

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 18, 2014

Diane M. Fremgen
Clerk of Court of Appeals

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.

Appeal No. 2013AP1263

Cir. Ct. No. 1995TR3265

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

COUNTY OF OCONTO,

PLAINTIFF-RESPONDENT,

V.

ROBERT E. HAMMERSLEY,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Oconto County:
MICHAEL T. JUDGE, Judge. *Affirmed.*

¶1 STARK, J.¹ Robert Hammersley, pro se, appeals an order denying relief from a 1995 default order revoking his license for violating the implied consent law. He also appeals an order denying his motion for reconsideration.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Hammersley argues the circuit court prematurely entered the 1995 order, the officer failed to perform his duties under the implied consent law, and a stipulation he entered in the related operating-while-intoxicated case does not preclude relief. We disagree and affirm.

BACKGROUND

¶2 On October 28, 1995, Hammersley was arrested for operating while intoxicated. He refused the officer's request to submit to a chemical blood alcohol test under the implied consent law, and the officer issued him a "Notice of Intent to Revoke Operating Privilege." (Some capitalization omitted.) The notice stated it was given to Hammersley on "10-28-95 [at] 10:35 PM." It informed Hammersley that his operating privilege would be revoked unless he filed a written request with the Oconto Circuit Court for a refusal hearing within ten days.

¶3 The court's copy of the notice was filed on December 7, 1995. On December 12, the court entered an order revoking Hammersley's license, finding he "failed to request a hearing within ten days after [he] had been served with the notice of intent to revoke the operating privileges."

¶4 Approximately seventeen years later, on December 28, 2012, Hammersley moved for relief from the court's 1995 order on the basis that the order was void. *See* WIS. STAT. § 806.07(1)(d). He argued the order was void because he had ten days to request a refusal hearing, and the court revoked his

license eight days after the court's copy was filed.² He also argued the officer did not fulfill his duties under the implied consent law.

¶5 The circuit court denied Hammersley's motion. It observed that in the related 1995 operating-while-intoxicated case Hammersley entered into a stipulation whereby Hammersley acknowledged that his license was previously revoked as a result of his refusal to submit to a chemical blood test.³ The court concluded that, based on Hammersley's stipulation, he could not attack the validity of the 1995 refusal order.

¶6 Hammersley moved for reconsideration, arguing the stipulation did not prevent him from seeking relief. The court denied Hammersley's motion. He now appeals.

DISCUSSION

¶7 We will not reverse a circuit court's order denying a WIS. STAT. § 806.07 motion for relief if the record shows that the court exercised its discretion and that there is a reasonable basis for its determination. *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 541-42, 363 N.W.2d 419 (1985). On appeal, Hammersley first renews his argument that the circuit court erred in 1995 by entering the default order eight days after the court's copy of the notice of intent to revoke was filed. Hammersley contends the court was required to wait ten days to enter the default order and the court's premature action voids the order.

² We observe the CCAP entry states the court's copy of the notice of intent to revoke was filed December 4, 1995. However, the record on appeal indicates the notice of intent to revoke is date stamped December 7, 1995.

³ The stipulation provided that, in exchange for the dismissal of the operating-while-intoxicated charge, Hammersley agreed to the entry of judgment on a speeding forfeiture.

¶8 We reject Hammersley’s argument. At the outset, this argument does not address the circuit court’s reason for denying Hammersley’s WIS. STAT. § 806.07 motion—that his stipulation prevented him from challenging the 1995 revocation order. *See M.L.B.*, 122 Wis. 2d at 541-42 (whether to grant relief under § 806.07 is a discretionary decision).

¶9 However, even on the merits, Hammersley erroneously believes the ten-day time period to request a refusal hearing begins when the court receives its copy of the notice of intent to revoke. Both WIS. STAT. § 343.305(10)(a) and the notice of intent to revoke Hammersley received provide Hammersley had ten days to request a refusal hearing from the date *he* received the notice. *See* WIS. STAT. § 343.305(10)(a) (“[I]f the person does not request a hearing within 10 days after the person has been served with the notice of intent to revoke,” the court shall revoke the person’s operating privilege.).

¶10 In this case, the notice of intent to revoke stated Hammersley received the notice on October 28, 1995. Accordingly, Hammersley had ten days after October 28, 1995 to request a hearing. The date the court received its copy of the notice of intent to revoke is immaterial. Once Hammersley failed to request a hearing within ten days, the court was required to revoke Hammersley’s driver’s license, which it did on December 12, 1995. The court did not prematurely enter the default revocation order against Hammersley.

¶11 Hammersley next argues the officer failed to read him the informing the accused form and did not provide him with the notice of intent to revoke on October 28, 1995. Hammersley, however, provides no evidence or record citation in support of these conclusory statements. His statements are also directly contradicted by the record—the notice of intent to revoke explicitly states the

officer read Hammersley the informing the accused form and gave Hammersley the notice on “10-28-95 [at] 10:35 PM.” We will not consider this argument further.

¶12 Hammersley asserts the court erred by basing its denial of his WIS. STAT. § 806.07 motion on the stipulation in the OWI case. He contends the stipulation was entered into without his understanding, his attorney deceived him into entering into the stipulation, and, contrary to the court’s suggestion, his § 806.07 motion was timely.

¶13 Hammersley’s assertions that he did not understand the stipulation and that his attorney deceived him are largely conclusory. We do not address his contention that his WIS. STAT. § 806.07 motion was timely as it is unsupported by legal argument. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider undeveloped arguments). However, we have serious concerns about Hammersley’s ability to bring a motion for relief seventeen years after the underlying order was entered. In any event, the objections that Hammersley has to the stipulation, in which Hammersley simply acknowledged the revocation order had been previously entered, are immaterial.

¶14 The record reflects that, by the time Hammersley retained an attorney (in December 1995) and entered into the stipulation (in March 1996), the ten-day time period for requesting a refusal hearing had passed. A circuit court loses competence to consider a refusal allegation if a defendant fails to request a hearing within ten days. *Village of Elm Grove v. Brefka*, 2013 WI 54, ¶44, 348 Wis. 2d 282, 832 N.W.2d 121. Therefore, regardless of the stipulation, once Hammersley failed to request a refusal hearing within ten days, the court lost competence to consider any objection to the implied consent law violation and was

required to enter a default order revoking Hammersley's driver's license. *See* WIS. STAT. § 343.305(10). The stipulation does not affect the continued validity of the revocation order.

By the Court.—Orders affirmed.

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

