COURT OF APPEALS
DECISION
DATED AND FILED

August 30, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0526

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

CITY OF SHEBOYGAN,

PLAINTIFF-RESPONDENT,

v.

ANDREW M. WILSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: JOHN B. MURPHY, Judge. *Affirmed.*

¶1 BROWN, P.J.[1] Andrew M. Wilson's appeal is apparently based on the premise that because he has the "God-given, constitutionally recognized" right to travel, he is not required to be licensed to drive by the Wisconsin Department of Motor Vehicles. However, this premise has no basis in Wisconsin law. Wilson

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

cites no authority in Wisconsin or elsewhere which holds that the State cannot validly enact laws requiring the licensing of drivers and penalizing their violation. To the contrary, both this court and the Wisconsin Supreme Court have repeatedly recognized that the operation of a motor vehicle is a privilege properly regulated by the State. *See* ***State v. Stehlek***, 262 Wis. 642, 646, 56 N.W.2d 514 (1953); ***Kopf v. State***, 158 Wis. 2d 208, 214, 461 N.W.2d 813 (Ct. App. 1990). Just as the premise of this case fails, the litany of meritless arguments Wilson also raised likewise fails.

¶2 Wilson was cited by the City of Sheboygan police for operating without a valid driver's license, first offense. The trial court entered a default judgment against Wilson after he refused to testify at trial. Related to appealing that judgment, Wilson filed a motion to waive trial transcript fees due to indigency pursuant to WIS. STAT. § 814.29. The trial court denied the motion, stating that Wilson had no meritorious claims which could be appealed.

¶3 There are no transcripts of any of the trial court proceedings in the appellate record. Therefore, the first issue we must consider is whether the trial court improperly denied Wilson's motion to waive transcript fees. We directed that the parties discuss this as one of the issues on appeal. After reviewing the briefs and that part of the record we have before us, we agree with the trial court that denial was proper because none of the reasons Wilson gave to the trial court have any merit. Our answer as to why the trial court was correct in ruling that there were no meritorious issues to appeal also drives the outcome of the appeal itself. We affirm the trial court's denial of transcript fees and we also affirm the trial court's judgment.

¶4 The law is that an indigent defendant is entitled to waiver of fees for payment of a transcript if the defendant can state a claim with arguable merit. *See* ***State ex rel. Girouard v. Circuit Court for Jackson County***, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990). Whether a claim has arguable merit is a question of law which this court reviews de novo. *See* ***State ex rel. Hansen v. Circuit Court for Dane County***, 181 Wis. 2d 993, 998, 513 N.W.2d 139 (Ct. App. 1994).

¶5 In his motion for waiver of transcript fees, Wilson stated to the trial court that there were five "serious" issues to be reviewed on appeal. We will address each of these in turn. Wilson first argued that the trial court erred "in ruling the court had jurisdiction without making any findings required by the Wisconsin Statutes." While Wilson admits in his brief that the description of this issue, as well as the remaining four, was "inartful," that is an understatement. The description of this issue is ambiguous and nonspecific. We are at a loss to understand, either from the four corners of Wilson's motion to the trial court or from his appellate brief, as to what type of jurisdiction, what required findings and what Wisconsin statutes Wilson was referring to. But we will try our best and assume that Wilson was referring to the arguments in his motion to dismiss regarding jurisdiction, which the trial court rejected.

¶6 In Wilson's motion regarding jurisdiction, he argued that the City lacked subject matter jurisdiction over his claim because the City cannot deprive him of his "God-given, constitutionally recognized" right to travel by forcing him to be licensed to drive by the State.[2] We will not quarrel with Wilson's

[2] In Wilson's motion to the trial court regarding jurisdiction, he labeled this argument as a challenge to personal jurisdiction. However, in his appellate brief, he concedes that this argument, if anything, is a challenge to subject matter jurisdiction. We treat it as such.

assumption that he has a "God-given, constitutionally recognized" right to travel about this country. Be that as it may, there is nothing in the Constitution allowing him to exercise this right of travel by a particular method of transportation. In other words, there is no right to travel about while operating a motorized vehicle on the highways of this state, built and paid for by the citizens of this state, without a license.

