COURT OF APPEALS
DECISION
DATED AND FILED

December 16, 1997

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.

Nos. 96-1781 &
96-1782

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

CITY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

v.

SHIRLEY A. NEGLEY,

DEFENDANT-APPELLANT.

CITY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

v.

CLIFFORD R. NEGLEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Shirley A. and Clifford R. Negley appeal from a trial court order affirming municipal court judgments finding that the Negleys violated certain City of Milwaukee building Code ordinances. The Negleys claim that the trial court: (1) erred in holding that Mr. Negley was not entitled to a *de novo* trial from the default judgment entered in municipal court; (2) erred when it deemed certain responses to requests for admissions be admitted; (3) erred in granting summary judgment; and (4) erred in sentencing both Mr. and Mrs. Negley to the maximum $5,000 forfeiture. We affirm.

The Negleys, husband and wife, were charged in municipal court with seven different violations of the City of Milwaukee building code, all affecting rental property they owned as joint tenants. Mrs. Negley appeared on behalf of both parties to plead the case. The municipal court, however, refused to allow her to speak on behalf of Mr. Negley and consequently entered default judgment against him. The municipal court did hear Mrs. Negley's case and eventually entered judgment against her on the merits. The municipal court indicated its willingness to consider reopening Mr. Negley's case so that his case could be tried along with his wife's but Mr. Negley declined the court's offer to reopen; Mr. Negley indicated that he would prefer to take an appeal and have his case tried in circuit court. Despite being cautioned that, absent a trial in municipal court, a trial might not be available to him in circuit court, Mr. Negley continued to refuse to reopen his case in municipal court.

Both parties filed an appeal from the municipal court judgments pursuant to § 800.14, STATS.[1] The City of Milwaukee filed a motion *in limine* requesting the circuit court to rule that Mr. Negley was not entitled to a new trial on appeal, arguing that a trial in municipal court is a prerequisite to a "new trial" in circuit court. *See* § 800.14(4). The trial court granted the City's motion. The trial court also granted the City's motion requesting that the trial court deem admitted the subject of requests to admit that had been served on the Negleys. The trial court concluded that the order deeming the matters admitted was justified

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[1] Section 800.14, STATS., provides:

> **Appeal from municipal court decision.** **(1)** 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 written notice of appeal within 20 days after judgment.
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> **(2)** 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.
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> **(3)** On meeting the requirements for appeal, execution on the judgment of the municipal court shall be stayed until the final disposition of the appeal.
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> **(4)** Upon the request of either party within 20 days after notice of appeal under sub. (1), or on its own motion, the circuit court shall order that a new trial be held in circuit court. The new trial shall be conducted by the court without a jury unless the appellant requests a jury trial in the notice of appeal under sub. (1). The required fee for a jury is prescribed in s. 814.61 (4).
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> **(5)** If there is no request or motion under sub. (4), an appeal shall be based upon a review of a transcript of the proceedings. The municipal judge shall direct that the transcript be prepared from the electronic recording under s. 800.13 (1) and shall certify the transcript. The costs of the transcript shall be paid for under s. 814.65 (5). The electronic recording and the transcript shall be transferred to the circuit court for review.
>
> **(6)** The disposition of the appeal shall be certified to the municipal court by the reviewing court within 30 days of the judgment of the reviewing court.

because the Negleys' answers were insufficient. *See* RULE 804.11(1)(c), STATS. The requests for admissions asked, among other things, whether the Negleys owned the property, whether they received notice of the violations, and whether the claimed defects actually violated the building code. The Negleys had written the words "don't know" next to these requests. The trial court deemed the requests admitted because the responses failed to state that a reasonable inquiry had been made. *See* RULE 804.11(1)(b), STATS.

With respect to the remaining requests, the Negleys admitted that there were violations but alleged that they were unable to make the necessary repairs because the City did not issue what they contended was the requisite building permit. The trial court deemed these requests admitted.[2] Subsequently, the City filed a motion for summary judgment against Mrs. Negley. The trial court granted the motion and eventually imposed a forfeiture of $5,000 plus costs against the Negleys.

First, the Negleys claim that the trial court erred in holding that Mr. Negley was not entitled to a "new trial" under § 800.14, STATS., because there was never an original trial conducted in municipal court. Resolution of this issue requires that we interpret § 800.14(4). The interpretation of a statute presents a question of law that we review *de novo*. ***Gonzalez v. Teskey***, 160 Wis.2d 1, 7–8, 465 N.W.2d 525, 528 (Ct. App. 1990). The purpose of statutory construction is to give effect to the legislative intent. ***Zimmerman v. DHSS***, 169 Wis.2d 498, 504, 485 N.W.2d 290, 292 (Ct. App. 1992). When determining legislative intent, we first examine the language of the statute itself, and will resort to extrinsic aids only

[2] The trial court found that two more requests to admit, not at issue in this appeal, were denied.

if the language is ambiguous. ***Id.***, 169 Wis.2d at 504–505, 485 N.W.2d at 292. Where one of several interpretations of a statute is possible, we must ascertain the legislative intention from the language of the statute in relation to its scope, history, context, subject matter, and object intended to be accomplished. *See* ***State ex rel. First Nat'l Bank & Trust Co. v. Skow***, 91 Wis.2d 773, 779, 284 N.W.2d 74, 77 (1979).

