COURT OF APPEALS
DECISION
DATED AND RELEASED

AUGUST 13, 1997

NOTICE

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.

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No. 97-1201-FT

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

AMY WILLOUGHBY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County: ROGER P. MURPHY, Judge. *Reversed.*

ANDERSON, J. Amy Willoughby appeals from a judgment of conviction for two counts of permitting underage drinking on her premises in violation of § 125.07(1)(a)3, STATS. On appeal, Willoughby argues that no violation occurred because her premises is not an area described in a license or permit as required by the statute. We agree and therefore reverse.

The facts are undisputed. On the evening of June 23, 1996, officers Latona and Garry responded to a complaint of marijuana odor in the apartment complex where Willoughby lived. The officers determined that the odor was coming from Willoughby's apartment. After Latona knocked at the door and announced his presence, a female answered and allowed the officer into the apartment.

Inside the apartment, Latona noticed a few empty beer cans lying around the apartment. He also observed several males, who appeared to be under age twenty-one, fleeing through the patio doors. Three of the fleeing males were eventually apprehended and arrested. All three males were under the legal drinking age, and at least one was issued a citation for underage drinking.

At the apartment, Willoughby, age twenty-two at the time, disclosed that she rented the apartment in question and that her friend had brought the people who were inside the apartment. Willoughby also stated that she was aware that these people were drinking inside her apartment. Willoughby was later issued two citations for violating § 125.07(1)(a)3, STATS.

During trial, two of the arrested males testified that they had been drinking alcoholic beverages at Willoughby's apartment, but that Willoughby had not provided or offered them alcohol. No evidence was introduced to show that Willoughby procured for, sold, dispensed, or gave away alcoholic beverages to any underage person. Moreover, the State stipulated that no liquor license or any other license was issued to Willoughby's residence.

Prior to trial, as well as after the State's presentation of its case, Willoughby moved to dismiss for failure of the State to put forth a prima facie case of a § 125.07(1)(a)3, STATS., violation. The trial court denied both motions

and found Willoughby guilty of two counts of permitting illegal underage drinking on her premises. This appeal followed.

The only issue on appeal is whether § 125.07(1)(a)3, STATS., applies broadly to include Willoughby's apartment, or whether it is limited in scope to those premises described in a license or permit. This involves the interpretation or construction of a statute and its application to a set of undisputed facts. As such, it presents a question of law which this court reviews de novo. *See* ***Kwiatkowski v. Capitol Indem. Corp.***, 157 Wis.2d 768, 774-75, 461 N.W.2d 150, 153 (Ct. App. 1990).

The sole purpose for determining the meaning of a statute is to ascertain and give effect to the legislature's intent. *See* ***Cynthia E. v. LaCrosse County Human Servs. Dept***, 172 Wis.2d 218, 225, 493 N.W.2d 56, 59 (1992). To find that intent we look to the plain language of the statute. *See* ***Peter B. v. State***, 184 Wis.2d 57, 71, 516 N.W.2d 746, 752 (Ct. App. 1994). If the statute is clear and unambiguous on its face, our inquiry ends, and we must simply apply the statute to the facts of the case. *See* ***id.*** Moreover, when a word is specifically defined by statute, that meaning must be given effect. *See* ***Smith v. Kappell***, 147 Wis.2d 380, 385, 433 N.W.2d 588, 590 (Ct. App. 1988). This court would be setting a dangerous precedent if it assumed that the legislative body did not mean what it clearly said. *See* ***Buening v. DHSS***, 205 Wis.2d 32, 58, 556 N.W.2d 116, 126 (Ct. App. 1996).

Section 125.07(1)(a)3, STATS., provides:

> No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the

> adult's control. This subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

The trial court and the State contend that this statute applies broadly to prevent an adult from permitting an underage person from illegally consuming alcoholic beverages on any premises owned by or under the adult's control. However, the clear and unambiguous language of the statute indicates the statute is more narrow in scope. The statute specifically limits the scope of "premises" to that area described in a license or permit to sell alcoholic beverages under ch. 125, STATS. *See* § 125.02(9), (13) and (14m), STATS. Section 125.02 also states that "[e]xcept as otherwise provided" these definitions are controlling in ch. 125.

Applying the clear language of the statute to this case, Willoughby's premises is not covered under the statute. Willoughby lives in a residential apartment that has not been issued a license or permit under ch. 125, STATS. Moreover, there is no indication from the language of § 125.07(1)(a)3, STATS., that the definition of "premises" as defined in § 125.02(14m), STATS., is not controlling here. The State contends that because this section did not use the word "license" or "permit," it is an indication that "premises" is meant to be broader here than elsewhere in the statute. However, by definition, the word "premises" is an area described in a license or permit; therefore, to use the word "license" or "permit" again is not required. [1]

[1] The State also argues that § 125.07(1)(a)4, STATS., read together with § 125.07(4)(a)2, renders § 125.07(1)(a)3 superfluous. Moreover, the State argues that to interpret § 125.07(1)(a)3 as applying to only premises covered by a license or permit would leave a loophole for social hosts. Although § 125.07(1)(a)4 may overlap with § 125.07(1)(a)3, the clear and unambiguous language of § 125.07(1)(a)3 must be given effect. *See* ***Smith v. Kappell***, 147 Wis.2d 380, 385, 433 N.W.2d 588, 590 (Ct. App. 1988). Furthermore, the statute does not necessarily leave a "loophole" for social hosts in cases such as the one here. The State could have conceivably brought charges against the defendant under § 125.07(1)(a)4 in conjunction with § 125.07(4)(b). However, the State never did so, nor did it make this argument at trial or on appeal.

Finally, although this court has had few opportunities to address § 125.07(1)(a)3, STATS., the two primary cases that discuss this section provide support for the conclusion reached here that "premises" does not include Willoughby's apartment. In ***Miller v. Thomack***, 204 Wis.2d 242, 253-54, 555 N.W.2d 130, 135 (Ct. App. 1996), *aff'd*, Nos. 95-1684 and 95-1766 (Wis. June 13, 1997), this court assumed for purposes of § 125.07(1)(a)3 that "premises" was "the area described in a license or permit" as defined in § 125.02(14m), STATS.[2] Furthermore, in ***Smith***, 147 Wis.2d at 385, 433 N.W.2d at 590, we determined that the clear language of § 125.07(1)(a)3 must govern, and that if a word is specifically defined by statute, that meaning must be given effect. Therefore, consistent with our previous holdings and discussions on statutory construction and § 125.07(1)(a)3, this section does not apply to Willoughby's apartment. Accordingly, we reverse the trial court's judgment of conviction.

By the Court.—Judgment reversed.

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

[2] We did not base our holding in ***Miller v. Thomack***, 204 Wis.2d 242, 254-55, 555 N.W.2d 130, 135 (Ct. App. 1996), *aff''d,* Nos. 95-1684 and 95-1766 (Wis. June 13, 1997), on the definition of "premises," but rather on the fact that the defendant did not know underage drinking was occurring on his business parking lot and beach area.