

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2016

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. 2015AP800

Cir. Ct. No. 2014CV2637

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF MADISON,

PLAINTIFF-RESPONDENT,

V.

JEFFREY K. CROSSFIELD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
RICHARD G. NIESS, Judge. *Affirmed.*

¶1 KLOPPENBURG, P.J.¹ Jeffrey Crossfield, pro se, appeals the order of the circuit court affirming the municipal court's decision finding him guilty of

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.

failure to obey an official traffic sign or signal in violation of the Madison General Ordinance adopting WIS. STAT. § 346.04(2).

¶2 As an initial matter, I observe that Crossfield’s appellate brief is confusing, rambling, and unorganized. I have labored to discern Crossfield’s arguments and to address them in this opinion. Although Crossfield is pro se, he is “bound by the same rules that apply to attorneys on appeal.” *Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). I discern Crossfield’s arguments to be that the circuit court erred in two respects: (1) finding that the sign that Crossfield allegedly failed to obey read “right lane closed-merge left” such that Crossfield failed to obey it when he did not merge left; and (2) finding that that sign was an “official” sign when, according to Crossfield, the sign did not conform with the Manual on Uniform Traffic Control Devices (MUTCD). For the reasons set forth below, I reject Crossfield’s arguments and affirm.

BACKGROUND

¶3 Crossfield was issued a citation for failing to obey an official traffic sign or signal in violation of the Madison General Ordinance adopting WIS. STAT. § 346.04(2). Crossfield contested the citation in municipal court, appearing pro se. The municipal court heard testimony from Crossfield and three other witnesses, including Eric Harried and John Seid who were part of a work crew that was doing road repairs on the eastbound side of the beltline highway near the Old Sauk Road exit ramp in Madison. The third witness was the officer who issued the citation.

¶4 Upon review of the witnesses’ testimony and the parties’ briefs, the municipal court found that at the time of the incident, there was a “work crew team that was doing road repairs on the eastbound side of the beltline highway near the Old Sauk Road exit ramp. As traffic traveling eastbound on the beltline

passed the Greenway Blvd. on ramp to the beltline there was a large electronic portable changeable message board mounted on a truck operated by [Seid] parked on the shoulder of the road.”

¶5 The municipal court noted that Harried and Seid both testified that the message board said “right lane closed-merge left,” but that Crossfield disputed that the sign instructed drivers to merge left. The municipal court found that the City presented clear, satisfactory, and convincing evidence that the message board read “right lane closed-merge left.” The municipal court pointed to Crossfield’s testimony that “rather than merge left as the sign instructed, he drove right onto the shoulder of the road in order to gain access [to] the off ramp at Old Sauk Road.” The municipal court also found that the “evidence presented by the City established that the message board on the truck ... met the standards to be considered an official traffic sign or signal.” Accordingly, the municipal court ruled that Crossfield was guilty of failure to obey an official traffic sign or signal, in violation of the Madison General Ordinance adopting WIS. STAT. § 346.04(2).

¶6 Crossfield appealed the municipal court decision to the circuit court pursuant to WIS. STAT. § 800.14(5). Upon review of the record and the parties’ briefs, the circuit court affirmed the decision of the municipal court, and Crossfield now appeals to this court.

DISCUSSION

¶7 As noted, Crossfield appealed the municipal court’s decision to the circuit court pursuant to WIS. STAT. § 800.14(5). An appeal under § 800.14(5) “shall be based upon a review of the proceedings in the municipal court.” As this court has explained, “an appeal ... based upon a review of a transcript of the proceedings’ under sec. 800.14(5), Stats., does not permit the circuit court to

review the record *de novo* and to substitute its judgment for that of the municipal court.” *Village of Williams Bay v. Metzl*, 124 Wis. 2d 356, 361, 369 N.W.2d 186 (Ct. App. 1985). Review under § 800.14(5) is limited to “an examination of the transcript to determine whether the evidence supports the municipal court decision.” *Village of Williams Bay*, 124 Wis. 2d at 361.

¶8 This court reviews the decision of the municipal court and not that of the circuit court. *Id.* When reviewing the municipal court’s decision, “[t]he court of appeals applies the same standard of review as the circuit court.” *Id.* at 362. Accordingly, we uphold the municipal court’s factual findings unless they are clearly erroneous, and “[w]e search the record for facts to support the municipal court’s findings of fact.” *Id.* at 361-62.

