COURT OF APPEALS
DECISION
DATED AND RELEASED

April 25, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3487

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

CITY OF MIDDLETON,

Plaintiff-Respondent,

v.

JAMES H. PARKIN,

Defendant-Appellant.

APPEAL from an order of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed*.

DYKMAN, J. This is a single-judge appeal decided pursuant to § 752.31(2)(c), STATS. James H. Parkin appeals from an order dismissing his appeal from a municipal court's judgment of conviction as untimely under § 800.14(1), STATS.[1] Parkin argues that his appeal to the trial court is not

[1] Section 800.14(1), STATS., provides: "Appeals from judgments of municipal courts may be taken by either party to the circuit court of the county where the offense occurred. The appellant shall appeal by giving the municipal judge written notice of appeal within 20 days after judgment."

untimely because the municipal court did not enter a judgment against him. We conclude that the time in which Parkin must file an appeal from a municipal court judgment starts to run on the date when the court grants a judgment in favor of a party. Accordingly, we affirm.

BACKGROUND

On February 10, 1994, James H. Parkin was arrested for operating a motor vehicle while under the influence of an intoxicant, contrary to § 346.63(1)(a), STATS. At a municipal court hearing on May 8, 1995, the court found him guilty and notified him that he had twenty days to file an appeal. Parkin asked the court to delay entering the judgment until the end of the week, or May 12, because he is an out-of-state driver and wanted more time. The City of Middleton did not object and the court agreed. The court, however, never entered a formal judgment against him.

On August 17, 1995, Parkin filed a notice of appeal in the trial court.[2] He wrote that he was appealing "from the whole of the final judgment and sentence entered" in the municipal court. The City moved to dismiss the appeal, arguing that it was untimely under § 800.14(1), STATS. The trial court dismissed the appeal, relying on a transcript of the municipal court proceedings, a printout of the City's "citation screen listing," and a copy of the citation. It found that the municipal court granted the judgment on May 8, 1995, that it rendered it on May 12, 1995, and that Parkin's appeal was untimely. Parkin appeals.

STANDARD OF REVIEW

Whether Parkin's appeal is untimely requires us to construe § 800.14(1), STATS. Statutory construction is a question of law which we review *de novo*. ***State ex rel. Frederick v. McCaughtry***, 173 Wis.2d 222, 225, 496 N.W.2d 177, 179 (Ct. App. 1992). In construing a statute, our purpose is to determine the

[2] The document is dated June 8, 1995, but it appears that Parkin did not file it with the trial court until August 17, 1995. In either case, both dates exceed the twenty days allowed for appeal under § 800.14(1), STATS.

legislature's intent and give it effect. ***Id***. The first step is to examine the statute's language, and, absent ambiguity, we give the language its ordinary meaning. ***Id***. at 225-26, 496 N.W.2d at 179. If the language is unclear we determine legislative intent by examining the scope, history, context, subject matter and purpose of the statute. ***Id***. at 226, 496 N.W.2d at 179.

DISCUSSION

Section 800.14(1), STATS., limits the time in which a defendant convicted in municipal court may appeal to the trial court for review. It provides that a defendant "shall appeal by giving the municipal judge written notice of appeal within 20 days after judgment." ***Id.*** Parkin argues that because the municipal court never entered a judgment against him, his appeal is not untimely. We disagree.

The plain language of § 800.14(1), STATS., provides that an appeal must be taken within twenty days after judgment. The issue is whether the judgment must be entered before the time in which an appeal may be taken starts to run. We note that in most other sections of the Wisconsin Statutes, when the legislature refers to the entry of a judgment, it uses the term "entry" or "entered." *See, e.g.,* § 799.445, STATS. ("An appeal in an eviction action shall be initiated within 15 days of the entry of judgment or order ...."); § 805.17(3), STATS. ("Upon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may amend its findings or conclusions ...."); § 808.04(1), STATS. ("An appeal to the court of appeals must be initiated within 45 days of entry of judgment or order appealed from ...."). In this case, it did not. From this, we can draw only one conclusion: the legislature intended that the time in which an appeal may be taken starts to run when the judgment is granted and not when it was entered.

As Parkin notes, the granting, rendering and entering of a judgment are different steps in the process of judgment in a municipal court. Section 800.14(1), STATS., however, is silent as to what action must be taken with regard to the judgment before the twenty-day time period for an appeal begins to run. Under § 800.11(1)(g), STATS., the municipal judge is charged with maintaining a docket in which he or she shall enter the judgment he or she has rendered. But the failure of the municipal judge to properly keep a docket does

not affect the court's jurisdiction or render the judgment void. Section 800.11(2).

We conclude that had the legislature intended that the twenty-day time period for an appeal begins to run when a judgment is entered by the municipal court, it would have used that language. Consequently, we conclude that the twenty-day time period begins to run when the municipal court grants a judgment.

Parkin also points to the procedural rules governing judgments in the trial court set forth in ch. 806, STATS., in support of his argument. But that chapter and chs. 801 to 847, STATS., are only applicable in the trial courts. Section 801.01(2), STATS. The procedure in municipal courts is governed by ch. 800, STATS. ***City of Kenosha v. Jensen***, 184 Wis.2d 91, 94, 516 N.W.2d 4, 5-6 (Ct. App. 1994) (a municipal court must follow ch. 800 to determine civil actions before it, while a trial court faced with a civil action follows the procedures found in chs. 801 to 847). There is no definition of judgment set forth in ch. 800.

Therefore, the facts demonstrate that while the municipal court never formally entered a judgment of conviction against Parkin, it did find on May 8, 1995, that Parkin was guilty of operating of motor vehicle while under the influence of an intoxicant. For the purposes of § 800.14(1), STATS., an appeal had to be taken within twenty days from that date. Because an appeal was not taken within that time, we conclude that the trial court properly dismissed this appeal as untimely. Accordingly, we affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.