

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 7, 1998

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.

**No. 97-2518**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**CITY OF MILWAUKEE,**

**PLAINTIFF-APPELLANT,**

**v.**

**MICHAEL FRANK MACHNITZKY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
PATRICIA D. McMAHON, Judge. *Reversed and cause remanded with  
directions.*

CURLEY, J.<sup>1</sup> The City of Milwaukee appeals from a circuit court order affirming a municipal court judgment dismissing on the merits the City's civil forfeiture action against Michael Frank Machnitzky for his alleged violation

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<sup>1</sup> This appeal is decided by one judge, pursuant to § 752.31(2), STATS.

of § 106-1 of the Milwaukee Code of Ordinances. The municipal court dismissed the City's forfeiture action against Machnitzky because of the City's failure to comply with a discovery order. The City appealed to the circuit court pursuant to the record review provisions of § 800.14, STATS., and the circuit court affirmed the municipal court's judgment. The City argues that the circuit court erred because: (1) the municipal court lacked the authority to dismiss the action with prejudice as a sanction for the City's failure to comply with the discovery order; and (2) alternatively, if the municipal court had the authority to dismiss the action, in so doing, it erroneously exercised its discretion. We conclude that although municipal courts have the inherent authority to dismiss with prejudice a civil forfeiture action for the failure of a party to comply with a discovery order, they may only do so after making a reasonable determination that the noncomplying party's conduct was egregious, and that there was no clear and justifiable excuse for the party's noncompliance. In the instant case, the municipal court failed to make such a finding. Therefore, we conclude that the municipal court erroneously exercised its discretion, and we reverse and remand the circuit court's order for proceedings consistent with this opinion.

### **I. BACKGROUND.**

On August 17, 1996, Machnitzky was issued a citation for disorderly conduct in violation of § 106-1 of the Milwaukee Code of Ordinances. Machnitzky pleaded not guilty and a trial was scheduled. On November 1, 1996, Machnitzky filed a four-paragraph motion for discovery requesting discovery of a number of items. On November 22, 1996, the municipal court heard and granted the motion in its entirety, and ordered that all requested discovery be provided before December 13, 1996.

Machnitzky received one fax from the City consisting of the narrative portion of his municipal citation; however, the City failed to provide the remainder of the requested discovery. On March 25, 1997, the trial date, Machnitzky moved for dismissal on the grounds that the City's failure to comply with the discovery order denied him the opportunity to present a defense. The municipal court granted Machnitzky's motion and dismissed the action on the merits "explicitly on the ground that the City failed to comply with this Court's previous Order for Discovery." Although the municipal court did find that the City "evidently knew it had to do something" and acted in a "cavalier" fashion which "in no way complies with the letter or spirit of the law," the municipal court did not make a determination that the City's conduct was "egregious" and had no "clear and justifiable excuse."

The City appealed the municipal court's judgment to the circuit court pursuant to the record review provisions of § 800.14(5), STATS. After neither party appeared at a status conference that the circuit court had ordered, the court reviewed the record and affirmed the municipal court's decision. The City subsequently filed a motion to vacate the circuit court's order, which was denied, and the City now appeals.

## II. ANALYSIS.

The central question raised by this appeal is whether a municipal court has the authority to dismiss with prejudice a civil forfeiture action as a sanction for one party's failure to comply with a discovery order. The extent of a municipal court's authority is a question of law which this court decides *de novo*. See *City of Sun Prairie v. Davis*, No. 97-1651, slip op. at 3, (Wis. Ct. App. Feb. 26, 1998) (ordered published March 25, 1998).

Municipal courts, once created by the legislature and by appropriate municipal action, are courts endowed with all judicial powers not expressly denied them. *City of Milwaukee v. Wroten*, 160 Wis.2d 207, 223, 466 N.W.2d 861, 867 (1991). Pursuant to this endowment, municipal courts have inherent judicial powers which they exercise as part of Wisconsin's unified court system. See *Davis*, slip op. at 5; *City of Kenosha v. Jensen*, 184 Wis.2d 91, 516 N.W.2d 4, 7 (Ct. App. 1994).

