

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 2008

David R. Schanker
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 Nos. 2008AP848
2008AP849
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2007FO578
2007FO579**

**IN COURT OF APPEALS
DISTRICT III**

ST. CROIX COUNTY,

PLAINTIFF-APPELLANT,

V.

JAMES LEONARD RUSHFELDT,

DEFENDANT-RESPONDENT.

APPEALS from a judgment of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Reversed and cause remanded for further proceedings.*

¶1 BRUNNER, J.¹ St. Croix County appeals a judgment granting James Rushfeldt's motion to dismiss two forfeiture complaints. The County contends the circuit court erred when it concluded WIS. STAT. § 172.015 required a peace officer to give a contemporaneous removal notice to an owner whose livestock was on a highway. The County argues prior notice may be sufficient to show an owner knowingly permitted livestock to run at large on a highway and failed to remove them. We agree and therefore reverse and remand for further proceedings consistent with this decision.

BACKGROUND

¶2 The County charged Rushfeldt with two violations of WIS. STAT. § 172.015 for incidents occurring on July 12 and July 22, 2007.² The facts before the court were primarily limited to those alleged in the police reports attached to the complaints.

¶3 The July 12 report indicated deputy Stephen Drost responded to a complaint and observed a dozen cattle on or near the roadway. He recognized the cattle as the Rushfeldts' from several past complaints. He removed the cattle from the road and then unsuccessfully attempted to contact the Rushfeldts. Drost then herded the cattle through an open gate, which he secured with some nearby wire. It appeared the gate had previously been secured by merely leaning it against a fence post. Finally, Drost's report noted that he had sent prior complaints to the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

² Rushfeldt was also charged with a third violation for an incident occurring on September 8, 2007, but that charge was dismissed for other reasons and the County does not challenge its dismissal.

district attorney's office for review, which in turn sent warning letters to the Rushfeldts.

¶4 The July 22 report indicated Drost responded to a report of cattle in the road to find seven cows standing in the ditch or on the shoulder. He then observed one of the cows slip through the barbed wire fence back into the pasture. Drost led the rest of the cattle along the fence, opened the gate, and got them back inside. He called the Rushfeldt residence and left a message that their cows were out again and requested they come down and take a count. Again, the report indicated Drost had dealt with the Rushfeldts' cows many times in the past.

¶5 In addition to the police reports, the record contains a warning letter to the Rushfeldts from the district attorney's office dated December 11, 2006. The letter stated the office had received several referrals for charges with regard to complaints of the Rushfeldts' cattle being on a specific portion of a county highway.

¶6 Prior to trial, the circuit court granted Rushfeldt's motion to dismiss the charges because the County conceded Rushfeldt did not receive notice from a peace officer on the same day his cattle were on the highway. The court stated:

The only interpretation of the statute the Court can make is that the statute envisions and applies contemporaneous situations where cattle are out, owner is notified, and he does nothing. And based on his failure to remove the livestock after notice, then is cited under the statute.

DISCUSSION

¶7 Statutory interpretation presents a question of law that we review de novo. *Baraboo Nat'l Bank v. State*, 199 Wis. 2d 153, 158, 544 N.W.2d 909 (Ct. App. 1996). In construing a statute, our purpose is to determine the legislature's intent and give it effect. *Id.* We first examine the statute's language and, absent ambiguity, give that language its ordinary meaning. *Id.* Statutory language is interpreted in the context in which it is used and reasonably, to avoid absurd or unreasonable results. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110.

¶8 A statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses. *Id.*, ¶47. If a statute is ambiguous, a court may resort to legislative history to determine its meaning. *Id.*, ¶51. Further, courts are to avoid interpretations that would render a statute meaningless. See *State v. Pharm*, 2000 WI App 167, ¶20, 238 Wis. 2d 97, 617 N.W.2d 163; *Baraboo Nat'l Bank*, 199 Wis. 2d at 160-61.

¶9 The circuit court's decision turned on the "after notice" language in WIS. STAT. § 172.015. That section provides:

Livestock on highways; penalty. No livestock shall run at large on a highway at any time except to go from one farm parcel to another. If the owner or keeper of livestock knowingly permits livestock to run at large on a highway, except when going from one farm parcel to another, and after notice by any peace officer fails to remove the livestock from the highway, the owner or keeper may be fined not more than \$200.

¶10 We conclude the plain language of the statute might reasonably be understood in either the sense taken by the court, requiring contemporaneous

notice, or by the County, permitting prior notice. This ambiguity warrants a review of the statute's legislative history. *See Kalal*, 271 Wis. 2d 633, ¶46.

¶11 WISCONSIN STAT. § 172.015 was first created by 1969 Wis. Laws, ch. 417 and has not been significantly altered since that time. While the Act itself does not contain any information relevant to our inquiry, the drafting record is enlightening. The record indicates the statute was prompted by a letter to a legislator from the La Crosse County sheriff. *See Letter from Sheriff James McHugh to Assemblyman Norbert Nuttleman, Drafting Records, 1969 A.B. 844 (Jan. 15, 1969) (on file with the Wisconsin Legislative Reference Bureau).*

¶12 The letter detailed several problems law enforcement was experiencing and requested new legislation to rectify them. As relevant here, the sheriff observed he had received numerous complaints of cattle on the highway in La Crosse County. His letter then stated: "One particular case is a party who constantly permits his livestock to be on the highway and other persons' property, and although we have warned him on many occasions there is nothing we can do about it."

¶13 The above situation, which was specifically contemplated when the statute was drafted, appears remarkably similar to the situation presented here. If we were to adopt the circuit court's interpretation that a livestock owner may not be penalized based on repeated notices of livestock on the highway and repeated requests to remedy the situation, but instead must have contemporaneous notice, then the statute would fail to apply in one of the very situations for which it was drafted.

¶14 The circuit court's narrow interpretation would render the statute unenforceable. This leads to absurd results in its application. *See Pharm*, 238

Wis. 2d 97, ¶20. The County contends, and the police reports verify, no person would ever be held accountable under the contemporaneous notice interpretation because responding police officers must immediately clear the road of livestock upon arrival at the scene. The danger to the motoring public is too great to do otherwise. Additionally, it may not be immediately apparent who owns the livestock. Once the officers determine ownership, they would then need to actually locate the owners to provide the notice. These steps could require an officer to leave the scene, with the livestock still presenting a hazard. Of course, there is no guarantee that officers will be able to immediately notify the owners or keepers, even if their identity can be determined.

¶15 Taken to its logical extreme, the contemporaneous notice interpretation would permit owners to pasture their livestock in an unfenced field, knowingly permitting them to run at large on nearby highways and creating a daily hazard to the public. Owners could absent themselves each day, making it impossible to give contemporaneous notice and thus avoid sanctions under the statute. Alternatively, assuming contemporaneous notice was given, owners could simply remove their cattle from the roadway, only to repeat the events the following day.³

¶16 We conclude the proper interpretation is to allow consideration of prior notice, taking into account the number of notices and time elapsed between them, as well as any remedial action taken by the owner. Owners who fail to remedy the problem after repeated notice from the police that their livestock were in the road can be found to be knowingly permitting them to run at large. The

³ This is exactly the conduct in which Rushfeldt appears to have been engaged.

statute is not conducive to a bright line rule, and trial courts must weigh the facts of any given situation. Here, the County pled prior notice but was denied the opportunity to develop sufficient evidence that could show the owner “knowingly permitted” the cattle to run at large on the highway after receiving notice from a peace officer.

By the Court.—Judgment reversed and cause remanded for further proceedings.

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

