

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

August 12, 1997

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. 97-0903

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CITY OF DURAND,

PLAINTIFF-RESPONDENT,

v.

THOMAS WILLIAM DETTINGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Pepin County:
DANE F. MOREY, Judge. *Affirmed.*

CANE, P.J. Thomas W. Dettinger appeals a judgment convicting him of exceeding the posted speed limit in violation of ch. 14 of the City of Durand's Municipal Traffic Code, adopting § 346.57(5), STATS.¹ Dettinger raises

¹ Section 346.57(5), STATS., provides in pertinent part: "[N]o person shall drive a vehicle in excess of any speed limit established pursuant to law by state or local authorities and indicated by official signs."

numerous issues on appeal arguing, among other things, that the trial court erred when it denied his motion to dismiss the case on grounds of insufficiency of the complaint. Dettinger's main issue on appeal is whether a traffic citation, which does not state a specific ordinance number but is complete in all other respects, is adequate to form the basis of a charge against him. This court concludes that even though the precise city ordinance number was not stated on the face of the citation, the document as a whole was sufficient to inform Dettinger of the charge against him. This technical error in the traffic citation did not affect Dettinger's substantial rights, and therefore the trial court's judgment is affirmed.

Dettinger was issued a Wisconsin uniform traffic citation on November 26, 1996, requiring him to appear in circuit court on December 10, 1996.² Dettinger appeared in person pro se on that date, at which time he made a motion to dismiss the action for lack of subject matter jurisdiction or, alternatively, for failure to prosecute by the City. The trial court denied both motions.

At the trial, the court acknowledged receipt of numerous motions filed by Dettinger but chose not to respond to them. The sole witness at the trial was the officer who issued the citation; he testified and was cross-examined by the defendant. The trial court offered Dettinger an opportunity to testify, but he declined. Upon the close of testimony, the court found Dettinger guilty of speeding, ordered him to pay a forfeiture and assessed demerit points against his driving record.

² The City charged Dettinger with operating a motor vehicle at 41 miles per hour in a 30 mile per hour posted speed zone in the city limits of Durand.

Of the various issues raised by Dettinger, this court addresses first the issue of whether the omission of the specific section of the municipal code on the face of the citation results in a defective pleading requiring dismissal of the case. Dettinger contends that the uniform traffic citation was defective as a complaint because it did not meet the requirements of § 345.11(2), STATS., by failing to list a specific city ordinance number. In addition, he claims that the omission of a specific ordinance number made it impossible for him to know or understand the charge against him, rendering him unable to prepare a defense to the action.

An action to enforce a municipal ordinance is civil in nature. Section 66.12(1)(a), STATS. Section 801.01(2), STATS., provides that chs. 801 to 847 govern procedure and practice in civil actions except where a different procedure is prescribed by statute. A "different procedure" is prescribed in ch. 345, STATS., VEHICLES—CIVIL AND CRIMINAL LIABILITY. Section 345.40, STATS., provides that a citation which complies with § 345.11, STATS., may be used as the initial pleading in the case and will serve as the complaint. Section 345.11(2), STATS., sets forth the information required on the uniform traffic

citation.³ Dettinger contends that the citation issued to him did not comply with § 345.11(2) because it did not state the specific ordinance number of the City of Durand Municipal Code allegedly violated and was, therefore, a defective complaint.

The trial court determined that the failure to state the specific ordinance did not affect Dettinger's substantial right to be notified of the charge against him. This court agrees. Section 805.18(1), STATS., provides that "The court shall, in every stage of an action, disregard any error or defect in the pleadings ... which shall not affect the substantial rights of the adverse party." Even though the omission of an exact ordinance number on the citation was a technical defect, the defect did not affect Dettinger's substantial right to be notified of the nature of the charge against him. The information recorded by the officer on the citation form supplies all of the information Dettinger claims he needs in order to understand the charge against him and to prepare a defense. Dettinger was also given an opportunity to cross-examine the City's witness and he did so; he had an opportunity to present his side of the story and he declined to do so.

