

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 20, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-1828

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ROBERT J. GOLDAMMER,

PLAINTIFF-APPELLANT,

v.

**DAIRYLAND GREYHOUND PARK, INC., MIDWEST TRACK
ASSOCIATES, CROIXLAND PROPERTIES LIMITED AND
W.D. GREYHOUND RACING, INC.,**

DEFENDANTS-RESPONDENTS,

**WISCONSIN DEPARTMENT ADMINISTRATION - DIVISION
OF GAMING,**

**DEFENDANT-INTERVENOR-
RESPONDENT.**

APPEAL from a judgment of the circuit court for St. Croix County:
ERIC J. LUNDELL, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Robert Goldammer, a horse owner, appeals a judgment dismissing his action against four Wisconsin greyhound tracks. The class action complaint sought 123 million dollars compensatory damages based on unjust enrichment, punitive damages based on conversion, an injunction and an order directing the tracks to deposit funds that Goldammer alleges were wrongfully retained by the tracks. All of his causes of action depend upon his construction of § 562.065, STATS., which he contends compels the racetracks to set aside eight percent of the money wagered on all races for horse race purses and that the Greyhound tracks licensees are required to hold horse races to distribute this fund to the owners of winning horses. Because the statute cannot be construed in that manner, we affirm the judgment dismissing Goldammer's complaint for failure to state a claim.

Construction of a statute is a question of law that we decide without deference to the trial court. *See Minuteman, Inc. v. Alexander*, 147 Wis.2d 842, 853, 434 N.W.2d 773, 778 (1989). The primary purpose of statutory construction is to determine and give effect to the legislature's intent. *See DeMars v. LaPour*, 123 Wis.2d 366, 370, 366 N.W.2d 891, 893 (1985). When the language chosen by the legislature is clear and unambiguous, we arrive at its intent by giving the language its plain, ordinary and accepted meaning. *See State v. Mendoza*, 96 Wis.2d 106, 114, 291 N.W.2d 478, 483 (1980). A fundamental axiom of judicial construction is to avoid any result that would be absurd or unreasonable under the facts and circumstances of the case. *See In the Interest of J.A.L.*, 162 Wis.2d 940, 962-63, 471 N.W.2d 493, 502 (1991).

Section 562.065(3), STATS., regulates and allocates the money acquired by racetracks from betters. Subsection (a) requires the racetrack to deduct 17% to 25% "from the total amount wagered on all animals..." and pay the

balance, minus breakage, to the winning betters. Subsection (b) contains two paragraphs mandating the creation of purse money from the amount deducted. Section 562.065(3)(b)1 and 2, provide:

1. For horse races, from the total amount deducted under par. (a) on each race day, the licensee under s. 562.05(1)(b) shall use at least an amount equal to 8% of the total amount wagered on each race day for purses for races held on that race day.... The licensee shall pay purses directly to the owner of a horse....

2. For dog races, from the total amount deducted under par. (a) on each race day, the licensee under s. 562.05(1)(b) shall use at least an amount equal to 4.5% of the total amount wagered on each race day for purses....Purses shall be paid on or before Thursday of the calendar week immediately following the race day on which the purses are won. The licensee shall pay purses directly to the owner of a dog....

The statute then requires racetrack licensees to pay a pari-mutuel tax in different amounts, depending on whether the deduction is from a horse race or a dog race.

Section 562.065(3) cannot be construed to require a greyhound track licensee to retain eight percent of all wagers to create purses for horse races. The structure and plain language of the statute evinces a legislative intent to create purses for dog owners from the deduction in a dog race. A horse owner is not entitled to share in the purses paid for live greyhound races. While the deduction created by § 562.065(3)(a), STATS., applies to the total amount wagered on “all animals,” the plain language of subsection (b) creates separate purse structures for horses and dogs. The bulk of the money is returned to winning ticket holders. Of the remaining amount, subsection (b) requires “purses” to be paid to the owners of animals that competed successfully in the race on which the money was wagered. The language “for horse races” and “for dog races,” the provision that the payments to owners be made through “purses for races held on that race day” and the separate tax structure set out in § 562.065(3)(c)1 and 2(g), STATS., underscore

the legislative intent to separate horse racing from dog racing when allocating the money for purses.

Goldammer argues that the trial court's construction of the statute renders superfluous the language in § 562.065(3)(a), STATS., that refers to the "total amount wagered on all animals." To the contrary, the trial court's interpretation is the only sensible interpretation that gives effect to all of the statutory provisions. Subsection (a) creates rules for all pari-mutuel betting that determines the amount of each pool to be returned to the bettors. Subsection (b), on the other hand, relates to purses, referring to the purses paid to the owners of winning animals that raced on that day. The trial court's construction of the statute results in no surplus language and no inconsistencies.

Even if Goldammer correctly construes the statute to require dog track licensees to set aside proceeds for horse racing purposes, he has not established any basis for his claim to the proceeds. He alleges that he owns race horses, but not that his horses have raced or won any money in races in this State. By using the word "purses," the legislature evinced its intent to distribute a percentage of the handle to the owners of horses that are "in the money" in races on that day. Merely owning a horse gives Goldammer no right to any portion of funds dedicated to "purses." The absurdity of his construction of the statute is demonstrated by the impossibility of determining which horse owners would be entitled to distribution of the fund. In light of the detailed provisions contained in the remainder of ch. 562, it is unimaginable that the legislature would have created such a huge fund without establishing any guidelines or procedures for its distribution.

Goldammer argues that it is the greyhound licensees' fault that there is no procedure for disbursing purses to horse owners because the greyhound track licensees are obligated to hold horse races. That argument is not supported by any Wisconsin law. Section 562.05(1)(g), STATS., allows a Wisconsin track to be licensed to conduct horse racing or dog racing or both. That statute cannot be construed to compel a dog track licensee to also secure a horse track license. The dog tracks are not allowed to conduct horse races without a specific license. *Id.* The only reasonable interpretation of the statutes is that the legislature intended to create the opportunity, but not the obligation, to conduct horse racing in Wisconsin.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

