

**COURT OF APPEALS
DECISION
DATED AND FILED**

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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. 98-3425

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

FRANK GEIGER,

PLAINTIFF-APPELLANT,

V.

EASTERN WISCONSIN STOCK CAR ASSOCIATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Sheboygan County:
JAMES J. BOLGERT, Judge. *Affirmed.*

BROWN, J. Frank Geiger appeals from an order granting summary judgment to the Eastern Wisconsin Stock Car Association (the EWSCA), dismissing his action against the association. Geiger claimed that the EWSCA was in violation of statutes and administrative code sections governing standard weights and measures by maintaining an inaccurate scale with which to weigh stock car race competitors' cars. The EWSCA asserted that by joining the association, Geiger had voluntarily subjected himself to its rules and regulations

and thus waived his right to object to the use of the scale. Further, claimed the EWSCA, this scale is not subject to the statutes and code sections Geiger cites because it is not a commercial scale within the meaning of those sections. We agree with the EWSCA and affirm.

This dispute began with a 1995 stock car race. Geiger, a member of the EWSCA, won the race. The EWSCA refused to award him the prize because his vehicle had weighed in too light. It is undisputed that the scale did not meet the state-required tolerances for a commercial scale.

We review a grant of summary judgment using the same methodology as the trial court. *See* § 802.08(2), STATS.; *L.L.N. v. Clauder*, 209 Wis.2d 674, 682-84, 563 N.W.2d 434, 438-39 (1997) (detailing summary judgment standards).

Here, we agree that the case was appropriate for summary judgment. Geiger and the EWSCA do not dispute the facts germane to this case. Thus, the whole case boils down to whether it mattered that the EWSCA's scale did not comply with the consumer protection code. This is a question of law. We agree with the trial court's grant of summary judgment in favor of the EWSCA for two reasons. First, this scale is not used for the "commercial weighing of commodities" and therefore need not comply with the administrative code chapter governing weighing and measuring devices. *See* § 98.25(1), STATS.; WIS. ADM. CODE § ATCP 92.02. Second, Geiger's status is that of a member of a voluntary association, not a consumer.¹ By joining the association, he agreed to follow its

¹ The EWSCA first incorporated as a business corporation in 1961. However, it has always been more akin to a voluntary association or club than a profit-seeking enterprise. In 1995, after this dispute, it amended its articles of incorporation so that it is now legally a nonprofit corporation.

rules and regulations and accept its determination whether his car met racing specifications.

Commercial scales must meet certain tolerance rules issued by the Department of Agriculture, Trade and Consumer Protection. *See* §§ 93.01(3), 98.03(2), 98.25, STATS. The department has adopted federal standards set forth in the National Institute of Standards and Technology handbook. *See* WIS. ADM. CODE § ATCP 92.02(1). That handbook states that tolerance requirements apply to:

commercial weighing and measuring equipment; that is, to weights and measures and weighing and measuring devices commercially used or employed in establishing the size, quantity, extent, area or measurement of quantities, things, produce or articles for distribution or consumption, purchased, offered or submitted for sale, hire or award, or in computing any basic charge for payment for services rendered on the basis of weight or measure.²

The question before this court is whether the EWSCA's scale fits this description and thus must conform to the tolerance requirements.

We conclude that the EWSCA's scale is not among the weighing devices to which ch. 98, STATS., and WIS. ADM. CODE ch. ATCP 92 apply. The scale is used to weigh cars to see if they are eligible to compete. It is not used to measure the size of anything that is going to be sold or awarded. This would be a different case if the scale were used to weigh bratwurst sold to spectators in the stands. In short, this is not the type of weighing meant to be regulated by the statutory scheme, and that the EWSCA's scale does not comply with the

² Geiger sets forth this language from the handbook in his appendix and the EWSCA does not challenge it, so we accept it as accurate.

prescribed standards set forth in the statutes and administrative code is of no moment.³

We also agree with the trial court's conclusion that by becoming a member of the EWSCA and racing, Geiger consented to the EWSCA's rules and waived his right to object to the accuracy of the scale. The 1995 Rules and Regulations clearly state that a person must be a dues-paying member of the corporation in order to purchase a pit pass, and that by purchasing a pit pass, a "driver and/or car owner ... accepts the rules and regulations described herein." Further, the rules state that "[t]he decision of the Association Officers as to whether a car complies with the rules will be final." Regarding weight specifications, the rules declare that "[a]ny car with driver weighing less than required ... will lose all points and monies for that race night." We may presume that as a voluntary member of the racing club, Geiger was aware of these rules. He assented to them when he joined. If Geiger objects to the scale used by the EWSCA, the appropriate avenue for him to pursue change is through the internal workings of the club. Or he could join a different race club. We refuse to interfere. *See Wood v. Chamber of Commerce*, 119 Wis. 367, 383, 96 N.W. 835,

³ In support of his assertion that the EWSCA's scale is subject to regulations governing tolerance, Geiger cites a letter from the Wisconsin Department of Agriculture, Trade and Consumer Protection. The letter states that the scale "is not subject to licensure with the department," but that "EWSCA is engaged in commercial activity, and [the] scale is used for commercial purposes." Therefore, according to the department, the scale must meet the state's prescribed tolerances.

This opinion letter from the department is in no way binding on this court. It is not an agency determination reached after a full-blown administrative proceeding. And even if it were, we would still not be bound; at most, we would give it great weight deference. *See Harnischfeger Corp. v. LIRC*, 196 Wis.2d 650, 659-60, 539 N.W.2d 98, 102 (1995). Here, we need not decide what level of deference would be appropriate, as the cited letter is merely an informal opinion, not formal findings of fact and conclusions of law issued by an administrative review commission.

841 (1903) (“The methods provided by the laws of a corporation for disciplining its members, unless void for unreasonableness or violative of some law of the corporation itself, or of the land, are supreme.”); 6 AM. JUR. 2D *Associations and Clubs* § 5 (1963) (noting that a corporation or voluntary association has the right to establish and enforce rules and regulations regarding internal policy, and that such rules are binding on members who have consented to them).

By the Court.—Order affirmed.

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

