

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 11, 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. 99-3056

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF ONALASKA,

PLAINTIFF-RESPONDENT,

v.

TERRY J. PRIEN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County:
RAMONA A. GONZALEZ, Judge. *Affirmed.*

¶1 DYKMAN, P.J.¹ Terry Prien appeals from an order dismissing his appeal from a municipal court judgment convicting him of operating a motor vehicle while under the influence of an intoxicant (OMVWI). He argues that the municipal court required him to pay his forfeiture before the circuit court would

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (1997-98).

have jurisdiction over the appeal of the forfeiture. We conclude that the municipal court did not require him to pay his forfeiture. We further conclude that the municipal court's requirement that he post a bond to guarantee the payment of the forfeiture and costs of appeal was authorized by WIS. STAT. § 800.14(2) (1997-98).² We therefore affirm.

¶2 The municipal court for the City of Onalaska found Prien guilty of OMVWI, and assessed a forfeiture totaling \$676.50. Prien appealed to the La Crosse County Circuit Court. He enclosed with his notice of appeal checks totaling \$105.00 for the filing fee and transmittal fee. In his letter to the Onalaska Clerk of Court, Prien's attorney said:

It is my understanding that [your] Court normally requires that the amount on the ticket be paid in full in order to file an appeal in a case. It is my position that the statute does not allow for that. It may be necessary to pay the entire amount to stay execution of the judgment, but not to timely file an appeal. Consequently, if the Notice of Appeal is not timely filed in your Court and the Circuit Court, I will be forced to seek legal action against you.

¶3 The municipal court judge wrote in reply:

We are in receipt of your request for appeal. The bond amount, however, was not included with the \$100.00 and \$5.00 checks. Please see Wisconsin State Statute 800.14(2), stating that the bond amount can be ordered sent to this Court before an appeal will be processed.

¶4 Nonetheless, the municipal court clerk sent the municipal court record to the clerk of circuit court for La Crosse County. The circuit court

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

dismissed Prien's appeal for failure to comply with WIS. STAT. § 800.14(2), which provides:

On appeal by the defendant, the defendant shall execute a bond to the municipality with or without surety, approved by the municipal judge, that if the judgment is affirmed in whole or in part the defendant shall pay the judgment and all costs awarded on appeal.

The interpretation and application of a statute presents a question of law that we review de novo. See *State v. Hughes*, 218 Wis. 2d 538, 543, 582 N.W.2d 49 (Ct. App. 1998).

¶5 Prien cites but one case which he believes is dispositive of this appeal, *Douglas v. Dewey*, 147 Wis. 2d 328, 433 N.W.2d 243 (1989). In *Douglas*, the supreme court considered WIS. STAT. RULE 809.10, which provides that “[a] person shall initiate an appeal by filing a notice of appeal with the clerk of the trial court in which the judgment or order appealed from was entered” together with WIS. STAT. RULE 809.25(2)(a), which provides: “[t]he clerk of the court shall charge the following fees: 1. For filing an appeal, cross-appeal, petition for review, petition to bypass, or other proceeding, \$150.” The *Douglas* court concluded that the appellant's failure to pay the entire filing fee with his notice of appeal did not deprive the court of appeals of jurisdiction to entertain the appeal. *Douglas*, 147 Wis. 2d at 342.

¶6 Prien asserts: “*Douglas* holds that when a statute requires only filing a notice of appeal to initiate an appeal, then *only* a notice is required.” But *Douglas* was more specific than that. In *Douglas*, the court concluded that in an appeal to the court of appeals, the notice of appeal conferred jurisdiction on the appellate court whether or not the filing fee was paid with the notice of appeal. *Id.* The facts in Prien's case are different.

¶7 Prien did not refuse to pay a filing fee and he appealed to the circuit court, not the court of appeals. He confuses paying the forfeiture and posting a bond. The municipal court did not require Prien to pay his forfeiture. Prien refused to execute a bond to the City of Onalaska, an action required by WIS. STAT. § 800.14(2). He asserts that the City required a cash bond, and that is one possible inference that can be drawn from the municipal court’s letter to Prien’s attorney. But the question before us is not whether the municipal court required a cash bond whereas § 800.14(2) permits the filing of a bond “with or without surety.” That issue would have been raised had Prien filed a bond. Instead, Prien refused to file any bond, asserting that he was not required to do so.

