COURT OF APPEALS
DECISION
DATED AND FILED

January 23, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP973 **Cir. Ct. No. 2007TR6717**

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

CITY OF GLENDALE,

PLAINTIFF-RESPONDENT,

V.

LAWRENCE C. STEARNS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MARSHALL B. MURRAY, Judge. *Affirmed.*

¶1 CURLEY, P.J.[1] Lawrence C. Stearns appeals *pro se* the trial court's order dismissing his appeal. The Glendale municipal court found Stearns guilty, by default, of violating a municipal ordinance for failing to obey an official

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2005-06).

sign (illegal u-turn), contrary to WIS. STAT. § 346.04(2) (2003-04).[2] Stearns submits that the case should be dismissed because "he never did anything wrong"; that the police officer should have stopped him from making the u-turn or should have given him a warning; and he should not be charged for the police officer's time in court. Further, he claims that the municipal court violated WIS. STAT. § 800.13 by not recording the default judgment hearing.

¶2 In ***City of Pewaukee v. Carter***, 2004 WI 136, ¶¶54-55, 276 Wis. 2d 333, 688 N.W.2d 449, the supreme court opined that no appeals are possible from a municipal default judgment because a party must exhaust his or her options in the municipal court. Thus, Stearns is prohibited from appealing his default judgment. As a consequence, the trial court's dismissal order is affirmed. ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (if a decision on one point disposes of the appeal, then the appellate court need not decide other issues raised).[3]

I. BACKGROUND.

¶3 According to the record and the briefs submitted by the parties, on November 29, 2005, a Glendale police officer stopped Stearns after the officer saw him make a u-turn in front of the Bayshore shopping center. As a result, he was ticketed for making an illegal u-turn. Stearns contested the matter, which was

[2] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

[3] Besides his initial arguments, in his reply brief Stearns appears to acknowledge the City's argument that case law prohibits his appeal, but he claims that the trial court has the discretion to hear the appeal. He also appears to claim that he did not commence this appeal; rather, that the city attorney did so and misled the trial court. Case law does not support the former argument, and the record belies the latter.

scheduled for pre-trial three different times before a trial date was set. A default judgment was entered on May 11, 2006, after Stearns failed to appear for the trial. The adjournments of the pre-trial were all at Stearns' request, with Stearns citing health reasons. On July 27, 2006, the municipal court granted Stearns' motion to reopen the judgment. After the court set several new dates for a trial and Stearns failed to appear, the municipal court set one last trial date ordering Stearns to either appear in person or submit "a legitimate verifiable medical excuse." When neither of the court's conditions was met, the trial court again entered a default judgment ordering Stearns to pay a fine of $78.50 and motion costs of $165.50. Stearns never brought a new motion to reopen the default judgment. On January 18, 2007, Stearns appealed this matter to the trial court.

¶4 On April 24, 2007, the trial court refused to hear the appeal and dismissed the case after noting that this case was an appeal from a municipal default judgment. The trial court noted that such appeals are not authorized under WIS. STAT. § 800.14. Later, the court issued a written order confirming the dismissal and denying Stearns' request for a transcript at public expense. On April 26, 2007, Stearns filed an appeal with this court.

II. ANALYSIS.

¶5 Initially this court is called upon to determine whether the trial court properly dismissed Stearns' appeal of the default judgment entered against him by the municipal court. This court is satisfied that the trial court correctly determined that Stearns was not permitted to appeal from the municipal court's judgment because the case was resolved by way of a default judgment and no trial took place.

¶6 The interpretation of a statute presents a question of law, which we review *de novo*. ***State v. Williams***, 198 Wis. 2d 516, 525, 544 N.W.2d 406 (1996).

¶7 WISCONSIN STAT. § 800.14 governs appeals from the municipal court to the trial court. In the ***City of Pewaukee*** case, our supreme court examined the change in the law that occurred in 1987. ***Id.***, 276 Wis. 2d 333, ¶¶50-62. Before this date a party could seek an appeal from a municipal court charge by simply pleading not guilty. ***Id.***, ¶51. The revision sought to plug that loophole. In discussing the consequences of the legislative change, the supreme court observed: "The solution proposed by the drafting request was 'to require that all alleged violators go to municipal court first, exhaust their options there, and if they lose, they may exercise the right to 1. a new trial, 2. a jury trial, or 3. to request review by a judge.'" ***Id.***, ¶54 (footnote omitted).

¶8 In defining what constitutes a "trial" that triggers the right to appeal a decision, the court went on to explain that: "Other documents included in the drafting record further reveal the objective of the revamped WIS. STAT. § 800.14(4). A handwritten note reads, 'Make sure it's not possible to default in [municipal court and] then file for a jury trial.' The note continued, 'Must *try issues* in [municipal court].'" ***City of Pewaukee***, 276 Wis. 2d 333, ¶55 (footnote omitted; alterations and emphasis in ***City of Pewaukee***).

¶9 In light of this language, this court concludes that it is not possible for Stearns to appeal the municipal court's entry of a default judgment because no trial was held and he has not exhausted his options in the municipal court.

Consequently, this court will not address the merits of Stearns' arguments and the dismissal order is affirmed.[4]

By the Court.—Order affirmed.

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

[4] It is curious that Stearns, who claimed to be too ill to attend the trial, was able to appear in the clerk's office and at the trial court hearing. Hopefully these facts signify an improvement in his health.