

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 28, 2010

A. John Voelker
Acting Clerk of Court of Appeals

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.

Appeal No. 2009AP2890

Cir. Ct. No. 2009CV2948

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

TOWN OF OCONOMOWOC,

PLAINTIFF-RESPONDENT,

V.

CHARLES F. HIBBARD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
RICHARD CONGDON, Judge. *Dismissed.*

¶1 SNYDER, J.¹ Charles F. Hibbard appeals from a circuit court order dismissing his appeal from a municipal court judgment and his request for a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

de novo jury trial. We understand Hibbard to contest the circuit court's determination that he did not comply with statutory procedure and thereby deprived the circuit court of appellate jurisdiction. The circuit court remanded the matter to the municipal court for reinstatement of the judgment of conviction. Hibbard contends that the circuit court erred and he appeals. We hold that Hibbard's failure to comply with statutory procedure for invoking the circuit court's appellate jurisdiction required dismissal.

¶2 On January 11, 2009, the Town of Oconomowoc Police Department cited Hibbard for operating while intoxicated, defective equipment, and issued a notice of intent to revoke his operating privilege for refusal to submit to a chemical blood test contrary to Wisconsin's implied consent law. Hibbard filed a motion to dismiss the OWI charge on grounds there was no probable cause for the arrest. He followed that with a motion for a change of venue on grounds he was the victim of a conspiracy to "defraud the general public (especially non-residents of the general Oconomowoc area) by deceitful practices under the color of law." Hibbard also filed a request for a jury trial. Finally, Hibbard filed a motion to suppress evidence on grounds he was not notified of his *Miranda*² rights.

¶3 The Lake Country Municipal Court addressed Hibbard's motions on June 26.³ The court denied the motion to dismiss and found Hibbard guilty of OWI and driving with a defective stop lamp. The court dismissed the refusal charge. On July 1, 2009, the Lake Country Municipal Court received the Town's

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ The record contains exhibits from a proceeding on June 26, 2009. No transcript was provided with the record. For purposes here, we accept the Town's version of events at the hearing. Hibbard offers no alternative version.

appeal from the municipal court's dismissal of the refusal charge and on July 13, the municipal court received Hibbard's appeal from the balance of the judgment. Both parties sought a new trial in circuit court.

¶4 Hibbard then filed a motion to dismiss the Town's appeal and the circuit court held a motion hearing on October 28, 2009. At the hearing, it was determined that while both parties filed their appeals with the circuit court in a timely fashion, neither had served the other party with notice. Because the parties had failed to comply with the notice requirement of WIS. STAT. § 800.14(1),⁴ the court held that it lacked jurisdiction. The circuit court remanded the matter to the municipal court "for entry and reinstatement of the Judgment of Conviction." Hibbard appeals.

¶5 Hibbard's primary arguments on appeal are (1) that the circuit court improperly considered whether it had jurisdiction because the issue was not raised by motion, and (2) that he, as a pro se litigant, "should be held to a less stringent standard than a member of the Wisconsin Bar Association would be and should be allowed a certain amount of latitude in regard to this matter." Hibbard concedes that he failed to comply with WIS. STAT. § 800.14(1) by failing to serve notice of his appeal on the Town, but he excuses his failure by asserting that "[n]owhere on [the notice of appeal] form is there an instruction directing or informing Hibbard that a copy of the Notice of Appeal was to be forwarded to the opposing party."

⁴ WISCONSIN STAT. § 800.14(1) states: "Appeals from judgments of municipal courts may be taken by either party to the circuit court of the county where the offense occurred. The appellant shall appeal by giving the municipal judge and other party written notice of appeal within 20 days after judgment."

