COURT OF APPEALS
DECISION
DATED AND FILED

February 22, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP1813 **Cir. Ct. No. 2017CV916**

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

CITY OF VERONA,

PLAINTIFF-RESPONDENT,

V.

EDWARD A. SIEVERDING,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: NICHOLAS J. McNAMARA, Judge. *Affirmed*.

¶1 FITZPATRICK, J.[1] The Verona Municipal Court issued a judgment against Edward Sieverding, finding him guilty of operating a motor vehicle after suspension, operating without insurance, operating while intoxicated,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c)(2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

and operating with a prohibited alcohol content. Sieverding tried to appeal the municipal court decision to the Dane County Circuit Court, but he did not give the City of Verona notice of the appeal. The circuit court granted the City's motion to dismiss the appeal for lack of jurisdiction due to Sieverding's failure to give notice to the City. On appeal, Sieverding argues that he complied with the requirements of WIS. STAT. § 800.14 because he notified the municipal clerk who, in turn, notified the City of the appeal via email. In the alternative, Sieverding argues that the City waived its right to object to the improper notice. I reject Sieverding's arguments and affirm the circuit court's dismissal of the appeal.

BACKGROUND

¶2 There is no dispute as to the following facts. In July 2015, while driving in the City of Verona, Sieverding received citations for operating a motor vehicle after suspension, operating without insurance, operating while intoxicated, and operating with a prohibited alcohol content. In March 2017, the Verona Municipal Court found Sieverding guilty on all four citations. Sieverding gave timely notice of appeal to the municipal court clerk on April 7, 2017. On April 11, 2017, the municipal court clerk sent an email to the Dane County Clerk of Courts and attached to the email a copy of Sieverding's notice of appeal. At the same time, Sieverding and the City were sent copies, by email, of the municipal court clerk's email (and its attachment) to the Dane County Clerk of Courts. The City never received direct notice regarding the appeal from Sieverding.

¶3 The City moved to dismiss the appeal on June 26, 2017, arguing that the circuit court lacked jurisdiction to consider the appeal because Sieverding failed to give the City notice of the appeal by April 12, 2017 (within twenty days of the municipal court's judgment) pursuant to WIS. STAT. § 800.14(1). The

circuit court found that Sieverding did not give the City written notice of the appeal within twenty days of the judgment and granted the City's motion to dismiss. Sieverding now appeals.

DISCUSSION

¶4 The primary issue before me is whether the City's receipt of a notice of appeal attached to an email from the municipal court clerk is, alone, sufficient to satisfy the requirements of WIS. STAT. § 800.14. I conclude that it is not.

I. Sieverding failed to satisfy the requirements of WIS. STAT. § 800.14(1).

¶5 The Wisconsin Constitution provides in relevant part: "Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state and such appellate jurisdiction in the circuit as the legislature may prescribe by law." WIS. CONST. art. VII, § 8. A circuit court has no jurisdiction over an appeal from a municipal court except "under the rules of appealability established by the legislature." ***Walford v. Bartsch***, 65 Wis. 2d 254, 258, 222 N.W.2d 633 (1974). So, "[i]n order for there to be a right of appeal some statute must grant it and a party seeking to appeal must follow the method prescribed in the governing statute." ***City of Mequon v. Bruseth***, 47 Wis. 2d 791, 794, 177 N.W.2d 852 (1970).

¶6 Here, the governing statute is WIS. STAT. § 800.14, which grants circuit courts appellate jurisdiction over municipal court decisions. Section 800.14(1) reads, in relevant part: "The appellant shall appeal by giving the municipal judge and other party written notice of appeal within 20 days after the judgment or decision." Sec. 800.14(1). Therefore, to confer jurisdiction on the circuit court under this statute, Sieverding was required to give both the

municipal judge and the City notice of the appeal within twenty days of the judgment. Whether Sieverding complied with § 800.14 is a question of law this court reviews de novo. *See* ***Welin v. American Family Mut. Ins. Co.***, 2006 WI 81, ¶16, 292 Wis. 2d 73, 717 N.W.2d 690 (the interpretation and application of statutes and case law to facts of a particular case presents a question of law which appellate courts review de novo).

¶7 This issue requires interpretation of the statutory language of WIS. STAT. § 800.14(1). Statutory interpretation begins with the language of the statute. ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citing ***Seider v. O'Connell***, 2000 WI 76, ¶43, 236 Wis. 2d 211, 612 N.W.2d 659). If the meaning of the statute is unambiguous, the inquiry stops there. ***Id.***

¶8 I conclude that the meaning of WIS. STAT. § 800.14(1) is clear in that it required Sieverding to give timely written notice of his appeal to both the municipal court and the City. Sieverding never notified the City of his appeal. He sent notification only to the municipal court clerk. Accordingly, the circuit court properly dismissed the appeal because, based on the plain language of § 800.14(1), it was without jurisdiction to review the municipal court's decision.

¶9 Sieverding makes several arguments that he satisfied the requirements of WIS. STAT. § 800.14(1). I will address, and reject, each of these arguments individually.

