

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

December 27, 2000

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. 98-2014**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST MICHAEL P. SHEA,  
A POLICE OFFICER OF THE VILLAGE OF  
BROWN DEER:**

**MICHAEL P. SHEA,**

**PETITIONER-RESPONDENT,**

**v.**

**VILLAGE OF BROWN DEER POLICE  
COMMISSION,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MICHAEL D. GUOLEE, Judge. *Cause remanded with directions for  
modification of order; as modified, affirmed.*

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. The Village of Brown Deer Police Commission appeals from the circuit court order that “vacated” the Commission’s order suspending Brown Deer Police Officer Michael P. Shea for thirty days without pay, and remanded the case to the Commission for further proceedings. Because the circuit court clearly intended to hold the matter in abeyance in order to allow the Commission to augment its findings, and because the circuit court clearly had the authority to do so under its option to “require further return,” *see* WIS. STAT. § 62.13(5)(i) (1997-98),<sup>1</sup> we remand the cause to the circuit court for it to modify its order by substituting the words “held in abeyance” for the word “vacated.”

## I. BACKGROUND

¶2 In 1997, the Brown Deer police chief filed charges against Officer Shea alleging that he had violated “the Rules and Regulations of the Brown Deer Police Department, the Ordinances of the Village of Brown Deer and the Law Enforcement Code of Ethics” in the course of assisting a fire department rescue squad at Hearthside Rehabilitation Center. After a lengthy hearing, the Commission determined that Shea had been untruthful. As a result, the Commission suspended Shea for thirty days without pay. Shea appealed to the circuit court.

¶3 The circuit court “Decision and Order” stated: “[T]he order of the Board of Police Commissioners of the Village of Brown Deer is **vacated** and remanded to the Commission for further proceedings consistent with this opinion.”

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

The issues in this appeal arise from the confusion generated by the circuit court's "Decision and Order."

¶4 Following the recitation of the factual background, the circuit court decision states:

A circuit court, when reviewing a commission's decision under the "just cause" standard, may either defer[] to the commission's findings and credibility determinations or, if necessary, "may require further return or the taking and return of further evidence by the [commission]." Section 62.13(5)(i), Stats.

(First brackets added; "[commission]" in circuit court decision.) The court went on to explain that it was not empowered to conduct a *de novo* review, to take testimony, or to make its own credibility determinations. The court, after quoting the Commission's decision that found that the charge of untruthfulness had been sustained, then stated:

The Commission, based on the testimony of others, found that Officer Shea's testimony was not credible, thereby determining that Officer Shea was untruthful. However, the Commission did not make any specific findings of fact or specific credibility determinations relating to this charge.

....

Without a specific finding of why the Commission found Shea's testimony not to be credible and the other parties to be credible, this Court cannot defer to the Commission's findings that Shea was untruthful and, therefore, that the Commission's 30-day suspension of Shea was properly imposed.

**Therefore**, the order of the Board of Police Commissioners of the Village of Brown Deer is **vacated** and remanded to the Commission for further proceedings consistent with this opinion.

## II. DISCUSSION

¶5 The Commission argues: (1) this court has jurisdiction to review the circuit court order under WIS. STAT. § 808.03(1); (2) this court has jurisdiction to review the circuit court order, notwithstanding WIS. STAT. § 62.13(5)(i), because, in this case, the circuit court neither affirmed nor reversed the Commission; (3) this court has jurisdiction to review the circuit court order because § 62.13(5)(i) does not preclude appellate review of a police disciplinary case in which the circuit court's standard of review is at issue; and (4) the circuit court erred in remanding the case to the Commission to explain how it concluded that the charge of untruthfulness against Shea was sustained by the evidence because: (a) the Commission, not the circuit court, had the authority to assess the credibility of Shea and the other witnesses; (b) the circuit court erred in assuming that the Commission found Shea's testimony not credible; and (c) the Commission cannot comply with the circuit court order because the commissioners made their decision based on the record as a whole, and did not make specific findings regarding individual witnesses or items of evidence.

¶6 Shea, however, submits that despite the language of the circuit court's order, the court was actually reversing the Commission's decision. Shea maintains, therefore, that the "further proceedings consistent with this opinion" language of the circuit court's order "only requires the Commission to vacate its order and reinstate Officer Shea and order his pay to be restored."

¶7 As material to the issues in this appeal, WIS. STAT. § 62.13(5)(i) provides:

Any person suspended ... may appeal from the order of the [Commission] to the circuit court .... The trial shall be by the court and upon the return of the [Commission], except that the court may require further

return or the taking and return of further evidence by the [Commission]. The question to be determined by the court shall be: Upon the evidence is there just cause ... to sustain the charges against the accused? ... If the order of the [Commission] is reversed, the accused shall be forthwith reinstated and entitled to pay as though in continuous service. If the order of the [Commission] is sustained it shall be final and conclusive.

