect as if the appeal had been originally properly taken.

CERTIFICATION OF MAILING

I certify that this brief or appendix 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 (date of mailing) 12/8/2017. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

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I certify that on (date of delivery to carrier) _____, this brief or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

Date: _____

Signature: _____

NOTE: You may also file an affidavit of mailing or delivery, setting forth the same information. See §809.80(4), Wis. Stats.

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a [choose one] ☒ monospaced or ☐ proportional serif font.

The length of this brief is 19 pages [if a monospaced font is used] or _____ words [if a proportional serif font is used].

Date: 12/8/2017

Signature: Ed Sievenly

Notes:

This form and length certification must be included at the end of each brief. See also Wis. Stat. § (Rule) 809.50(4), 809.51(4) and 809.62(4) for additional form and length requirements.

Examples of fonts acceptable under §809.19(8)(b):

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Table of contents

No.	Pages	Document	Appendix pages
1	5	Docket from Circuit court	3-7
2	2	Notice of entry of judgment dismissing appeal of municipal judgment for failure to comply with 800.14	8-9
3	6	Record as received from the City of Verona	9-15
4	9	City of Verona's notice and motion to dismiss appeal of defendant's PAC conviction	16-25
5	14	City of Verona's amended motion to dismiss appeal of defendant's convictions.	56-38
6	2	Plaintiff City of Verona's witness list	39-41
7	28	Transcript of motion hearing on 7/28/2017	41-68