“Every court has inherent power, exercisable in its sound discretion, consistent with the constitution and statutes, to control disposition of causes on its docket with economy of time and effort.” *Latham v. Casey & King Corp.*, 23 Wis.2d 311, 314, 127 N.W.2d 225, 226 (1964) (citation omitted). A circuit court's inherent powers include the authority to sanction a party for failing to obey its orders. *Davis*, slip op. at 9 (citing *Johnson v. Allis Chalmers Corp.*, 162 Wis.2d 273-74, 470 N.W.2d 859, 863 (1991)). Such sanctions may include dismissal of an action on the merits. See *Davis*, slip op. at 9 (citing *Latham*, 23 Wis.2d at 314, 127 N.W.2d at 226). Although dismissal of an action with prejudice for a party's failure to comply with a discovery order is a particularly harsh sanction, circuit courts have both inherent and statutory authority to dismiss an action on the merits for noncompliance with a court's discovery order. See *Johnson*, 162 Wis.2d at 273-74, 470 N.W.2d at 863-64. Furthermore, statutes explicitly granting circuit courts the authority to dismiss an action with prejudice for failure to comply with a discovery order do not exhaust a court's inherent power or imply that a court does not have “the inherent power to fashion sanctions and penalties best calculated to aid the court in control of the judicial business before it.” See *Latham*, 23 Wis.2d at 315, 127 N.W.2d at 227.

Municipal courts do not have express statutory authority to dismiss an action on the merits as a sanction for a party's failure to comply with a discovery order. *See* Chapter 800, STATS. However, because municipal courts have all judicial powers not expressly denied them, and because circuit courts have the inherent authority to dismiss an action with prejudice for failure to comply with a discovery order, municipal courts also possess the inherent authority to do so unless the legislature expressly denies municipal courts such inherent power. In fact, the legislature has not expressly denied municipal courts the inherent power to dismiss an action on the merits as a sanction for violation of a discovery order. Chapter 800, STATS., titled "Municipal Court Procedure," contains the rules governing the functioning of municipal courts in Wisconsin. Although § 800.07, STATS., describes the rules for discovery in municipal court,<sup>2</sup> and § 800.12, STATS., gives municipal courts the power to impose sanctions for contempt of court,<sup>3</sup> none of Chapter 800's provisions discuss a municipal court's

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<sup>2</sup> Section 800.07, STATS., reads:

**Discovery in municipal court.** Neither party is entitled to pretrial discovery, except that if the defendant moves within 30 days after the initial appearance in person or by an attorney and shows cause therefor, the court may order that the defendant be allowed to inspect documents, including lists of names and addresses of witnesses, if available, and to test under s. 804.09, under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed.

<sup>3</sup>Section 800.12, STATS., reads:

**Municipal court contempt procedure.** (1) A municipal judge may impose a sanction authorized under sub. (2) for contempt of court, as defined in s. 785.01 (1), in accordance with the procedures under s. 785.03.

(2) A municipality may by ordinance provide that a municipal judge may impose a forfeiture for contempt under sub. (1) in an amount not to exceed \$50 or, upon nonpayment of the forfeiture, penalty assessment under s. 165.87 and jail assessment under

(continued)

authority to sanction a party for failure to comply with a discovery order by dismissing the action on the merits. Therefore, because the legislature has not expressly denied municipal courts the inherent power to dismiss an action on the merits for a party's failure to comply with a discovery order, municipal courts have that inherent power.

The City argues, however, that the Wisconsin Supreme Court's decision in *State v. Braunsdorf*, 98 Wis.2d 569, 297 N.W.2d 808 (1980), bars a municipal court from dismissing a civil forfeiture action on the merits as a sanction for a party's failure to comply with the court's discovery order. This court disagrees.

In *Braunsdorf*, the Wisconsin Supreme Court held that trial courts do not have the inherent authority to dismiss a criminal case with prejudice prior to the attachment of jeopardy. *Id.* at 585, 297 N.W.2d at 815-16. The court based its decision on the fact that dismissing criminal cases with prejudice prior to jeopardy was not essential to the existence of the orderly functioning of a trial court, and was not required by reason of public policy or economy of judicial resources. *Id.* at 585-86, 297 N.W.2d at 815-16. The City argues that, because "the societal interests associated with the regular enforcement of criminal laws are equally applicable to the enforcement of ordinance violations," this court should apply *Braunsdorf*'s reasoning to the facts of this case, and conclude that municipal courts lack the authority to dismiss an action on the merits as a sanction for one party's noncompliance with a discovery order.