¶8 The Commission argues that, assuming the circuit court's order is final, it is appealable under WIS. STAT. § 808.03(1). The Commission is incorrect. Section 808.03(1), in relevant part, provides that “a final order of a circuit court may be appealed as a matter of right to the court of appeals *unless otherwise expressly provided by law.*” (Emphasis added.) In this case, the Commission's argument is defeated by an express provision of law: WIS. STAT. § 62.13(5)(i).

¶9 As we recently reiterated, “the legislature has explicitly deprived appellate courts of jurisdiction to review orders issued by the circuit court under [WIS. STAT.] § 62.13(5)(i),” and “[a] specific statute trumps a general statute.” *Younglove v. City of Oak Creek Fire & Police Comm'n*, 218 Wis. 2d 133, 137-38, 579 N.W.2d 294 (Ct. App. 1998) (“[T]he legislature has made the circuit court's decision on a § 62.13(5)(i) appeal final—irrespective of whether an appellate court believes that decision is right or wrong.”). In the instant case, however, the challenged decision explicitly invokes § 62.13(5)(i), requiring “further return or the taking and return of further evidence.”<sup>2</sup>

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<sup>2</sup> Thus, this case is significantly different from *Younglove v. City of Oak Creek Fire & Police Comm'n*, 218 Wis. 2d 133, 579 N.W.2d 294 (Ct. App. 1998), where this court concluded that it had no jurisdiction to review a circuit court order. The Commission argues, however, that even assuming WIS. STAT. § 62.13(5)(i) generally precludes our review of circuit court orders in cases of this nature, it does not foreclose our review of “whether the circuit court applied the correct standard of review.” In *Younglove*, however, we rejected that very argument, denying a discharged police chief's request that, notwithstanding § 62.13(5)(i), we “nevertheless exercise our supervisory powers to decide a question that he characterize[d] as *publici juris*—the standard

(continued)

¶10 The Commission also argues that even assuming WIS. STAT. § 62.13(5)(i) precludes our review of an order affirming or reversing a commission's decision, the circuit court's order in this case still is appealable because it neither affirmed nor reversed the Commission's decision. As noted, Shea claims that the circuit court reversed the Commission's decision and, therefore, that this court has no jurisdiction. We disagree.

¶11 The circuit court decision mandates that “the order of the Board of Police Commissioners of the Village of Brown Deer is **vacated** and remanded to the Commission for further proceedings consistent with this opinion,” and it explicitly refers to WIS. STAT. § 62.13(5)(i). Although that wording was misleading, in part, and might allow for differing interpretations, we are satisfied that the circuit court directed the Commission only to conduct further proceedings, not to vacate its order and reinstate Shea.

¶12 Understanding the essence of the court's order that “remanded” the case “to the Commission for further proceedings consistent with [its] opinion,” we conclude that the court was actually holding the case in abeyance to allow the Commission to comply with its directive.<sup>3</sup> The circuit court's “Decision and Order” stated, in part:

This Court on reviewing the Commission's findings and the testimony is unable to determine why the Commission was able to make the finding that: “the charge of untruthfulness against officer Shea [was] sustained by the evidence[?]” [sic] What specific evidence did it rely on

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of review to be applied by the circuit court in an appeal from a board of police and fire commissioners under § 62.13(5)(i).” *Younglove*, 218 Wis. 2d at 136-38.

<sup>3</sup> No oral decision amplifies the record; the circuit court issued its written decision and order based on the record before the Commission and on the parties' briefs.

in making its finding that Officer Shea’s testimony was not credible and that he had been untruthful?...

Without a specific finding of why the Commission found Shea’s testimony not to be credible and the other parties to be credible, this Court cannot defer to the Commission’s findings that Shea was untruthful and, therefore, that the Commission’s 30-day suspension of Shea was properly imposed.

Thus, we conclude, the circuit court neither affirmed nor reversed the Commission’s order. Instead, under the authority provided by WIS. STAT. § 62.13(5)(i) to “require further return,” the court required the Commission to augment its findings—that is, to explain “[w]hat specific evidence ... it rel[ied] on in making its finding that Officer Shea’s testimony was not credible and that he had been untruthful.”

¶13 Neither a circuit court’s *affirmance* nor a circuit court’s *reversal* of a Commission decision is reviewable by this court. See *Younglove*, 218 Wis. 2d at 138 & n.5. But this principle does not preclude our review of *whether* a circuit court affirmed, reversed, or “require[d] further return” under WIS. STAT. § 62.13(5)(i). Accordingly, this court does have jurisdiction in this appeal.

¶14 Here, we conclude, the circuit court “require[d] further return.” It would have had no reason to require such “further return” in relation to a “vacated” order. Therefore, we conclude, the court intended to hold the matter in abeyance until the Commission complied with its directive. Accordingly, we remand this cause to the circuit court for it to modify its order by substituting the words “held in abeyance” for the word “vacated.”

*By the Court.*—Cause remanded with directions for modification of order; order, as modified, affirmed.

Not recommended for publication in the official reports.