³ Section 345.11(2), STATS., provides:

The form or automated format shall provide for the name, address, birth date, operator's license number of the alleged violator if known, the license number of the vehicle, the offense alleged, the time and place of the offense, the section of the statute or ordinance violated, the amount of deposit or bail for the offense, a designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and any other information as may be pertinent to the offense.

In addition to affirming the trial court based upon § 805.18(1), STATS., this court also declines to reverse Dettinger's conviction based on § 805.18(2), STATS., which provides:

No judgment shall be reversed or set aside or new trial granted in any action or proceeding ... for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment

This court has examined the record of the entire proceeding and the briefs of the parties and determines that the omission of a specific ordinance number on an otherwise complete uniform traffic citation does not affect Dettinger's substantial rights.

Dettinger's remaining arguments appear to challenge the trial court's denial of his motions to dismiss on various grounds at the initial appearance and at the trial. This court affirms the trial court with respect to all of Dettinger's contentions of abuse of discretion and trial court error.

At the initial appearance, the trial court denied Dettinger's written motion to dismiss for lack of subject matter jurisdiction. Dettinger argued that the proper court to hear the case was the municipal court. The trial court ruled that, in the absence of a municipal court, the circuit court did have jurisdiction. This court agrees. Section 345.30, STATS., plainly states that circuit courts have jurisdiction over actions for violation of traffic regulations.

Dettinger also asserts that the trial court abused its discretion by denying his request at the initial appearance to make an oral motion to dismiss for

failure to prosecute. Concerning his written pretrial motions, Dettinger complains that he was denied an opportunity to present oral argument on the motions. The pretrial motions include a "Demand for Default Judgment" which reiterated his motion to dismiss for failure to prosecute, and a "Demand for Probable Cause." The trial court indicated that it had received the motions and chose not to respond to them.

A trial court has considerable discretion in the conduct of a trial, and its rulings will not be disturbed unless a party's rights have been prejudiced. *Wengerd v. Rinehart*, 114 Wis.2d 575, 580, 338 N.W.2d 861, 865 (Ct. App. 1983). Furthermore, a reviewing court will not find an abuse of discretion if there is a reasonable basis for the trial court's determination and will look for reasons to sustain the trial court's rulings. *Erbstoesz v. American Cas. Co.*, 169 Wis.2d 637, 644, 486 N.W.2d 549, 552 (Ct. App. 1992). Here the trial court reasonably exercised its discretion by denying Dettinger's motion at the initial appearance and denying oral argument on his trial motions.

Dettinger claims that when the city attorney failed to appear at the initial appearance, the court should have allowed him to make an oral motion to dismiss for failure to prosecute, granted him a default judgment against the city and dismissed the action. The City's position is that the purpose of the initial appearance was for Dettinger to enter a plea to the charge and that its nonappearance did not prejudice Dettinger in any way. It was within the court's discretion to restrict the proceedings at the initial appearance to the entry of a plea, and it was not unreasonable to deny Dettinger's request to extend the proceedings to include making oral motions. Additionally, it was not unreasonable to deny oral argument at the trial, as the motions were without merit, and it is within the trial court's discretion to determine if it wishes to hear oral argument.

Dettinger's pretrial motion for substitution of judge was also denied. The motion was not filed within the time limit prescribed for exercising the statutory right to substitution of judge,⁴ and therefore the ruling is affirmed.

Finally, Dettinger challenges the sufficiency of the evidence at trial, arguing that the City did not prove the elements of the offense. Section 805.17(2), STATS., provides that, in a trial to the court, findings of fact should not be overturned unless clearly erroneous and that due regard should be given to the opportunity of the trial court to judge the credibility of the witnesses. This court determines that the trial court's decision is supported by the evidence in the record, namely the uncontradicted testimony of the officer who testified that Dettinger was operating a motor vehicle in the City of Durand at forty-one miles per hour in a thirty mile per hour speed zone.

By the Court.—Judgment affirmed.

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

⁴ Section 345.315(1), STATS., provides in part: "The written request shall be filed not later than 7 days after the initial appearance in person or by an attorney." Dettinger made his initial appearance on December 10, 1996. His motion for substitution of judge was not filed with the court until December 31, 1996.