The plain language of § 800.14(4), STATS., does not expressly say that a trial in municipal court is a prerequisite to a "new trial" in circuit court. The statute's legislative history, however, makes it clear that this was the legislature's intent in enacting the statute. Sections 800.14(4) and 800.04(1)(d), STATS., were both amended by 1987 Wisconsin Act 389 (effective November 1, 1988). The word "new" was inserted before the word "trial" in § 800.14(4) to replace what before stated "trial de novo." *See* § 800.14(4) (1990). The intent of the legislature in amending § 800.04(1)(d) was to place limits on the influx of municipal-ordinance violation cases that could be tried in the circuit court:

> The legislative history of secs. 800.04(1)(d) and 800.14(4), Stats., indicates that they were revised in 1987 in order to encourage municipal ordinance defendants to have their cases heard in municipal court and thus cut down on what were believed to be "excessive requests" for circuit court jury trials in civil forfeiture and ordinance violation cases. 1987 Bill Draft Request Form from Cheryl Wittke to Senator Adelman, Dec. 4, 1986. We believe the statutes reasonably serve that goal.

Village of Oregon v. Waldofsky, 177 Wis.2d 412, 419, 501 N.W.2d 912, 914 (Ct. App. 1993). Permitting a defendant in a municipal-ordinance violation case to get a full trial in circuit court by merely defaulting in the municipal court would defeat this legislative intent.

The Negleys also argue that § 800.14(4), STATS., gives the trial court discretionary power to grant a new trial, and that even if the trial court was correct in holding that a trial in municipal court was a prerequisite to a "new trial" in circuit court on appeal, the circuit court erroneously exercised its discretion in refusing to grant Mr. Negley's motion for a new trial. We disagree. As explained, a trial in municipal court is required before a "new trial" may be had in circuit court.

Next, the Negleys claim that the trial court erroneously exercised its discretion when it deemed admitted the subject of the City's requests for admissions. The Negleys take issue with the three following requests for admission:

> 1. Please admit that you were the owner of the property located at 2225-27 North 33rd Street from September 13, 1994 through January 27, 1995.
>
> 2. Please admit that you received service of the violations [described].
>
> ….
>
> 4. Please admit that the time given until January 27, 1995[,] to complete the violations was a reasonable length of time to have the work required in [an attached exhibit] completed.

The Negleys responded "don't know" to each of the above requests. Based upon the answers given, and pursuant to § 804.11(1)(b) & (c), STATS., the trial court deemed the matters admitted and then, based on those admissions, granted summary judgment.[3]

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[3] Section 804.11(1)(b), STATS., provides:

> (b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is

(continued)

The decision to allow relief from the effect of an admission is discretionary. ***Schmid v. Olsen***, 111 Wis.2d 228, 237, 330 N.W.2d 547, 551 (1983). We will not find an erroneous exercise of discretion if the trial court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *See* ***Loy v. Bunderson***, 107 Wis.2d 400, 414–415, 320 N.W.2d 175, 184 (1982). We cannot say that the trial court erroneously exercised its discretion in deeming the requests admitted; the trial court was merely adhering to the express

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> directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon the defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he or she had made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to s. 804.12 (3) deny the matter or set forth reasons why the party cannot admit or deny it.

Section 804.11(1)(c), STATS., provides:

> (c) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with this section, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. Section 804.12 (1) (c) applies to the award of expenses incurred in relation to the motion.

language of § 804.11(1)(b), STATS. The answers did not allege that the Negleys had made a reasonable inquiry or that the information known or readily obtainable by the Negleys was insufficient for them to admit or deny. The Negleys did not comply with § 804.11(1)(b). Section 804.11(1)(c) permits the trial court to order admitted the subject of an insufficient response to a request for admission. Under the facts here, the trial court did not erroneously exercise its discretion in ordering the matters admitted.

The Negleys next argue that the trial court erred in granting summary judgment based on the admitted requests. Again, we disagree. This court reviews summary judgment decisions *de novo*, applying the same standards employed by the circuit court. *See* ***Ervin v. City of Kenosha***, 159 Wis.2d 464, 479, 464 N.W.2d 654, 660 (1991). We must affirm summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, … show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." ***Bank of Two Rivers v. Zimmer***, 112 Wis.2d 624, 631, 334 N.W.2d 230, 233–234 (1983).

In order to prove their case against Mrs. Negley, the City was required to prove: (1) that she was an owner of the property during the period between September 13, 1994 and January 27, 1995; (2) that she received notice of the order to correct conditions; (3) that she was given a reasonable amount of time to correct the alleged violations cited on the order; (4) that the defects alleged in the order actually were violations of the City of Milwaukee building code; and (5) that the violations were not corrected by the last day stated on the complaint, January 27, 1995. MILWAUKEE CODE OF ORDINANCES 200-12; 200-08-66; and 275-32. A request for admission can seek an admission on an issue that would be dispositive of the entire case. *See* ***Bank of Two Rivers***, 112 Wis.2d at 630, 334

N.W.2d at 233. The Negleys' failure to properly respond to the City's requests for admission resulted in admissions that established conclusively that the City was entitled to summary judgment as a matter of law. *See* § 802.08, STATS.; *see also* ***Bank of Two Rivers***, 112 Wis.2d at 630, 334 N.W.2d at 233.

Finally, the Negleys claim that the trial court erred in imposing the maximum forfeiture of $5,000 plus costs on each of them. The assessment of forfeitures within the statutory range lies within the sound discretion of the trial court. ***State v. City of Monona***, 63 Wis.2d 67, 72, 216 N.W.2d 230, 232 (1974). The City of Milwaukee's ordinance code 200-19-1 establishes a mandatory minimum penalty of $150 per day for violations of the city building code and a maximum penalty of $5,000 per violation. *See* MILWAUKEE CODE OF ORDINANCES 200-19-1. The penalties here were within that range, albeit at the maximum level. The trial court noted that the violations were "very flagrant" and "took place for a great period of time." The trial court concluded that this kind of conduct is "terrible for the community" and that everybody "suffers when houses are allowed to deteriorate like this and nothing is done about it." The trial court acted well within the ambit of its discretion.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.