¶10 First, Sieverding contends that he satisfied the requirements of WIS. STAT. § 800.14(1) because the municipal court clerk acted as an "intermediary" when she voluntarily transmitted Sieverding's written notice of appeal to the City. This argument fails because the statute requires that Sieverding, and not the

municipal clerk, "giv[e]" written notice to both "the municipal judge *and* other party." Sec. § 800.14(1) (emphasis added). As a result, Sieverding's service of the notice of appeal on only the municipal court clerk did not satisfy the statute. Any other interpretation would make the notice requirement to the "other party" superfluous. *See* ***Kalal***, 271 Wis. 2d 633, ¶46 ("Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.")

¶11 Similarly, Sieverding argues that the municipal clerk's email which sent a copy of the notice of appeal to the City attorney satisfies the requirements of WIS. STAT. § 800.14(1) because there is no specific method of delivery of the notice mandated by the statute. In making this argument, Sieverding relies on ***Village of Theinsville v. Fisk***, No. 2015AP576, ¶3, unpublished slip op. (Wis. App. Aug. 26, 2015), in which the court held that § 800.14(1) places no requirements or limitations on the method of delivery for a notice of appeal. However, Sieverding's reliance on ***Fisk*** is misplaced. While there is no obligatory method of delivery of the written notice required pursuant to § 800.14(1), Sieverding was still required to actually give notice to the City, as the "other party," to satisfy the statute. He failed to do so because he gave notice only to the municipal court clerk. Therefore, this argument also fails.

¶12 Finally, Sieverding argues that there was no prejudice caused to the City by his failure to proffer to the City a written notice of appeal. This argument similarly falls flat. Lack of prejudice can be an exception to notice requirements under some Wisconsin Statutes. For example, pursuant to WIS. STAT. § 893.80(1d)(a), where a party fails to give requisite notice when bringing a claim against a governmental body, the action is not barred if the claimant shows that the governmental body has not been prejudiced by the failure to comply with the notice requirements. Sec. 893.80(1d)(a). But, similar language does not exist in

WIS. STAT. § 800.14. Courts will not read language into a statute that the legislature omitted. ***Brauneis v. State, Labor & Indus. Review Comm'n***, 2000 WI 69, ¶27, 236 Wis. 2d 27, 612 N.W.2d 635. Therefore, whether the City was (or was not) prejudiced by Sieverding's inaction does not excuse Sieverding's failure to comply with the notice requirements in § 800.14(1).

¶13 For those reasons, I conclude that the circuit court correctly granted the City's motion to dismiss and that the circuit court lacked the jurisdiction to consider Sieverding's appeal.

II. The City did not waive its right to object to the jurisdiction of the circuit court.

¶14 Sieverding next asserts that the City's conduct falls within the scope of WIS. STAT. § 807.07(1) and, as a result, the City waived its right to raise a jurisdictional objection. Section 807.07(1) reads:

> When an appeal from any court, tribunal, officer or board is attempted to any court and return is duly made to such court, the respondent shall be deemed to have waived all objections to the regularity or sufficiency of the appeal or to the jurisdiction over the parties of the appellate court, unless the respondent moves to dismiss such appeal before taking or participating in any other proceedings in said appellate court. If it appears upon the hearing of such motion that such appeal was attempted in good faith the court may allow any defect or omission in the appeal papers to be supplied, either with or without terms, and with the same effect as if the appeal had been originally properly taken.

Sieverding contends that the City was required to move to dismiss his appeal before participating in the circuit court proceedings. Whether the City waived the defense of lack of jurisdiction is a question of law for this court's independent review. *See* ***Artis-Wergin v. Artis-Wergin***, 151 Wis. 2d 445, 452, 444 N.W.2d 750 (Ct. App. 1989).

¶15 Where a party has properly raised an objection to jurisdiction, the party may participate in pretrial hearings without waiving the objection to jurisdiction. ***City of Milwaukee v. Mallett***, No. 2010AP400, unpublished slip op. (Wis. App. Aug. 10, 2010); *see also* ***Dietrich v. Elliott***, 190 Wis. 2d 816, 825, 528 N.W.2d 17 (Ct. App. 1995) (quoting ***Danielson v. Brody Seating Co.***, 71 Wis. 2d 424, 431, 238 N.W.2d 531 (1976)) ("If a defendant has properly raised his objection to jurisdiction in his answer, he may later take part in pretrial discovery or otherwise contest the merits of the action without waiving his objections to personal jurisdiction."). Here, the City made its objection to the circuit court's jurisdiction known by filing its motion to dismiss on June 26, 2017, before the first scheduled hearing.[2] Therefore, because the City's motion to dismiss preserved the issue, the City did not waive its jurisdictional objection by participating in proceedings before its motion was granted.

CONCLUSION

¶16 For those reasons, I affirm the circuit court's dismissal of Edward Sieverding's appeal of the municipal court judgment.

By the Court.—Judgment affirmed.

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

[2] Sieverding argues that the City did not file its motion to dismiss until July 21, 2017. However, the City initially filed its motion to dismiss on June 26, 2017 and filed an amended motion to dismiss on July 21, 2017. That the City filed an amended pleading does not change the analysis or my conclusion that the City properly preserved its right to object to the circuit court's jurisdiction.