

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 4, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1355
99-1356

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

TOWN OF BELOIT,

PLAINTIFF-RESPONDENT,

v.

THOMAS GOODWIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
EDWIN C. DAHLBERG, Judge. *Affirmed.*

¶1 DEININGER, J.¹ Thomas Goodwin appeals a judgment convicting him of operating a motor vehicle while under the influence of an intoxicant (OMVWI), in violation of the Town of Beloit traffic ordinance. Goodwin

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

originally contended that he was entitled to a de novo circuit court trial following his plea and conviction in the municipal court, and he now contends, alternatively, that he is entitled to a transcript review of the municipal court proceedings. We conclude, however, that Goodwin is not entitled to a de novo trial in the circuit court because there was no trial in the municipal court, and further that Goodwin forfeited his right to a transcript review of the municipal court proceedings when he elected to seek a trial de novo. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

¶2 Goodwin was charged with three violations of the Town of Beloit traffic ordinance: (1) operating a motor vehicle while under the influence of an intoxicant (OMVWI), (2) operating a motor vehicle with a prohibited blood alcohol concentration, and (3) operating left of the center line. In the Town of Beloit’s municipal court, Goodwin pled no contest to the OMVWI charge. The municipal court entered a judgment of conviction for OMVWI, and the remaining charges were dismissed.

¶3 Nineteen days later, Goodwin appealed the judgment of the municipal court under WIS. STAT. § 800.14, requesting a de novo trial in Rock County circuit court.² The Town objected to Goodwin’s request, contending that Goodwin was not entitled to a “new” trial because he had not had a trial in the

² As his notice of appeal, Goodwin signed and filed a “Notice of Right to Appeal and Appeal Bond,” which appears to be a standard form issued by the Town of Beloit Municipal Court. The notice states that Goodwin “hereby appeal[s],” and that he “request[s] the type of appeal checked below....” Three choices are provided: “TRANSCRIPT REVIEW”; “NEW TRIAL BEFORE CIRCUIT COURT JUDGE WITHOUT A JURY”; “NEW TRIAL IN CIRCUIT COURT BEFORE A SIX-PERSON JURY.” Goodwin checked the third alternative.

municipal court. After conducting a hearing on the issue, the circuit court determined that Goodwin was not entitled to a new trial because a “judgment entered on a plea of no contest does not constitute a trial within the meaning of [WIS. STAT. § 800.14(4)].” The circuit court dismissed Goodwin’s appeal and reinstated the municipal court’s judgment. Goodman appeals the circuit court’s decision.

ANALYSIS

¶4 Goodwin argues in his opening brief that he is statutorily entitled to appeal his municipal court judgment and to obtain a trial de novo in the circuit court. His argument is based on WIS. STAT. § 800.14, which provides that “[a]ppeals from judgments of municipal courts may be taken by either party to the circuit court of the county where the offense occurred,” and that “[u]pon the request of either party ... the circuit court shall order that a new trial be held in circuit court.” Section 800.14(1) and (4). Thus, Goodwin’s original contention is that, under these two subsections, any defendant who has been convicted of a municipal court violation is entitled to a new trial in circuit court.

¶5 Shortly after Goodwin filed his brief, however, we rejected this very argument in another case. *See Village of Menomonee Falls v. Meyer*, 229 Wis. 2d 811, 601 N.W.2d 666 (Ct. App. 1999). We considered in *Meyer* whether a defendant was entitled to a new trial when the merits of the case had not been fully litigated in the municipal court. *See id.* at 812. After concluding that WIS. STAT. § 800.14(4) is ambiguous, we considered its legislative history and determined that the word “new” was added to the statute in an attempt to “reduce the number of circuit court jury trial requests from municipal ordinance violation appeals,” and that the word “new” implies that the issue had been “fully litigated

at an earlier time.” *Id.* at 815, 817. We then concluded that “a full trial of the parties’ issues in the municipal court is a condition precedent to a ‘new’ trial in the circuit court.” *Id.* at 816.

¶6 Goodwin next submitted a motion to this court in which he concedes that “[u]nder the precedent set by *Meyer*, [his] basic position ... on this appeal is no longer tenable.” He contends, however, that the circuit court nonetheless erred in dismissing his appeal. Although he concedes that he is not entitled to a new trial under WIS. STAT. § 800.14(4), Goodwin asserts that he remains entitled to an appeal under § 800.14(5), which provides for an appeal “based upon a review of a transcript of the proceedings.” According to Goodwin, the fact that he originally requested a de novo trial in the circuit court should not preclude him from now requesting that his appeal of the municipal court judgment proceed as a transcript review. We disagree.

¶7 Goodwin’s contention that an appellant who erroneously requests a new trial under subsection (4) is nonetheless entitled to a transcript review of the municipal court proceedings finds some support in the language and structure of WIS. STAT. § 800.14. The statute permits an appeal from a municipal court judgment to proceed in one of three ways in the circuit court. The process begins with the filing of a notice of appeal within twenty days after the municipal court judgment. *See* § 800.14(1). Then, if either party “within 20 days after notice of appeal” so requests, “the circuit court shall order that a new trial be held in circuit court,” which will be a bench trial “unless the appellant requests a jury trial in the notice of appeal....” *See* § 800.14(4). But “[i]f there is no request ... under sub. (4), an appeal shall be based upon a review of a transcript of the proceedings.” *See* § 800.14(5). Thus, Goodwin argues that when a new trial request under subsection (4) is deemed defective for any reason, an appellant who has timely

filed a notice of appeal retains the default or residual right to a transcript review in the circuit court.³

¶8 The Town contends, however, that Goodwin forfeited his right to request a transcript review of the municipal court proceedings when he elected to request a new trial in circuit court. According to the Town, an appellant who seeks review of a municipal court judgment under WIS. STAT. § 800.14 is required to select *either* a de novo trial or a transcript review of the municipal court proceedings, and once the appellant chooses to pursue a de novo trial in the circuit court, he or she is precluded from later requesting a transcript review. We conclude that our analysis in *Meyer* supports the Town’s position. We said in *Meyer* that the appellant “had the opportunity to seek a meaningful review of the municipal court judgment through an appeal on the record under § 800.14(5),” but that the appellant had “forfeited this opportunity” when it requested a new trial instead. *See Meyer*, 229 Wis. 2d at 817-18. *Meyer* thus addresses the question before us, and we are bound to apply it. *See Cook v. Cook*, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997) (holding that “the court of appeals may not overrule, modify or withdraw language from a previously published decision of the court of appeals”).

³ Goodwin also contends that our decision in *Village of Menomonee Falls v. Meyer*, 229 Wis. 2d 811, 601 N.W.2d 666 (Ct. App. 1999), supports this result. We said in *Meyer* that “[h]olding that the [appellant] is barred from seeking a new trial in the circuit court because there was no trial on the merits in the municipal court does not prohibit the [appellant] from seeking review of the municipal court action...” *Id.* at 817. However, as we explain in the text below, taken in context, our statement does not support Goodwin’s position; rather it refers to an appellant’s ability to obtain a transcript review by *initially* pursuing that type of review in the circuit court.

CONCLUSION

¶9 For the reasons discussed above, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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

