

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 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. 98-1946

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITY OF WHITEWATER,

PLAINTIFF-RESPONDENT,

V.

DARREN R. GILL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County:
MICHAEL S. GIBBS, Judge. *Reversed and cause remanded with directions.*

SNYDER, P.J. Darren R. Gill appeals a circuit court order affirming his municipal court conviction for operating a motor vehicle while intoxicated contrary to § 346.63(1)(a), STATS. Gill contends that the circuit court's order is void because the court failed to review a certified copy of the municipal court transcript pursuant to § 800.14(5), STATS. The City of Whitewater counters that Gill was responsible for the record on appeal, that there

was sufficient evidence to support the circuit court's decision without the trial transcript, that any error was harmless and that Gill waived his right to contest the issue. We conclude that the circuit court should have reviewed a certified copy of the trial transcript, and, therefore, we reverse and remand.

At Gill's October 29, 1997 municipal court trial, the proceedings were electronically recorded and a transcript was later made. On appeal to the Walworth County Circuit Court, the parties waived their request for a trial de novo and stipulated that the matter would be decided on the record pursuant to § 800.14(5), STATS. The circuit court then affirmed the municipal court, relying upon the police report and an uncertified transcript of the trial.

We review questions of statutory interpretation without deference to the conclusions of the trial court. *See Burnett v. Hill*, 199 Wis.2d 163, 167, 544 N.W.2d 580, 582 (Ct. App. 1996), *rev'd on other grounds*, 207 Wis.2d 110, 557 N.W.2d 800 (1997). Section 800.14, STATS., governs appeals from municipal court decisions. Because the parties agreed to forego a trial de novo, we look to § 800.14(5), which sets forth the procedure for a "transcript review":

[A]n appeal shall be based upon a review of a transcript of the proceedings. The municipal judge shall direct that the transcript be prepared from the electronic recording under s. 800.13(1) and *shall certify the transcript...* The electronic recording and the transcript shall be transferred to the circuit court for review. [Emphasis added.]

Id.; *see City of Middleton v. Hennen*, 206 Wis.2d 347, 350, 557 N.W.2d 818, 819 (Ct. App. 1996).

We view the appellate issue as not whether the circuit court erred in affirming the municipal court conviction as framed by the City, but as to what jurisdiction the circuit court had, if any, to act upon Gill's appeal without having

received the lower court's certified transcript. *See State v. Waste Management of Wis., Inc.*, 81 Wis.2d 555, 564, 261 N.W.2d 147, 151 (1978) (stating that an appellate court is not required to address the appellate issues as structured by a party).

It is undisputed that the municipal court failed to certify the transcript to the circuit court. The statute, however, plainly requires that it must do so in order to perfect the appeal to the circuit court. "It is manifest that an appellate court does not acquire jurisdiction of a case until the jurisdiction of the lower court is superseded. The lower court retains jurisdiction of the case until everything necessary to perfect the appeal has been done." *Todorovic v. Hirschberg*, 172 Wis. 14, 15, 177 N.W. 884, 884 (1920). Contrary to the City's position, it was not Gill's responsibility to send a certified transcript to the circuit court; § 800.14(5), STATS., places the burden of certifying and transferring a transcript upon the court system. We must give effect to the ordinary and accepted meaning of the statutory language. *See County of Walworth v. Spalding*, 111 Wis.2d 19, 24, 329 N.W.2d 925, 927 (1983).

The appellate issue presented in this case was addressed in *Bruins v. Downey*, 45 Wis. 496 (1878). Bruins sued Downey in the justice court and judgment was rendered in favor of Downey. Bruins appealed to the Fond du Lac county court. The county court reversed the decision of the justice court. Because the justice court records and papers had not been properly certified to the county court, the Wisconsin Supreme Court held that the county court "could not lawfully reverse the judgment" and that there could be no jurisdiction in the county court "except [that there could be] an application for an order to compel [the lower court] return, or an application to dismiss the appeal." *Id.* at 497; *see also Allard v. Smith*, 97 Wis. 534, 537, 73 N.W. 50, 51 (1897) (distinguishing failure to pay

the required fee from failing to obtain transfer of the lower court record). The supreme court then reversed the county court and remanded the cause “for further proceedings according to law.” *Bruins*, 45 Wis. at 498. Because Gill’s appeal suffers from the same procedural defect as described in *Bruins* (the failure to perfect the appeal as required by law), we conclude that the circuit court’s jurisdiction was limited to dismissal of the appeal or ordering the municipal court to certify and transfer the transcript.

When Gill became aware of the lack of compliance with § 800.14(5), STATS., his remedy was to move the circuit court for relief from the appellate order because his appeal had not been perfected under § 800.14(5). However, because Gill has the right to appeal, and because due process requires that the right to appeal cannot be rendered meaningless, *see State v. Borrell*, 167 Wis.2d 749, 778, 482 N.W.2d 883, 894 (1992),¹ we are compelled to reverse the existing order and remand the matter to the circuit court with directions that the municipal court be ordered to certify the transcript as required by § 800.14(5).

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

¹ For those reasons, we also reject the City’s contentions that the failure of the municipal court to certify the transcript is technical or harmless error, or was subject to Gill’s waiver of the certification. The right of appeal is a substantial, important and valuable right and is favored by the courts. *See Allard v. Smith*, 97 Wis. 534, 535-36, 73 N.W. 50, 50 (1897).