¶7 There is a compelling basis for differentiating the right to travel from the means of travel. The automobile of today, with engineering emphasis placed on power and speed, can be a crippling if not lethal weapon in the hands of an irresponsible driver. *See* ***Steeno v. State***, 85 Wis. 2d 663, 671, 271 N.W.2d 396 (1978). The roads upon which Wilson wants to drive a vehicle were built by human hands with money collected by the citizens for their common welfare. Since it is the citizens who paid to build the roads, these same citizens have the right to demand that the irresponsible driver be kept off the road. One method of tracing irresponsible drivers is to insist that everyone wishing to drive on the public highways be licensed. Another method is to identify the automobiles on the road by means of owner registration. *See* ***State v. Yellow Freight Sys.***, 96 Wis. 2d 484, 489-90, 292 N.W.2d 361 (Ct. App. 1980). A good record keeping system of driver licensing and owner registration allows the citizens of this state to identify irresponsible drivers with less difficulty. This is why our supreme court wrote in ***Steeno*** that "the granting of an automobile license to operate a motor vehicle is a privilege and not an inherent right." ***Steeno***, 85 Wis. 2d at 671. Wilson's argument lacks merit.

¶8 As an alternative subject matter jurisdiction claim, Wilson asserted that the City improperly incorporated WIS. STAT. § 343.05 entitled "Operator to be licensed; exceptions" into SHEBOYGAN, WIS., MUNICIPAL CODE § 118-1.

WISCONSIN STAT. § 349.06 allows municipalities to enact traffic regulations "in strict conformity" with traffic regulations enacted by the State in WIS. STAT. chs. 341 to 348 and 350 if the penalty is a forfeiture. The State regulates operating without a license in ch. 343. The penalty for operating a vehicle without a license, first offense, is a forfeiture. *See* § 343.05(5)(b)1. Because operating without a license, first offense, is a traffic regulation enacted in ch. 343 for which the penalty is a forfeiture, the City may incorporate this statute. And it has been incorporated pursuant to SHEBOYGAN, WIS., MUNICIPAL CODE § 118-1.[3] Because the incorporation was proper, there is no merit to Wilson's argument to the contrary.

¶9 Wilson's second reason for claiming that he had meritorious issues to raise on appeal concerned his contention that the trial court improperly joined this case with another case without any notice and without an opportunity for him to argue against joinder. Wilson fails to tell us in his brief which claim was joined with this ordinance violation case and fails to make any argument about why joinder was improper. Without knowing anything about the claim that was allegedly joined, we have no way of evaluating this issue and will not further address it.

¶10 Wilson's third argument was that the trial court erred in "threatening" him with jail time if he refused to testify adversely. As we said at

[3] SHEBOYGAN, WIS., MUNICIPAL CODE § 118-1 states:

> Except as otherwise specifically provided in this chapter, the statutory provisions in W.S.A. chs. 340 to 348 … exclusive of any provisions therein related to penalties to be imposed and exclusive of any regulations for which the statutory penalty is a fine or term of imprisonment, are adopted by reference in this section and made a part of this chapter.

the outset of this opinion, we do not have a transcript. And we will not take Wilson at his word that the trial court threatened to send him to jail if he did not testify. Even without the transcript, however, we easily conclude that his argument is meritless. This was not a criminal trial. It was a civil trial. A court may require a party to testify adversely in a civil trial. *Cf.* ***State v. R.B.***, 108 Wis. 2d 494, 498, 322 N.W.2d 502 (Ct. App. 1982). Refusal to testify is contempt. *See* WIS. STAT. § 785.01(1)(c). The court may order jail time as a remedy for this form of contempt. *See* WIS. STAT. § 785.04(1)(b). Consequently, Wilson's claim that the trial court's "threat" was an error is without merit. Wilson's argument also fails for another reason. He has never indicated that he was actually held in contempt and given jail time. An appellant will not be heard to contest a result which did not occur.

¶11 Wilson next argued that the trial court erred in entering a default judgment against him when he was "present, mak[ing] an appearance and was participating in the trial." Wilson is obviously hung up on the word "default." He apparently believes that a "default" is only granted in situations where a party does not answer a pleading or does not show up for a hearing or a trial. But the legal use of the word "default" is not that restrictive. While we do not know whether, in fact, the trial court entered a "default judgment"—because we do not have a transcript—we will assume this to be the case. By Wilson's own admission, he refused to obey a court order to testify. This is grounds for a default judgment. WISCONSIN STAT. § 805.03 allows the trial court to make orders included but not limited to those authorized pursuant to WIS. STAT. § 804.12(2)(a) if a claimant fails to "obey any order of the court." Pursuant to § 804.12(2)(a)3, the court may enter a default judgment. Wilson failed to follow a court order to testify; §§ 805.03 and 804.12(2)(a)3 allow the court to enter a default judgment in this

instance. For this reason, Wilson's argument that he is shielded from a default judgment just because he was "present, mak[ing] an appearance and was participating in the trial" is meritless.

