**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**August 26, 2008**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal Nos. 2008AP845-FT**
**2008AP846-FT**

**Cir. Ct. Nos. 2007FO400**
**2007FO401**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DONALD V. GUSTAFSON,**

**DEFENDANT-APPELLANT.**

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APPEALS from judgments of the circuit court for Bayfield County: ROBERT E. EATON, Judge. *Reversed.*

¶1 PETERSON, J.[1] Donald Gustafson appeals judgments of conviction for harvesting raw forest products without notification, contrary to WIS.

[1] These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2) and expedited pursuant to WIS. STAT. RULE 809.19. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

STAT. § 26.03(1m)(a)(1), and unauthorized timber theft, contrary to WIS. STAT. § 26.05. Both statutes require the State to prove that raw forest products were involved. Gustafson contends, among other things, that the trial court gave an overly broad interpretation to the phrase "raw forest products."[2] We agree. We further conclude the State failed to prove that the products involved were in fact raw forest products and therefore reverse the judgments.

## BACKGROUND

¶2 In the summer of 2007, Gustafson hired a contractor to level a parcel of his own land adjacent to property owned by Mary Peterson. In addition to clearing and leveling Gustafson's land, the contractor also bulldozed approximately 10,000 square feet of Peterson's land. Although the parties disagree about the amount of vegetation removed from Peterson's land, they agree that the contractor bulldozed a number of saplings. After Peterson's sister contacted the Department of Natural Resources, an employee of the DNR's forestry division visited both properties and cited Gustafson for harvesting raw forest products without notice from his own property and for timber theft from Peterson's property.

¶3 At trial, the court found that Gustafson's contractor cleared Peterson's land and removed saplings in the process. Dismissing Gustafson's argument that economic value is implicit in the definition of raw forest products,

[2] Gustafson makes three additional arguments in his appeal: that the court applied overly broad definitions of "remove" and "transport"; that WIS. STAT. § 26.03 applies only to planned harvesting operations; and that the theft envisioned in WIS. STAT. § 26.05 does not comport with common sense notions of theft. Because we conclude the State failed to establish the cleared trees were raw forest products, we need not reach these issues. ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514, 520 (Ct. App. 1989) (cases are decided on the narrowest possible ground).

the court concluded the bulldozed saplings were raw forest products according to the plain language of the definition of the phrase in WIS. STAT. § 26.05(1) and upheld the DNR's citations.

## DISCUSSION

¶4 This case presents a question of statutory interpretation, an issue of law that we review independently. ***Thielman v. Leean***, 2003 WI App 33, ¶6, 260 Wis. 2d 253, 659 N.W.2d 73. When interpreting a statute, our principal objective is "to determine what the statute means so that it may be given its full, proper, and intended effect." ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. While statutory interpretation "begins with the language of the statute," it is also "interpreted in the context in which it is used; not in isolation, but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." ***Id.***, ¶¶45-46.

¶5 Both WIS. STAT. §§ 26.03 and 26.05 deal with raw forest products. Subdivision 26.03(1m)(a)1 states, "[N]o person may harvest any raw forest products … from any land until 14 days after the clerk of the county in which the land is located is notified of the person's proposal to harvest." Section 26.05(2) states, "No person may cut, remove or transport raw forest products … without the consent of the owner." Raw forest products are defined in § 26.05(1): "Raw forest products" means "forest products not altered by a manufacturing process off the land from which they are taken and includes seedlings, saplings, shrubs, whole—tree chips, boughs, logs, pilings, posts, poles, cordwood products, pulpwood, fuel wood and Christmas trees."

¶6 The crux of Gustafson's argument is that the saplings he bulldozed were not raw forest products because they had no commercial value. He cites the definition of product from the SHORTER OXFORD ENGLISH DICTIONARY indicating the term has commercial connotations. From this, he concludes the ordinary meaning of "raw forest product" requires commercial value.

¶7 This conclusion is warranted, according to Gustafson, because interpreting the list of examples of raw forest products in WIS. STAT. § 26.05(1) without limitation would yield absurd results. For example, argues Gustafson, if all of the items enumerated were, without qualification, "raw forest products," the statute would apply to every cabin owner who clears any tree or shrub from his or her property. This cannot be the result the legislature intended because the purpose of WIS. STAT. ch. 26, he contends, is to regulate the commercial aspects of forest productivity.

¶8 The State responds that the statute is plain on its face and clearly applies to the saplings Gustafson bulldozed. Not only is the list of examples of forest products in WIS. STAT. § 26.05 not exclusive, notes the State, the statute also does not qualify these examples in any way. Further, the State argues that Gustafson's characterization of WIS. STAT. ch. 26 as pertaining solely to the economic regulation of forests is inaccurate. Rather, the State points out that ch. 26 covers a wide range of topics that extend beyond economic considerations.

¶9 The trial court agreed with the State:

> Now, I think the first question is does it matter if they have commercial value or not. As I have indicated I conclude it doesn't matter whether or not they have commercial value. … So whether the forest products have resale value or have a value out in the open market, to me it

> doesn't matter. The statute does not add that as an element of the defense.

Finding that when Gustafson's contractor cleared the land, "saplings came down," the court concluded that because commercial value is not an element of the statutory definition, the saplings fell within the scope of WIS. STAT. §§ 26.03 and 26.05.

¶10 We agree with Gustafson that the trial court gave an overly broad definition to "raw forest products." However, we take a different route to that conclusion than Gustafson. Rather than focusing on "product," we conclude the significant word is its modifier: "forest." The focus of WIS. STAT. §§ 26.03 and 26.05, indeed all of ch. 26, is forests. The chapter is entitled, "Protection of Forest Lands and Forest Productivity." ***Aiello v. Village of Pleasant Prairie,*** 206 Wis. 2d 68, 73, 556 N.W.2d 697, 700 (1996) (although titles are not part of statutes, they may be helpful in interpretation). At the outset, the chapter establishes a council on forestry to advise governmental bodies on various "topics as they affect forests." WIS. STAT. § 26.02(1). Every section of the chapter is related in one way or another to forests. In fact, WIS. STAT. § 26.30(3)(d) defines forests and forest lands as

> any area on which trees exist, standing or down, alive or dead, actually or potentially valuable for forest products, watershed or wildlife protection or recreational uses in contrast to shade, horticulture or ornamental trees valuable for landscape, agricultural, aesthetic or similar purposes.

While this definition pertains specifically to § 26.30 and not to the chapter as a whole, it acknowledges that not every area with trees or bushes is a forest. Therefore, not every sapling will be a "raw forest product."

¶11 To conclude otherwise would lead to absurd results. *See* ***Kalal***, 271 Wis. 2d 633, ¶46 (we interpret statutes reasonably to avoid absurd results). Under the State's interpretation, any sapling or shrub in even an urban setting would be a raw forest product. Such a broad interpretation would defy common sense.

¶12 The record in this case contains no evidence that the land Gustafson cleared was a forest. For that reason, the state failed to prove Gustafson violated either WIS. STAT. §§ 26.03 or 26.05.

*By the Court.*— Judgments reversed.

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