COURT OF APPEALS
DECISION
DATED AND FILED

April 1, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3351-FT

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

FRANK J. STEFFES,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed.*

DYKMAN, P.J.[1] Frank J. Steffes appeals from an order denying his "motion to perfect statutory right to a refusal hearing." Steffes was arrested for operating a motor vehicle while under the influence of an intoxicant, contrary to § 343.63(1)(a), STATS. He contends that even though he failed to request a refusal hearing under § 343.305(9)(a), STATS., within ten days after the police notified him of

[1] This appeal is decided by one judge pursuant to § 752.31(c), STATS, and expedited under RULE 809.17, STATS.

the State's intent to have his license revoked, he is still entitled to a hearing on whether he refused to submit to a test. We disagree and affirm.

BACKGROUND

Officer Chris MacNeill of the Lomira Police Department arrested Steffes for operating a motor vehicle while under the influence of an intoxicant. Following the arrest, Officer MacNeill transported Steffes to a hospital where he read Steffes the Informing the Accused form. After reading the form, Officer MacNeill requested that Steffes submit to a blood-alcohol test. Steffes apparently refused. Officer MacNeill then issued Steffes a notice of intent to revoke his operating privilege. The notice advised Steffes that he had ten days to request a hearing on the revocation of his license, and that if he did not request a hearing within ten days, the period of revocation would commence thirty days after the notice was issued.

Steffes did not request a refusal hearing within the ten days following the issuance of the notice. Instead, he waited several weeks and filed a "motion to perfect statutory right to a refusal hearing," which was his attempt to request a hearing on whether he refused to submit to the test. The trial court denied his motion as untimely under § 343.305(10)(a), STATS. Steffes appeals.

DISCUSSION

Steffes contends that he is entitled to a refusal hearing because the language of § 343.305(10)(a), STATS., does not bar refusal hearings when requests are made outside the ten-day statutory period; it merely allows revocation to occur. The question of whether a person charged under § 343.63, STATS., is entitled to a refusal hearing after the ten-day period has expired is a matter of statutory interpretation that we review de novo. *See* ***State v. Sutton***, 177 Wis.2d 709, 716, 503 N.W.2d 326, 329

(Ct. App. 1993). The primary purpose of statutory interpretation is to discern the intent of the legislature and give effect to that intent. *See* ***State v. Miller***, 180 Wis.2d 320, 323, 509 N.W.2d 98, 99 (Ct. App. 1993). The first step is to examine the statute's language and, absent ambiguity, to give the language its ordinary meaning. *See* ***State v. Phillips***, 172 Wis.2d 391, 394, 493 N.W.2d 238, 240 (Ct. App. 1992).

Section 343.305(10)(a), STATS., reads as follows:

> If the court determines under sub. (9)(d) that a person improperly refused to take a test or if the person does not request a hearing within 10 days after the person has been served with the notice of intent to revoke the person's operating privilege, the court shall proceed under this subsection. If no hearing was requested, the revocation period shall begin 30 days after the date of the refusal. If a hearing was requested, the revocation period shall commence 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later.

Steffes does not challenge that license revocation occurs within thirty days if a person refuses to take a blood-alcohol test and does not request a hearing within the ten-day statutory period. Rather, he contends that he should not be determined to have refused to submit to the test simply because he failed to request a hearing within the ten-day period. He argues that because the statute is silent on refusal hearings beyond the ten-day statutory period, such a hearing is permitted. We disagree.

While § 343.305(10)(a), STATS., is silent as to whether a person may request a refusal hearing beyond the ten-day statutory period, that silence does not create a right. The implied consent statute sets out various detailed procedures that the courts are to follow depending on the situation at issue. Section 343.305(10)(a), sets out the procedure that a circuit court must follow once it has determined that the person charged with refusing to submit to a test has not requested a refusal hearing within ten days after he or she has been served with the notice of intent to revoke his or her operating privilege. Nowhere in this mandatory procedure is the court authorized to grant a refusal hearing after the ten-day statutory period has passed.

The only reason Steffes offers for why he is requesting a hearing is that he does not want the State to use his failure to submit to a test and failure to request a hearing within the ten-day statutory period as evidence of guilt when he is later tried for driving under the influence of an intoxicant.[2] We are not persuaded.[3]

We conclude that § 343.305(10)(a), STATS., is clear and unambiguous

[2] Steffes argues that it is in the interest of public policy to allow for such hearings after the ten-day period has expired. He contends that proof of his "refusal" could be used as proof of consciousness of guilt at his subsequent trial on the charge of operating a motor vehicle while under the influence, and that permitting the admission of such evidence simply because the deadline that triggers license revocation has passed "ties the hands of trial courts throughout the state" and "undermines the court's authority." Eliminating a trial court's discretion is exactly what the legislature intended when it enacted the implied consent statute.

Since its enactment, the supreme court has held that the purpose of the statute is to facilitate the gathering of evidence against drunk drivers, secure convictions and get drunk drivers off the roads. *See* ***State v. Brooks***, 113 Wis.2d 347, 356, 335 N.W.2d 354, 355 (1983); ***State v. Neitzel***, 95 Wis.2d 191, 203, 289 N.W.2d 828, 835 (1980). Therefore, we reject Steffes's public policy argument.

[3] We question the relevancy of the hearing Steffes requests. He appears to argue that he wants a hearing because he does not want the State to be able to argue at trial that his refusal to take the test is evidence of his guilt. But, if he did refuse, the only argument he could make would be that he suffered from some sort of disability that precludes him from submitting to the test, and he has offered no such argument. Regardless of the result of a hearing, the State could argue the inference of guilt from Steffes's decision not to take the test. As a result, we see no reason for why a refusal hearing is necessary.

regarding the procedure that a trial court must follow once it determines that a person has refused to submit to a test under the implied consent statute.[4] Conducting a refusal hearing when one is requested outside the ten-day statutory period is not a part of that procedure. If a person contests an arresting officer's conclusion that he or she refused to submit to a test, he or she may request a refusal hearing within the period proscribed under § 343.305(10)(a). Otherwise, he or she will be determined to have refused the test. Steffes failed to request a test within the proscribed ten-day time period; therefore, he is deemed to have refused the test and is no longer entitled to a hearing on the matter. Accordingly, we affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.

[4] Steffes argues that if the statute is ambiguous, we should interpret it in his favor. Because we conclude the statute is not ambiguous, we need address this argument.