¶8 A filing fee paid to the clerk of the court of appeals serves a function different from the function served by a bond protecting a municipality from an appellant who desires an appeal but will not guarantee that the municipality will be paid if the appeal is lost. The former helps offset the costs of operating the court of appeals. Whether that fee is paid at the time of the notice of appeal or soon thereafter is of little consequence. A WIS. STAT. § 800.14(2) bond protects a successful plaintiff from a defendant’s avoidance of a forfeiture by initiating an appeal.

¶9 We do not read *Douglas* as authorizing fee-free appeals to the court of appeals. And our practice both before and after *Douglas* is consistent with this reading of *Douglas*. If an appellant fails or refuses to pay a filing fee to the clerk of the court of appeals, with some exceptions not applicable here, we eventually dismiss the appeal as a sanction for violating WIS. STAT. RULE 809.83(2).

¶10 We need not decide whether, had Prien posted a bond shortly after filing his notice of appeal, the circuit court would have been required to hear his

appeal. He did not do that. WIS. STAT. § 800.14(2) is a legislative policy that the exercise of a right of appeal is conditioned upon guaranteeing the plaintiff that a forfeiture will be paid without further ado if the appeal fails. To defeat that policy, we would either have to conclude that § 800.14(2) does not mean what it says, or that the statute is unconstitutional. We decline to do either.

¶11 There is another reason why *Douglas* is inapplicable here. In *Douglas*, the court examined rules enacted in 1978 as part of a significant court reorganization. That reorganization did not, however, affect, in any way relevant here, the municipal courts of Wisconsin, or the method of appealing a municipal court judgment or order to the circuit court. The underpinning for *Douglas* was an appellate procedure not seen in Wisconsin prior to 1978. But the procedure for appealing a municipal court judgment or order was unchanged in content by the 1978 reorganization. Compare WIS. STAT. § 800.14(2) (quoted previously) with WIS. STAT. § 300.14(2) (1977):

On appeal by the defendant, the defendant shall execute a bond to the municipality with or without surety, approved by the municipal judge, that if the judgment is affirmed in whole or in part the defendant shall pay the judgment and all costs awarded on appeal.

¶12 There is no longer any doubt that the procedures in a review of the circuit court by the court of appeals and the procedures in a review of the municipal court by the circuit court can be and are quite different. In much the same way that Prien now analogizes the procedure required of him to the procedure applicable in *Douglas*, the appellants in *City of Middleton v. Hennen*, 206 Wis. 2d 347, 353, 557 N.W.2d 818 (Ct. App. 1996), argued that the WIS. STAT. ch. 809 rules of appellate procedure were applicable in municipal court transcript review appeals to the circuit court. We did not agree:

Defendants argue that we must therefore read into § 800.14(5) procedures analogous to those in Chapter 809, STATS., which governs appeals in this court and the supreme court. We disagree.

There is no basis for an expansive construction of § 800.14(5), STATS. The legislature has shown itself capable of outlining specific procedures for circuit courts to follow when reviewing decisions made in other forums. The legislature has not done likewise in § 800.14(5) and, absent any ambiguity, we will not read into a statute what the legislature has not written there.

Id. (citations omitted). *Douglas* is not applicable to Prien’s appeal.

¶13 Prien also discusses WIS. STAT. § 800.14(3), which reads: “On meeting the requirements for appeal, execution on the judgment of the municipal court shall be stayed until the final disposition of the appeal.” Prien contends that § 800.14(3) demonstrates that § 800.14(2) is a requirement for obtaining a stay of execution on the judgment and not a requirement for an appeal. We disagree. Section 800.14(3) states that “[o]n meeting the requirements for appeal,” there shall be a stay of execution on the judgment. We have concluded that executing a bond under § 800.14(2) is one of “the requirements for appeal.” The language of § 800.14(3) provides no basis for concluding that executing a bond is a precondition to obtaining a stay, but not to taking an appeal.

¶14 Compliance with WIS. STAT. § 800.14(2) is a precondition to taking an appeal from municipal court to the circuit court. Prien did not satisfy this precondition. The circuit court therefore correctly dismissed his appeal.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

