

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

October 2, 1997

Marilyn L. Graves  
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 § 808.10 and RULE 809.62, STATS.

**No. 96-2730**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**VILLAGE OF WAUNAKEE,**

**PLAINTIFF-RESPONDENT,**

**v.**

**DONALD MAIER,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County:  
MICHAEL B. TORPHY, JR., Judge. *Affirmed.*

DEININGER, J.<sup>1</sup> Donald Maier appeals a circuit court order which affirms his municipal court conviction for operating a motor vehicle while under the influence of an intoxicant (OMVWI). He argues that the Village of DeForest Municipal Court lacked subject matter jurisdiction over the action which charged a violation of a Village of Waunakee traffic ordinance. We conclude that the

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(b), STATS.

municipal judge for the Village of DeForest had jurisdiction to hear the case, and therefore, affirm the circuit court order and the underlying conviction.

## BACKGROUND

Maier was arrested for OMVWI in the Village of Waunakee by a Waunakee police officer. The citation alleged a violation of Waunakee Ordinance 10-1-1, adopting § 346.63(1)(a), STATS. Prior to hearing the case, the Waunakee Municipal Court Judge disqualified himself. The chief judge then assigned the municipal judge for the Village of DeForest to hear the case. *See* § 751.03(2)(a), STATS.<sup>2</sup>

Maier objected to the DeForest Municipal Court's jurisdiction, but his objection was overruled. The court found him guilty and convicted him of OMVWI. Maier appealed to Dane County Circuit Court under § 800.14, STATS., and in response, the Village of Waunakee requested the circuit court to conduct a new trial. *See* § 800.14(4), STATS. Maier and the Village of Waunakee then entered into a stipulation by which both parties agreed that the appeal should be limited to the jurisdictional issue which Maier had raised in both the municipal and circuit courts.

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<sup>2</sup> Section 751.03(2), STATS., provides in relevant part as follows:

The chief justice of the supreme court may exercise ... authority ... in regard to municipal courts for the purpose of:

(a) Assigning a case in which a change of judge is requested under s. 757.19 (5) or is required under s. 800.05 to another municipal judge or, if none is available, transferring the case to circuit court.

(SCR 70.24 designates the chief judge of a judicial administrative district to act for the chief justice in assigning municipal judges under this section.)

The circuit court denied Maier’s jurisdictional objection and entered an order affirming, on its merits, the municipal court judgment of conviction.

### ANALYSIS

Maier argues that the OMVWI conviction was entered in the Village of DeForest Municipal Court, which did not have jurisdiction over his alleged violation of a Village of Waunakee ordinance. The issue involves the interpretation and application of statutes to undisputed facts, which is a question of law we review de novo. *Millers Nat’l Ins. Co. v. City of Milwaukee*, 184 Wis.2d 155, 164, 516 N.W.2d 376, 378 (1994).

Section 755.045(1), STATS., provides that “[a] municipal court has exclusive jurisdiction over an action in which a municipality seeks to impose forfeitures for violations of municipal ordinances of the municipality that operates the court.” Maier concedes that a municipal court may gain jurisdiction over the alleged violation of another municipality’s ordinance when the action is transferred due to a request for the substitution of the municipal judge. *See* § 800.05(3), STATS.<sup>3</sup> However, Maier argues that when a municipal judge

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<sup>3</sup> Section 800.05(3), STATS., provides as follows:

In municipal court, upon receipt of the written request [for substitution of judge], the original judge shall have no further jurisdiction in the case ... except to determine if the request was made timely and in proper form. If no determination is made within 7 days, the court shall refer the matter to the chief judge for the determination and reassignment of the action as necessary. If the request is determined to be proper, the case shall be transferred as provided in s. 751.03(2). *Upon transfer, the municipal judge shall transmit to the appropriate court all the papers in the action and the action shall proceed as if it had been commenced in that court.*

(Emphasis supplied.)

disqualifies him or herself, the action can be assigned to another municipal *judge* under § 751.03(2)(a), STATS., but it must still be heard in the municipal *court* of the municipality whose ordinance was allegedly violated.

We agree, but conclude that Maier was convicted of OMVWI in the Village of Waunakee Municipal Court, presided over by the municipal judge for the Village of DeForest, who had been properly assigned by the chief judge to hear Maier’s case. The Judicial Assignment Order identifies the “Municipality” as “Village of Waunakee,” and indicates that it is a “Specific Assignment” of “Village of Waunakee -vs- Donald H. Maier.” The order then provides as follows:

IT IS ORDERED that the following *judge* be assigned.

....

