

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 26, 2015

Diane M. Fremgen
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. 2015AP576-FT

Cir. Ct. No. 2014CV479

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

VILLAGE OF THIENSVILLE,

PLAINTIFF-RESPONDENT,

V.

CONOR B. FISK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Ozaukee County:
PAUL V. MALLOY, Judge. *Reversed and cause remanded with directions.*

¶1 REILLY, P.J.¹ Conor B. Fisk was cited in municipal court with operating a motor vehicle while under the influence of intoxicants (OWI) and with

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

a prohibited alcohol concentration (PAC) in violation of Village of Thiensville ordinances adopting WIS. STAT. § 346.63(1)(a) and (b). The municipal court acquitted Fisk on the OWI charge but convicted him on the PAC. Twenty days after trial, Fisk filed a notice of appeal of the PAC conviction with the municipal court. Fisk attached the notice to an email that he sent to the municipal prosecutor's office account at 9:02 p.m. on the same day. The Village moved to dismiss Fisk's appeal on the basis that Fisk failed to properly serve his notice of appeal on the Village and, therefore, the circuit court did not have jurisdiction. The court agreed and dismissed Fisk's appeal. We reverse and remand to the circuit court to reinstate Fisk's appeal.

¶2 The Village concedes that WIS. STAT. § 800.14(1) “sets forth the sole manner in which an appellant shall appeal a municipal court judgment.” That statute provides that in appealing a municipal court judgment, “[t]he appellant shall ... giv[e] the municipal judge and other party written notice of appeal within 20 days of the judgment or decision.” *Id.* The Village does not dispute that it received written notice of Fisk's appeal within twenty days of the municipal court judgment. Its argument is that Fisk was required to utilize a method of delivery prescribed by the rules of civil procedure in WIS. STAT. § 801.14(2) and (4) and that he did not properly provide written notice as he did not “hand-deliver, fax, or mail his notice of appeal to the Village's attorney” prior to filing that notice with the court. We reject this argument.

¶3 WISCONSIN STAT. § 800.14(1) places no requirements on the method of delivery for a written notice of appeal. That is not changed by the fact that WIS. STAT. § 801.14(2) and (4) has more specific service requirements generally applied to civil actions in circuit courts. *See* WIS. STAT. § 801.01(2) (WIS. STAT. chs. 801 to 847 govern procedure and practice “in circuit courts of this state in all

civil actions ... except where different procedure is prescribed by statute or rule”). We presume that when the legislature has excluded words from a statute, that it has excluded them for a purpose. *C. Coakley Relocation Sys., Inc. v. City of Milwaukee*, 2008 WI 68, ¶24 n.10, 310 Wis. 2d 456, 750 N.W.2d 900. The legislature did not prescribe in § 800.14(1) that written notice of an appeal of a municipal court judgment had to be delivered by hand, fax, or mail to the opposing party prior to being filed with the municipal court, and we will not do so here. Fisk provided written notice of his appeal to the Village pursuant to § 800.14(1) when he emailed a copy of that notice twenty days after the municipal court judgment. That is all that the law requires.

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

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

