

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 9, 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. 2014AP540

Cir. Ct. No. 2013FO418

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF MONROE,

PLAINTIFF-APPELLANT,

V.

CONNAR STEVEN KOCH,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Green County:
JAMES R. BEER, Judge. *Reversed and cause remanded with directions.*

¶1 HIGGINBOTHAM, J.¹ The City of Monroe issued a citation to Connar Steven Koch for underage possession or consumption of alcohol, contrary

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

to Monroe City Code § 3-4-1, which adopts WIS. STAT. § 125.07(4)(b). Following a trial to the court, the court found Koch not guilty of underage drinking on the ground that Koch was “accompanied” by a parent, his father, within the meaning of a statutory exception to the prohibition to underage drinking. The issue on appeal is whether the circuit court properly interpreted and applied the term “accompanied” within the meaning of § 125.07(4)(b) to the instant facts, in finding Koch not guilty of the charged offense. We conclude that the court erred in interpreting and applying the term “accompanied” found in § 125.07(4)(b) to the instant facts. Accordingly, we reverse and remand with directions to the court to find Connor Steven Koch guilty of violating Monroe City Code § 3-4-1, adopting WIS. STAT. § 125.07(4)(b), and to proceed to sentencing, consistent with this opinion.

BACKGROUND

¶2 Connor Steven Koch lives in the City of Monroe. During a late August night in 2003, Koch was hosting a party at his father’s house. Two Monroe police officers were dispatched to the residence to investigate a complaint by a neighbor of loud noise coming from a group of individuals in a garage. One of the officers had contact with Koch and smelled the odor of intoxicants emanating from Koch. Koch admitted to consuming alcohol that night; one of the officers observed open containers of alcohol in plain view in the garage. One of the officers testified at the trial in this case that he did not see any person around or near the garage over the age of twenty-one. It is undisputed that Koch was not twenty-one years old at the time of this incident.

¶3 Significant to this case, Koch’s father did not come out to the garage until ten to fifteen minutes after the police had arrived there. Mr. Koch appeared to the officers that he had been sleeping.

DISCUSSION

¶4 This case requires the interpretation and application of a statute to undisputed facts.² Statutory interpretation is a question of law subject to de novo review. *Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650, 659, 539 N.W.2d 98 (1995). When interpreting a statute, we begin with the statutory language. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. If the meaning of the statute is plain, we ordinarily stop the inquiry and apply that meaning. *Id.*

¶5 Before discussing the merits of this appeal, we observe that in his response brief Koch violates our court rules regarding a properly filed appellate brief. In his brief, Koch fails to develop any legal argument supported by citations to legal authority, and with no citations to the record. Nevertheless, because clarifying the meaning of “accompanied” within the meaning of WIS. STAT. § 125.07(4)(b) will assist the bench and the bar in future cases, we choose to address the arguments made by the City.

¶6 We begin with the statutory language. WISCONSIN STAT. § 125.07(4)(b) provides, “[e]xcept as provided in par. (bm), any underage person not accompanied by his or her parent, guardian or spouse who has attained the

² Neither the State nor Koch challenge the trial court’s factual findings.

legal drinking age who knowingly possesses or consumes alcohol beverages is guilty of a violation.”

¶7 After taking evidence in this case, the circuit court found Koch not guilty of the City of Monroe’s underage drinking law. In making this finding, the court concluded that, under the facts of this case, Koch’s father “accompanied” Koch within the statutory meaning and therefore Koch was in lawful possession and had lawfully consumed alcohol.

¶8 We conclude that, under the facts of record, the circuit court erred in its construction and application of the term “accompanied” stated in WIS. STAT. § 125.07(4)(b).

¶9 There are no cases in Wisconsin where a court has interpreted the term “accompanied” within the meaning of WIS. STAT. § 125.07(4)(b). However, this court has construed the same term in the context of § 125.07(1)(a), which, like § 125.07(4)(b), governs and regulates the use and possession of alcoholic beverages by underage persons. *See, e.g., Mueller v. McMillian Warner Ins. Co.*, 2005 WI App 210, 287 Wis. 2d 154, 704 N.W.2d 613. It is proper to consider how a similar or the same term is interpreted and applied in the same statutory scheme for guidance. *See Kalal*, 271 Wis. 2d 633, ¶46. We interpret statutory language “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.* “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* (quoting another source).

¶10 In *Mueller*, this court considered the meaning of “accompanied” in the context of WIS. STAT. § 125.07(1)(a). Section 125.07(1)(a) states that “[n]o person may procure for, sell, dispense, or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.” As pertinent here, the question in that case was whether the parents of a nineteen-year-old boy, Apollo, had “accompanied” Apollo when he drank alcohol that the parents procured for the son. *Mueller*, 287 Wis. 2d 154, ¶11. The circuit court concluded that “accompanied” involved individualized supervision, which the court found was not present in that case. On appeal, the parents contended that to meet the statutory meaning of “accompanied,” it was unnecessary for the parents to be in the same room with Apollo while he was drinking. *Id.*, ¶12. The parents argued that it was sufficient that Apollo drank “in their proximity” and on the same premises, with their knowledge. *Id.* We rejected the parents’ and Apollo’s argument and concluded that “underage drinkers are not accompanied by a parent merely because the parent and child are on the same premises.” *Id.*, ¶16. We noted that the parents had told Apollo to not drink where other guests could observe him, and that they did not know how much Apollo drank over a course of eight hours. *Id.* Based on these facts, we concluded that the parents were “neither supervising nor otherwise controlling Apollo when he was drinking,” and thus they were not accompanying Apollo for the purposes of § 125.07(1)(a). *Id.*

¶11 We see no reason why the term “accompanied” found in WIS. STAT. § 125.07(1)(a) could not have the same meaning in § 125.07(4)(b). Considering that both statutes are within the context of the statutory scheme governing underage and intoxicated persons, WIS. STAT. § 125.07, we conclude that the term “accompanied” included in § 125.07(4)(b) has the same meaning as this court

concluded in *Mueller*, which entails individualized supervision and control of the underage drinker while the person is drinking. *Mueller* teaches that it is not enough to meet the statutory meaning of “accompanied” by merely being on the same premises as the child. *Id.*

¶12 Applying our interpretation of “accompanied” in the context of WIS. STAT. § 125.07(4)(b), we conclude that the circuit court erred in concluding that, under the undisputed facts, Koch was accompanied by his father during the period that Koch was consuming alcohol, by merely being on the same premises as Koch. As we noted, one of the police officers testified that he did not observe any person twenty-one years of age or older at the party when the officers had contact with Koch. It was not until approximately ten to fifteen minutes later that Koch’s father appeared on the scene and it appeared that the father had been sleeping prior to the officers’ arrival. Koch testified that, although his father knew that Koch had invited some friends over to the house, his father did not know that Koch was serving alcoholic beverages on the premises to individuals who were underage. These facts are similar to *Mueller*. In *Mueller*, the parents were “merely ... on the same premises,” and admittedly did not know how many beers Apollo had consumed at the party. *Id.* Here, the father, who was asleep in a different part of the premises, was not even aware that Koch had been drinking. These facts support our conclusion that the father was not “accompanying” Koch within the meaning of WIS. STAT. § 125.07(4)(b) while Koch consumed alcohol on his father’s premises.

¶13 Based on the foregoing reasons, we reverse and remand with directions to the court to find Connor Steven Koch guilty of violating Monroe City Code § 3-4-1, adopting WIS. STAT. § 125.07(4)(b), and to proceed to sentencing, consistent with this opinion.

By the Court.—Judgment reversed and cause remanded with directions.

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