From Judge/Court	To Judge/Court
Hon. Mark E. Colbert Village of Waunakee	Hon. Phillip Goedderz Village of DeForest

(Emphasis supplied.) The order transfers the case “to another municipal judge,” as authorized under § 751.03(2)(a), STATS. We conclude the references to “Court” and to the two villages is only for purposes of identification of the municipal judges involved. Section 751.03(2)(a), distinguishes between “[a]ssigning a case ... to another municipal judge” and “transferring the case to circuit court.” The statute does not authorize transferring the case to another municipal court following a judicial disqualification, and the chief judge did not do so.

Section 755.05, STATS., provides that “[e]very [municipal] judge has countywide jurisdiction,” and thus the DeForest Municipal Judge is authorized to preside in the municipal court for another Dane County municipality. The proceedings in Maier’s case were conducted in DeForest, and not in Waunakee,

but that fact does not result in a transfer of the case from one municipal court to the other. Circuit judges assigned to specific cases in neighboring counties will sometimes hear proceedings in their “home” courthouses, but the cases remain venued in the county of filing unless specifically ordered transferred. As the trial court noted:

[I] think it’s entirely possible for me to sit as the judge for Dane County in Appleton. Court is not a physical location. It is a concept. Matter of fact, I’ve done it. I’ve had other people do it for me. All a court is is a judge, a reporter and a clerk, to be very honest about it. It’s not a room to the extent you’re saying it’s a room.

Maier argues, generally, that for the convenience of parties, witnesses and community residents, proceedings of a given municipal court should be conducted within the municipality of venue. He does not argue, however, nor does the record reflect, that conducting proceedings in DeForest, instead of in Waunakee, subjected him to any particular hardship or prejudice. The Village of Waunakee, in having to prosecute its case in a “foreign” municipality, was subject to at least the same potential for hardship or prejudice as was Maier.

Section 755.09(1), STATS., specifies that municipal judges should “hold court only in the municipal hall of the town, village or city *in which elected*,” or “elsewhere in the municipality” if necessary. Neither party argues that the municipal judge elected by the residents of DeForest may hold court only in the DeForest Village Hall, even if hearing a Waunakee case. Nor, conversely, does either argue that the DeForest Municipal Judge must necessarily travel to Waunakee to hear the case. Absent statutory direction or a supreme court rule in this regard, it appears that the scheduling and situs of proceedings is a matter left to the parties and municipal judges involved, or to policies adopted by chief judges in their administrative districts. Except upon a specific showing of hardship or

prejudice to a party, we conclude that a municipal judge assigned to a case after the disqualification of the original municipal judge need not hear the case in the municipality where the case is venued.

Finally, Maier argues that the parties stipulated that his OMVWI conviction was entered in the DeForest Municipal Court, and that, therefore, we must accept this “fact.” Neither we nor the trial court, however, are bound by a stipulation between the parties, especially where the issue is more a legal conclusion than a factual issue. *See State v. J.C. Penney Co.*, 48 Wis.2d 125, 151, 179 N.W.2d 641, 655 (1970). Furthermore, while it is true that the parties’ stipulation states that “[t]he original trial in this action was held in the municipal court for the Village of DeForest,” it also recites that “[t]he municipal judge for DeForest was assigned to replace the recused judge.” (Emphasis supplied.)

In a post-briefing letter to this court, Maier invites our attention to *City of West Allis v. Sheedy*, 211 Wis.2d 92, 564 N.W.2d 708 (1997), which he claims presents “an issue conceptually identical to that raised in this appeal” and which he believes “constitutes controlling precedent in the present appeal.” Unfortunately, except for these conclusory statements, Maier presents no discussion or analysis of how *West Allis* applies to the facts of this case, or even what outcome it purportedly compels. In *West Allis*, the supreme court set aside a chief judge’s directive that following the transfer of a case between municipal courts under § 800.05(3), STATS., the prosecutor of the “receiving” municipality was to try the case and the receiving municipality was to retain any forfeiture imposed. The supreme court determined the directive to be contrary to the legislative intent of § 800.05(3).

As Maier himself argues to this court, § 800.05(3), STATS., does not apply when municipal judges are disqualified rather than substituted. We are not certain, therefore, what guidance *West Allis* may have on the present facts. We conclude, however, that our result is not inconsistent with the analysis in *West Allis*. Under the result here, the municipality of venue retains prosecutorial control over a case following the disqualification of a municipal judge, and it is entitled to receive any forfeiture imposed for a violation of its ordinances. The only thing that changes is the identity of the presiding municipal judge.

For the foregoing reasons, we conclude that following the self-disqualification of the Waunakee Municipal Court Judge, the municipal judge for the Village of Deforest was properly assigned and had jurisdiction to hear Maier's case.

*By the Court.*—Order affirmed.

This will not be published. *See* RULE 809.23(1)(b)4, STATS.