¶6 The Town responds to Hibbard’s arguments and further asserts that we should dismiss Hibbard’s appeal for his failure to comply with the rules of appellate procedure contained in WIS. STAT. RULE 809.19; specifically, Hibbard’s failure to submit an appellate brief that complies with the rules. *See* WIS. STAT. RULE 809.83(2) (penalties for noncompliance with rules of appellate procedure include dismissal). We agree that Hibbard failed to comply with relevant rules; however, we dismiss on other grounds.

¶7 We begin with the substantive issue on appeal; that is, whether the circuit court properly considered and resolved the question of its jurisdiction over Hibbard’s appeal. Hibbard takes the position that jurisdiction cannot be considered absent a motion by a party. His view is incorrect, however, because the issue of jurisdiction is always a proper question even if raised *sua sponte* by the court. *See State v. Omernik*, 54 Wis. 2d 220, 222, 194 N.W.2d 617 (1972). Accordingly, the circuit court was within its authority to consider the matter of its jurisdiction to hear Hibbard’s appeal.

¶8 The question of jurisdiction at issue here is specifically appellate jurisdiction, which is distinguishable from subject matter or personal jurisdiction. The Wisconsin Constitution provides in relevant part: “Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state and such *appellate jurisdiction* in the circuit *as the legislature may prescribe by law*.” WIS. CONST. art. VII, § 8 (emphasis added). Accordingly, a circuit court’s jurisdiction over an appeal from a municipal court “can only be acquired ... under the rules of appealability established by the legislature.” *Walford v. Bartsch*, 65 Wis. 2d 254, 258, 222 N.W.2d 633 (1974). “In order for there to be a right of appeal some statute must grant it and a party seeking to appeal must follow the method prescribed in the

governing statute.” *City of Mequon v. Bruseth*, 47 Wis. 2d 791, 794, 177 N.W.2d 852 (1970).

¶9 WISCONSIN STAT. § 800.14 grants circuit courts appellate jurisdiction over municipal court decisions. It states that an “appellant shall appeal by giving the municipal judge *and other party* written notice of appeal within 20 days after judgment.” Sec. 800.14(1) (emphasis added). In this case the circuit court was without jurisdiction to conduct a trial de novo under § 800.14(1) because both parties failed to give the required notice of appeal to the opposing party. When a specific method of review is prescribed by statute, that method is exclusive. *Sewerage Comm’n of Milwaukee v. DNR*, 102 Wis. 2d 613, 630, 307 N.W.2d 189 (1981). Failure to comply with the statutory procedure deprives the court of jurisdiction to conduct the review. See *Walford*, 65 Wis. 2d at 258. Thus, the circuit court properly dismissed Hibbard’s appeal.

¶10 We reject Hibbard’s contention that he should not be held to the same standard as a licensed attorney. Hibbard’s self-representation came with the responsibility to comply with relevant rules of procedural and substantive law. See *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992); see also *Holz v. Busy Bees Contracting, Inc.*, 223 Wis. 2d 598, 608, 589 N.W.2d 633 (Ct. App. 1998) (pro se litigants are required to reasonably investigate the facts and the law). The right to proceed pro se does not grant “a license not to comply with relevant rules of procedural and substantive law.” *Graf*, 166 Wis. 2d at 452 (citation omitted). Pro se appellants are bound by the same rules that apply to attorneys. See *id.* Accordingly, the procedural statutes relevant to the circuit court’s appellate jurisdiction apply to Hibbard just as they apply to any litigant, represented or not.

¶11 Our jurisdiction in an appeal such as this is confined only to the jurisdictional question itself. *See Ryde v. Dane County DSS*, 76 Wis. 2d 558, 564, 251 N.W.2d 791 (1977). Because we conclude that the circuit court correctly held that it had no jurisdiction, our only course is to dismiss the appeal. *See Libby v. Central Wisconsin Trust Co.*, 182 Wis. 599, 604, 197 N.W. 206 (1924) (“The circuit court from which the appeal was taken, having had no jurisdiction of the action, nothing remains to be done except to dismiss the appeal.”).

By the Court.—Appeal dismissed.

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