¶12 Wilson finally argued in his motion for fee waiver that the trial court erred in "fining" him instead of sentencing him to pay a forfeiture. This, he claims, is not authorized either by the Wisconsin Statutes or by the City of Sheboygan ordinances. Again, Wilson has not provided enough information in his brief for us to evaluate this claim. He does not, for example, provide any proof that what he received was a sentence of a fine rather than a sentence to pay a forfeiture. But again, we will indulge him. Our review of the limited record reveals that on a form entitled "MINUTE TRAFFIC OR FORFEITURE," Wilson was sentenced to pay $147.50. The permissible penalty for operating without a valid driver's license, first offense, is a forfeiture for not more than $200. *See* WIS. STAT. § 343.05(5)(b)1; SHEBOYGAN, WIS., MUNICIPAL CODE §§ 118-1, 3(a). Nothing in the record indicates that the penalty Wilson received is not a forfeiture for less than $201, so this claim is meritless.

¶13 Now that we have disposed of Wilson's claim that his arguments supporting his motion for waiver of transcript fees had any merit, we turn to his arguments that the trial court made various errors during trial. We will again note that Wilson failed to provide us with any transcripts. The appellant has a responsibility to provide this court with transcripts. When the appellant fails to do so, our review is limited to the portions of the record available to us. *See* ***Ryde v. Dane County Dep't of Social Servs.***, 76 Wis. 2d 558, 563, 251 N.W.2d 791 (1977). "[W]hen an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial

court's ruling." ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993).

¶14 Our answers as to why his motion to waive fees was not supported by a claim of merit to his appeal largely drive the issues on appeal. Wilson first argues that the trial court erred by entering a default judgment against him because the court had no "statutory authority" to do so for his failing to testify adversely. "We review a trial court's decision to enter a default judgment under the erroneous exercise of discretion standard." ***Smith v. Golde***, 224 Wis. 2d 518, 525, 592 N.W.2d 287 (Ct. App. 1999). As discussed above, pursuant to WIS. STAT. §§ 805.03 and 804.12(2)(a)3, the court may exercise its discretion and may enter a default judgment for failure to testify.

¶15 Alternatively, Wilson claims that the trial court erred in entering a default judgment against him as punishment for contempt because he refused to testify. He cites ***Hovey v. Elliott***, 167 U.S. 409 (1897), for the proposition that the court has no "inherent authority" to strike pleadings and enter a default judgment as punishment for contempt. However, our supreme court has held that the court may strike pleadings or enter a default judgment pursuant to WIS. STAT. § 804.12(2)(a) for "the orderly administration of justice" rather than as punishment for contempt. *See* ***Disciplinary Proceedings Against Haberman***, 128 Wis. 2d 390, 392, 382 N.W.2d 439 (1986) (citation omitted). For example, "[t]he power can be exercised when evidence is withheld which relates to an essential element of the defense so as to warrant a presumption of fact that the defense has no merit." ***Id***. at 393 (citation omitted). Again, we have no trial transcript so we have no evidence that the trial court entered a default judgment as punishment for contempt. So, we can assume that the transcript would reveal that the court

entered a default judgment because by not testifying Wilson undermined "the orderly administration of justice."

¶16 Wilson next argues that the trial court erred in "ruling that the court had personal jurisdiction when the trial court made none of the findings required by section 801.05 to establish personal jurisdiction." Our answer earlier regarding this claim is the answer here.

¶17 Wilson then argues that the court erred in determining that it had subject matter jurisdiction over him because the City improperly incorporated WIS. STAT. § 343.05 into SHEBOYGAN, WIS., MUNICIPAL CODE § 118-1. As discussed above, this statute was properly incorporated and the court had subject matter jurisdiction.

¶18 Wilson finally argues that the trial court improperly fined him rather than requiring him to pay a forfeiture and that it improperly ordered him to serve jail time if he failed to pay the "fine." Again, our above discussion answers this claim. And as to his assertion that the trial court has no authority to order him to go to jail if he fails to pay, he is incorrect. WISCONSIN STAT. § 345.47(1)(a) provides that a person may be imprisoned until a forfeiture is paid, but that such imprisonment shall not exceed ninety days.

By the Court.—Judgment affirmed.

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