¶9 Crossfield is charged with violating WIS. STAT. § 346.04(2), which reads:

No operator of a vehicle shall disobey the instructions of any official traffic sign or signal unless otherwise directed by a traffic officer.

Here, the City bears the burden of proving that Crossfield, as operator of a vehicle, disobeyed the instructions of an official traffic sign by clear, satisfactory, and convincing evidence. *See Waukesha Cnty. v. Mueller*, 34 Wis. 2d 628, 631, 150 N.W.2d 364 (1967) (burden of proof required in ordinance forfeiture cases is clear, satisfactory, and convincing evidence).

¶10 As noted above, Crossfield appears to argue that the municipal court erred in two respects: (1) finding that the sign that Crossfield allegedly failed to obey read “right lane closed-merge left” such that Crossfield failed to obey it when he did not merge left; and (2) finding that that sign was an “official” sign

when, according to Crossfield, the sign did not conform with the MUTCD. Upon independent review of the record, I conclude that the municipal court did not err in either respect.

A. Whether the Sign Read “Right Lane Closed-Merge Left”

¶11 Crossfield disputes the municipal court’s finding that the sign on Seid’s truck instructed drivers to “merge left.” As I proceed to explain, there is sufficient evidence in the record to support the municipal court’s finding.

¶12 “[F]indings of fact of the municipal court should not be set aside by the circuit court unless clearly erroneous and due regard should be given to the opportunity of the municipal court to judge the credibility of the witnesses.” *Village of Williams Bay*, 124 Wis. 2d at 361. “The court of appeals applies the same standard of review as the circuit court. We search the record for facts to support the municipal court’s findings of fact.” *Id.* at 362 (citation omitted).

¶13 Crossfield testified as to the following facts. On February 25, 2014, he was driving a van on the beltline highway approaching the exit for Old Sauk Road. At that time there were what he believed to be “maintenance workers” present. He saw a “sign” indicating that the “right lane was closed ahead” and saw two trucks in the right lane. He proceeded to pass the first truck on the paved shoulder. The second truck moved into a position that blocked Crossfield’s path while he was traveling on the shoulder.

¶14 Harried testified that on the date of the incident, he was employed by the Dane County Highway Department as a highway laborer and was part of the crew that was patching potholes on the beltline highway, including in the area near the Old Sauk Road exit ramp. Harried testified as to the standard procedure with

respect to the vehicles involved in the repair process as well as the procedure the crew used on the day of the incident:

The ... first vehicle that you come to is one of our message trucks, which is a pre-warning truck that has a message board on it. And ... *that day it was stating that the right lane was closed, and it says merge left.* We always stage that vehicle on the shoulder approximately a quarter of a mile behind our crash trucks.

... [T]he next vehicle that you get to is going to be a crash truck, which involves ... an arrow board, and then it has a crash attenuator mounted behind it in case our vehicle gets struck.... [T]hat first crash truck is on the shoulder, and then ... we have a second crash truck that's in the lane of traffic. That one has an arrow on it, which is protecting the workers in front of that vehicle.

(Emphasis added.) Harried testified that at the time of the incident, he was in the “second crash truck, which was in the right lane” of traffic with a left arrow on, and that the first crash truck was “on the shoulder with the left arrow on.” He testified that workers were working in the area in front of his truck—the driving lane—as well as on the shoulder of the road, just prior to the Old Sauk Road exit. In front of the workers was a “one-ton dump truck that has patch in it.”

¶15 Harried testified that his coworker who was “operating the message truck that day noticed a white van coming up in the right-hand lane [and] called ... on the radio and warned ... that there was a white van coming up in the right lane.” Harried then “noticed the white van ... had two tires in the grass and two tires on the gravel [and] proceeded to come around the first crash truck, which was on the shoulder.” Harried then “angled [his] truck to the right to stop that white van.” Harried identified Crossfield as the driver of the white van.

¶16 Seid, another employee of the Dane County Highway Department, testified as to the following:

I was in the message board truck ... parked ... between Old Sauk Road and Greenway Cross.

....

I was sitting on the shoulder ... just east of the Greenway ramp, heading towards Old Sauk. And ... *the message board said, right lane closed, ... merge left*, and then it has an arrow that points to the left, ... directing traffic to merge to the left lane.

....

... [T]he first crash truck from me ... would be ... on the shoulder, and he has an arrow that points to the left. And then the ... second crash truck is in the right lane of traffic with an arrow pointing left. And then in front of them is the one-ton [truck] with the patch with the two workers, ... and they're patching the potholes.

