COURT OF APPEALS
DECISION
DATED AND RELEASED

APRIL 1, 1997

NOTICE

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.

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

No. 96-2513-CR

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

State of Wisconsin,

Plaintiff-Appellant,

v.

Robert T. Hull,

Defendant-Respondent.

APPEAL from an order of the circuit court for Marathon County: MICHAEL W. HOOVER, Judge. *Reversed and cause remanded for further proceedings.*

CANE, P.J. The State appeals from the trial court's order dismissing its complaint against Robert Hull for operating a motor vehicle while under the influence of an intoxicant, contrary to § 346.63(1)(a), STATS., and with a prohibited alcohol concentration, contrary to § 346.63(1)(b), STATS. The sole issue on appeal is whether a privately owned road in a mobile home park is a "premise held out to the public" and thereby subject to § 346.63. This court concludes that it is and therefore reverses the trial court's order and remands the matter for further proceedings.

The facts are undisputed. While driving his car in the Green Acres Mobile Home Park, Hull slid into a snow bank and became stuck when attempting to turn around in the driveway of Carol Saal, a resident of the mobile home park. This occurred at approximately 4:45 a.m. After about twenty minutes, Hull was able to get out of the driveway, but Saal wrote down Hull's license plate number and gave it to the police who responded to her phone call. The police found the vehicle in Hull's driveway also located in the mobile home park. For purposes of this appeal, there is no dispute that Hull was driving his vehicle in the mobile home park that morning while under the influence of an intoxicant. The sole issue is whether the roadway in the mobile home park is a premise held out to the public and thereby subject to § 346.63, STATS.

This case involves the interpretation of Wisconsin's drunk driving laws and their application to a set of undisputed facts. See §§ 346.61 to 346.655, STATS. Statutory interpretation is a question of law which this court reviews without deference to the trial court's decision. ***Gonzalez v. Teskey***, 160 Wis.2d 1, 7-8, 465 N.W.2d 525, 528 (Ct. App. 1990).

When determining the meaning of a statute, the initial inquiry is to the plain meaning of the statute. ***Schmidt v. Wisconsin Employe Trust Funds Bd.***, 153 Wis.2d 35, 41, 449 N.W.2d 268, 270 (1990). If the statute is unambiguous, this court may not resort to judicial rules of interpretation, and construction is not permitted. ***Id.*** Rather, the words of the statute must be given their obvious and intended meaning. ***Id.***

Section 346.61, STATS., the section governing the applicability of the drunk driving laws, states:

> **Applicability of sections relating to reckless and drunken driving.** In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, all premises provided by employers to employes for the use of their motor vehicles and all premises

> provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof. Sections 346.62 to 346.64 do not apply to private parking areas at farms or single-family residences.

In ***City of Kenosha v. Phillips,*** 142 Wis.2d 549, 419 N.W.2d 236 (1988), the defendant was arrested for OMVWI in a parking lot owned by the American Motors Corporation (AMC) and designated for use by its employees. In determining whether the lot was "held out" to the public, the supreme court stated that the test was whether the person in control of the lot intended it to be available to the public for use of their motor vehicles. ***Id.*** at 557, 419 N.W.2d at 239. The court then resorted to RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1562 (Unabr. 2d ed. 1987), to define "public" as " 'of, pertaining to, or affecting a population or a community as a whole.' " ***Phillips,*** 142 Wis.2d at 557, 419 N.W.2d at 239. Finally, the court concluded that because AMC's employees constituted a "defined, limited portion of the citizenry," rather than the population or community as a whole, the lot was not held out to the public. ***Id.***

In ***City of La Crosse v. Richling***, 178 Wis.2d 856, 860, 505 N.W.2d 448, 449 (Ct. App. 1993), we held that it is not whether an area is held out to a designated group of persons, or that a certain percentage of persons use the roadway, but whether, on any given day potentially any resident of the community could use the area in an authorized manner. Therefore, the appropriate test is whether, on any given day, potentially any resident of the community with a driver's license and access to a motor vehicle could use the park's roadway in an authorized manner.

Although privately owned, nothing in the park restricts people from driving into or within the park. This is a large mobile home park. There are no signs restricting the park's use to its residents only. Local law enforcement patrols the area. There is a private craft shop in the park fifty yards from the entrance, and this craft shop

is open to the public at large. Also, there is a lake in the park which is used by people other than its residents. Thus, in this case, practically any motorist could drive in the park on any day. Under these facts, this court is satisfied the park's roadway was unrestricted and, therefore, is an area held out to the public.

The order is therefore reversed and cause remanded for further proceedings.

By the Court.—Order reversed and cause remanded for further proceedings.

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