COURT OF APPEALS
DECISION
DATED AND FILED

January 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1239-FT

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MICHAEL J. ARPKE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 SNYDER, J.[1] Michael J. Arpke appeals from an order revoking his driver's license for two years under WIS. STAT. § 343.305(10) of the implied

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

consent law. Arpke's license was also suspended under § 343.305(7). He contends that because the subsec. (7) and the subsec. (10) sanctions are mutually exclusive, the revocation must be vacated. We disagree and affirm the license revocation order.

¶2 The facts are brief and undisputed. Arpke was involved in a minor traffic accident on October 6, 1999. He requested medical treatment and was transported by ambulance to Sheboygan Memorial Medical Center (SMMC). At SMMC, he was arrested for operating a motor vehicle while under the influence of an intoxicant contrary to WIS. STAT. § 346.63(1)(a) and was requested to submit to a blood withdrawal for alcohol test purposes. He refused, his blood was forcibly withdrawn, *see* WIS. STAT. § 343.305(3)(c), *see also* ***State v. Bohling***, 173 Wis. 2d 529, 533-34, 494 N.W.2d 399 (1993),[2] and a prohibited blood alcohol content report was obtained.

¶3 The sole issue on appeal is whether the WIS. STAT. § 343.305(10) license revocation order must be vacated as contrary to the language in § 343.305(7) of the implied consent statute. Resolution of this issue requires that we interpret the statute. This presents a question of law that we review de novo. ***State v. Wilke***, 152 Wis. 2d 243, 247, 448 N.W.2d 13 (Ct. App. 1989). The basic rule of statutory construction is to avoid such a construction as would result in any

[2] A warrantless blood draw is permissible at the direction of a law enforcement officer where: (1) the blood draw is taken to obtain evidence of intoxication from a person lawfully arrested for a drunk driving-related violation or crime; (2) there is a clear indication that the blood draw will produce evidence of intoxication; (3) the method used to take the blood sample is a reasonable one and performed in a reasonable manner; and (4) the arrestee presents no reasonable objection to the blood draw. Arpke does not contest the legality of the involuntary blood withdrawal under these ***Bohling*** factors.

portion of the statute being superfluous. ***Village of Menomonee Falls v. Michelson***, 104 Wis. 2d 137, 151, 311 N.W.2d 658 (Ct. App. 1981).

¶4 The purpose of the implied consent law is to facilitate the taking of tests for intoxication. ***State v. Spring***, 204 Wis. 2d 343, 352, 555 N.W.2d 384 (Ct. App. 1996). In light of that purpose, the law is to be liberally construed to effectuate its policies. ***Id.*** at 353. Any person who drives or operates a motor vehicle upon public highways in this state is deemed to have given consent to a chemical test procedure to determine the presence or quantity of alcohol in the person's breath or blood. *See* WIS. STAT. § 343.305(2), (3)(a); ***State v. Rydeski***, 214 Wis. 2d 101, 106, 571 N.W.2d 417 (Ct. App. 1997). If the person refuses to take the test, the officer immediately takes possession of the person's license and issues a notice of intent to revoke the license under subsec. (10). *See* § 343.305(9)(a). Section 343.305(10)(a) states in relevant part:

> If the court determines … that a person improperly refused to take a test ... [and] a hearing was requested, the revocation period shall commence 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later.

Arpke premises his statutory argument on his § 343.305(7) license suspension. Section 343.305(7)(a) states:

> If a person *submits* to chemical testing administered in accordance with this section and any test results indicate a prohibited alcohol concentration, the law enforcement officer shall report the results to the department and take possession of the person's license and forward it to the department. The person's operating privilege is administratively suspended for 6 months. (Emphasis added.)

Arpke contends that the suspension sanction of subsec. (7) trumps the refusal sanction of subsec. (10) where a test subject, such as he, "submits" to the test

procedure involuntarily. Arpke's contention specifically guts the subsec. (10) refusal sanction and essentially negates the intent and purpose of the implied consent law. In effect, he argues that a person who honors the implied consent statute and consents to a blood withdrawal is subject to the very same sanction as a person who refuses the blood withdrawal, requiring that an involuntary blood sample be obtained. That logic is absurd. The result does not promote the intent and/or purpose of the implied consent statute. We will not construe a statute to work an absurd result. *See* ***State v. Clausen***, 105 Wis. 2d 231, 245, 313 N.W.2d 819 (1981). We are compelled to conclude that a subsec. (10) sanction, addressing the evidentiary obtaining of blood alcohol samples, is unaffected by the language of subsec. (7), addressing the evidentiary test results once obtained.

¶5 In sum, Arpke's underlying contention that his refusal to consent to a chemical test was excused when a test sample was obtained involuntarily is contrary to the very intent and purpose of the implied consent law "to facilitate the gathering of evidence against drunk drivers." ***State v. Neitzel***, 95 Wis. 2d 191, 203, 289 N.W.2d 828 (1980). Anyone who operates a motor vehicle is deemed to have consented to a properly administered test to determine blood alcohol content. Once a person has been properly informed of the implied consent statute, as Arpke was here, that person must promptly submit or refuse to submit to the required test. *See* ***Rydeski***, 214 Wis. 2d at 109. A refusal subjects the person to the WIS. STAT. § 343.305(10) penalty provisions of the implied consent statute. *See* ***Neitzel***, 95 Wis. 2d at 205. Arpke's refusal to submit to a blood withdrawal for alcohol-related evidence purposes cannot be cured by a selective reading of other provisions of the implied consent law. Because Arpke violated the implied

consent statute by refusing the request to provide law enforcement with a chemical test sample, we affirm the trial court's revocation order.[3]

By the Court.—Order affirmed.

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

[3] Arpke does not appeal from the WIS. STAT. § 343.305(7) license suspension, nor does his appeal indicate that he pursued administrative or judicial relief from the subsec. (7) suspension under the provisions of § 343.305(7) and (8).