(Emphasis added.) Seid further testified that he observed a white van drive past him “down the right lane [and] didn’t have his left blinker on.” Seid testified that the white van “ended up going to the right of the crash trucks on the shoulder ... off the roadway.” Seid radioed the crew to let them know that the white van was “coming around ... on the right.”

¶17 In finding that the sign read “right lane closed-merge left,” the municipal court found Harried and Seid’s testimony more credible than Crossfield’s testimony. Indeed, as the municipal court noted, “[i]t would make less sense for the sign to have only said right lane closed without also advising motorists to merge left.” To the extent that Crossfield argues that the testimony of these two witnesses is not credible, his argument is unpersuasive. For example, Crossfield suggests that because Harried was driving in the second crash truck, which was ahead of the message board truck driven by Seid, Harried could not have direct knowledge of the content of the sign that day. However, it is

reasonable to infer that Harried, as a member of the repair crew, would have direct knowledge of what was in fact displayed on the message board that day.

¶18 In sum, Crossfield fails to demonstrate that the municipal court's finding that the message board read "right lane closed-merge left" is clearly erroneous.

B. Whether the Sign was an "Official Traffic Sign"

¶19 Crossfield also disputes the municipal court's finding that the sign that Crossfield allegedly did not obey was an "official traffic sign" under WIS. STAT. § 346.04(2) when, according to Crossfield, the sign did not conform with the MUTCD. Whether the sign was an "official traffic sign" is a mixed question of law and fact. "When mixed questions of law and fact are presented to this court, there are really two component questions which must be answered. The first question is what, in fact, actually happened; the second question is whether those facts, as a matter of law, have meaning as a particular legal concept." *Snyder v. Badgerland Mobile Homes, Inc.*, 2003 WI App 49, ¶21, 260 Wis. 2d 770, 659 N.W.2d 887 (quoted source omitted). As I proceed to explain, I conclude that it was not error to conclude that the sign was an "official traffic sign."

¶20 As noted above, the City bears the burden of showing that Crossfield disobeyed the instructions of an "official traffic sign." The words and phrases in WIS. STAT. ch. 346 are used in the same sense as those defined in WIS. STAT. ch. 340. *See* WIS. STAT. § 346.01(1). The term "official traffic sign" is contained in the definition of "official traffic control device" under WIS. STAT. § 340.01(38):

"Official traffic control device" means all signs, signals, pavement markings, and devices, not inconsistent with chs.

341 to 349, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic; and includes the terms “official traffic sign” and “official traffic signal”.

Thus, an “official traffic sign” is one “placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.” Wisconsin law also requires that “[a]fter January 1, 1977, all traffic control devices placed and maintained by local authorities shall conform to the [Manual on Uniform Traffic Control Devices].” WIS. STAT. § 349.065.

¶21 Crossfield does not appear to dispute that the sign in this case was placed or erected by the appropriate authority. To the extent that he does dispute that fact, he points to no evidence in the record that the proper authority did not place or erect the sign here. I discern Crossfield to argue only that the sign did not conform to the MUTCD in two respects.

¶22 First, Crossfield cites MUTCD § 6F.60(14) to support his contention that the letters were required to be eighteen inches in height but that they were, instead, only twelve inches in height. However, that provision is not mandatory, because it appears under the heading of “Guidance,” and is, therefore, only a recommended practice. Indeed, that provision reads in pertinent part: “the letter height used for portable changeable message sign messages *should* be a minimum of 18 inches.” MUTCD § 6F.60(14) (emphasis added). The term “should” denotes that the provision is recommended but not required, in contrast to the MUTCD provisions that appear under the heading of “Standard,” and which use the term “shall” to denote that those provisions are required or mandatory.

¶23 Second, Crossfield cites MUTCD § 2L.03(04) to support his contention that the sign was required to be visible for at least one-half of a mile

but that the sign was, according to Crossfield, not visible from that distance. However, that provision is also not mandatory, because it appears under the heading of “Guidance” and reads in pertinent part: “Changeable message signs used on roadways with speed limits of 55 mph or higher *should* be visible from 1/2 mile under both day and night conditions.” MUTCD § 2L.03(04) (emphasis added).

¶24 In sum, Crossfield fails to show that the sign was not an “official traffic sign.”

CONCLUSION

¶25 For the reasons set forth above, I affirm the circuit court’s order affirming the municipal court’s decision.

By the Court.—Order affirmed.

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