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s. 302.46 and any applicable domestic abuse assessment under s. 973.055 (1), a jail sentence not to exceed 7 days.

The City fails to acknowledge, however, that municipal ordinance forfeiture actions are civil, rather than criminal, actions. See *Prentice v. County Court, Milwaukee County*, 70 Wis.2d 230, 234 N.W.2d 283 (1974); *City of Neenah v. Alsteen*, 30 Wis.2d 596, 142 N.W.2d 232 (1966); § 66.12(1)(a), STATS. (“An action for violation of an ordinance or bylaw enacted by a city ... is a civil action.”). Although the Wisconsin Supreme Court stated in *City of Milwaukee v. Wuky*, 26 Wis.2d 555, 561-62, 133 N.W.2d 356, 360 (1965), that civil forfeiture actions were “hybrid proceedings” which have “many characteristics of a criminal case,” the court later made it “crystal clear” that “the essential nature of a forfeiture action is civil.” *Alsteen*, 30 Wis.2d at 600, 142 N.W.2d at 235.

Additionally, although the power to dismiss a criminal case with prejudice prior to the attachment of jeopardy may not be essential to the orderly functioning of a trial court, this court does not see how the same could be said about a trial court, or a municipal court’s, power to dismiss an action with prejudice as a sanction against a party for failing to obey a court order. As the Wisconsin Supreme Court noted in *Johnson*, flagrant disobedience of court orders causes significant prejudice to the circuit court’s ability to efficiently and effectively administer judicial business:

The court’s authority to dismiss actions emanates not merely from a need to prevent injustice to the parties in the particular action, but also from a need to prevent injustice to the operation of the judicial system as a whole. The circuit courts have a duty to discourage the protraction of litigation, preserve judicial integrity, and promote the orderly processing of cases. Dismissal, in some instances, is necessary to maintain these interests. Each time the court’s orders are disregarded, the administration of justice suffers because the court’s time is misused to accommodate the noncomplying party’s dilatoriness at the expense of the other party and all other litigants awaiting the court’s attention. A continuing failure to sanction may be

perceived by the noncomplying party and other litigants as a green light to flaunt court orders.

*Johnson*, 162 Wis.2d at 281-82, 470 N.W.2d at 867. This court sees no reason why a municipal court's orderly functioning would not similarly be threatened if it lacked the ability to sanction those who flaunt its orders. Therefore, we conclude that *Braunsdorf* is distinguishable and does not bar a municipal court from exercising its inherent power to dismiss a civil forfeiture action on the merits as a sanction against a party in noncompliance with a discovery order.

A municipal court's power to dismiss an action with prejudice for failure to comply with a discovery order, however, is not unrestricted. Although circuit courts have the inherent power to dismiss an action on the merits for noncompliance with a discovery order, they may only do so if "there is a reasonable basis for the circuit court's determination that the noncomplying party's conduct was egregious and there was no 'clear and justifiable excuse' for the party's noncompliance." *Johnson*, 162 Wis.2d at 276-77, 470 N.W.2d at 865. Therefore, it stands to reason that in order for a municipal court to dismiss an action for noncompliance with an order, it must also reasonably make a determination that: (1) the noncomplying party's conduct was egregious; and (2) there was no clear and justifiable excuse for the party's noncompliance. In the instant case, although the trial court found that the City acted in a "cavalier" fashion that "in no way complied with the letter or spirit of the law," it failed to make a finding that the City's conduct was "egregious" and that there was no "clear and justifiable excuse" for the City's conduct. Therefore, although the municipal court had the power to dismiss the action, in so doing, it erroneously exercised its discretion. Thus, this court reverses the circuit court's order affirming the municipal court's judgment.



### III. CONCLUSION.

This court concludes that municipal courts, like circuit courts, possess the inherent power to dismiss an action on the merits as a sanction for a party's failure to comply with a discovery order. In order to do so, however, a municipal court must make a reasonable determination that the noncomplying party's conduct was "egregious" and that there was no "clear and justifiable" excuse for the noncompliance. By failing to make such a determination in the instant case, the municipal court erroneously exercised its discretion. This court therefore must reverse and remand the circuit court's order affirming the municipal court for proceedings consistent with this opinion.

*By the Court.*—Order reversed and cause remanded with directions.

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

