

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 14, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2609

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID SCOTT MATHIS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Calumet County:
DONALD A. POPPY, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ David Scott Mathis appeals from an order revoking his motor vehicle operating privilege arising from his refusal to submit to an implied consent blood alcohol test. He argues that the notice of intent to revoke

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

his operating privilege failed to provide the information required by WIS. STAT. § 343.305(9)(a), thereby depriving the circuit court of personal jurisdiction to revoke his operating privilege. We conclude that Mathis's request for a refusal hearing was untimely and the circuit court lacked the competence to entertain his motion to dismiss. Accordingly, we affirm.

¶2 Mathis was arrested for operating a motor vehicle while under the influence of an intoxicant (OMVWI). He refused to submit to a test to determine his blood alcohol content in violation of Wisconsin's informed consent law. WIS. STAT. § 343.305(2). The arresting officer then provided Mathis with a form entitled Notice of Intent to Revoke Operating Privilege.

¶3 Mathis filed a request for a refusal hearing and moved to dismiss the proceeding based on a deficient notice. After a refusal hearing, the circuit court denied his motion and ordered his operating privilege revoked. The circuit court found:

In this particular case, first of all, the Court notes, one, it may not even have jurisdiction to hear this issue, because the defense failed to properly and timely request the hearing. So, first of all, the court dismisses the request for a refusal hearing, because the hearing was not timely requested.

The circuit court also found that the Notice of Intent to Revoke fulfilled all statutory requirements. Mathis appeals from the revocation order.

¶4 The first issue we consider is whether Mathis’s untimely filing of a request for a hearing deprived the circuit court of the power to rule on his request.² A court’s competency to proceed is a question of law which we review de novo. *State v. Bollig*, 222 Wis. 2d 558, 563, 587 N.W.2d 908 (Ct. App. 1998).

¶5 WISCONSIN STAT. § 343.305(9)(a)4 requires that a request for a refusal hearing must be made within ten days of the date of the refusal.³ Mathis’s request for a refusal hearing was untimely. The Notice of Intent to Revoke was dated June 24, 2000, and plainly informed Mathis, “[a] hearing may be requested on the revocation of your operating privilege by mailing or delivering a written request within 10 days of the date of this notice to [the Calumet County Circuit Court].” Mathis’s request for a hearing was dated July 13 and was received July 14 by the circuit court. Mathis’s request was received twenty days after the Notice of Intent to Revoke was dated and issued.

¶6 Failure to comply with a statutory mandate will result in a loss of competency, which prevents a court from deciding a case before it. *Achtor v. Pewaukee Lake Sanitary Dist.*, 88 Wis. 2d 658, 663-64, 277 N.W.2d 778 (1979). The circuit court’s characterization of the problem as a lack of jurisdiction does not save Mathis. The Wisconsin Constitution grants circuit courts the authority to

² Although neither party has briefed this issue on appeal, we note that “[i]t is always the duty of this court in considering any appeal to resolve, even sua sponte, the initial question of whether the order involved on the appeal is, in fact, appealable, because, of course, this goes to the very jurisdiction of the court to hear the appeal.” *Worthington v. Farmers Ins. Exch.*, 64 Wis. 2d 108, 109, 218 N.W.2d 373 (1974).

³ WISCONSIN STAT. § 343.305(9)(a)4 provides:

That the person may request a hearing on the revocation within 10 days by mailing or delivering a written request to the court whose address is specified in the notice. If no request for a hearing is received within the 10-day period, the revocation period commences 30 days after the notice is issued.

hear actions of any nature; the failure to follow statutory mandates does not result in loss of subject matter jurisdiction but rather loss of competence—that is, the authority or power to adjudicate the particular case before it. *Green County Dep’t of Human Servs. v. H.N.*, 162 Wis. 2d 635, 655-56, 469 N.W.2d 845 (1991). Mathis’s failure to file his request for a refusal hearing within ten days deprived the circuit court of the competence to resolve the issue he raised.

¶7 Admittedly, Mathis misdirected his request for a refusal hearing to the Department of Transportation. There is no question this misdirected request would have been timely if directed to the circuit court. However, the face of the Notice of Intent to Revoke unmistakably put Mathis on notice that his request for a refusal hearing had to be directed to the circuit court within ten days. And, he fails to offer any plausible explanation of why he ignored the plain directory language on the Notice of Intent to Revoke.

¶8 We need not decide Mathis’s challenge to the language of the Notice of Intent to Revoke because we conclude that his failure to timely request a hearing deprived the circuit court of the competency to rule on his challenge to language in the Notice of Intent to Revoke. See *Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (“Because we have determined that there is at least one sufficient ground to support the order, we need not discuss the others.”).

By the Court.—Order affirmed.

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

