

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 8, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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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.

No. 99-0208

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

NAZIR I. AL-MUJAAHID, A/K/A JOHN BUTLER,

PETITIONER-APPELLANT,

v.

CITY OF MILWAUKEE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
BONNIE L. GORDON, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

¶1 EICH, J. Nazir Al-Mujaahid appeals from an order denying his request that the respondent, City of Milwaukee, be ordered to pay attorney fees

and costs under WIS. STAT. § 814.025 (1997-98)¹ for maintaining a frivolous position in resisting his petition for return of seized property under WIS. STAT. § 968.20. Because we conclude that the frivolous-action statute doesn't apply to proceedings that are criminal in nature, such as Al-Mujaahid's petition for return of property, we reject his argument and affirm the order.

¶2 While investigating a reported residential burglary, two City of Milwaukee police officers found two sawed-off firearms unsecured in a room that was rented to Al-Mujaahid. The owner of the residence told the officers that the guns belonged to Al-Mujaahid. According to the officers, upon conducting a background check, they learned that Al-Mujaahid had juvenile convictions for armed and masked robbery (for which he had been incarcerated) and for possession of a dangerous weapon by a child. The officers confiscated the weapons and placed them in inventory at the Milwaukee Police Department.

¶3 Al-Mujaahid sought return of the weapons on several occasions and through various channels. Eventually, he filed a return-of-property petition with the circuit court under WIS. STAT. § 968.20, which sets forth procedures for recovering property seized by police. After an evidentiary hearing at which the City strenuously objected to returning the weapons to Al-Mujaahid because of his violent history, the court ordered their return. It went on to deny Al-Mujaahid's request for attorney fees and costs under WIS. STAT. § 814.025, ruling that the City did not maintain a frivolous position in opposing his petition.

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶4 The issue is one of statutory construction—a question of law which we consider de novo. See *State ex rel. Frederick v. McCaughtry*, 173 Wis. 2d 222, 225, 496 N.W.2d 177 (Ct. App. 1992). Our goal in interpreting a statute is to discern the legislature’s intent and to ascribe a meaning to the statute which comports with that intent. See *Rolo v. Goers*, 174 Wis. 2d 709, 715, 497 N.W.2d 724 (1993). We look first to the language of the statute; if it is clear and unambiguous on its face, we simply apply that language to the facts at hand. See *State v. Michael J.W.*, 210 Wis. 2d 132, 146, 565 N.W.2d 179 (Ct. App. 1997). And while we will not look behind the statute’s plain and unambiguous language, we do consider its parts in relationship to the whole statute and related sections. *Elliott v. Employers Mut. Cas. Co.*, 176 Wis. 2d 410, 414, 500 N.W.2d 397 (Ct. App. 1993).²

¶5 We begin by noting that the legislature has plainly and unambiguously classified a proceeding seeking the return of seized property under WIS. STAT. § 968.20 as criminal, rather than civil, in nature. Not only is chapter 968 itself entitled “Commencement of Criminal Proceedings,” but a related statute, WIS. STAT. § 967.01, states that chapters 967 to 969 are to be “referred to as the criminal procedure code and shall be interpreted as a unit.” We are satisfied that § 968.20 is unambiguously **criminal in nature**.

¶6 The frivolous-action statute, WIS. STAT. § 814.025, is equally clear. It is part of the Civil Procedure Code and, under WIS. STAT. § 801.01(2), it is one of the statutes governing “**procedure and practice in circuit courts of this state in**

² It is only when the statutory language is ambiguous that we examine the law’s scope, history, context, subject matter and purpose in order to determine legislative intent. See *State ex rel. Frederick v. McCaughtry*, 173 Wis. 2d 222, 226, 496 N.W.2d 177 (Ct. App. 1992). We discern no argument in either party’s briefs that either WIS. STAT. § 968.20 or WIS. STAT. § 814.025 is ambiguous, whether facially or in their application to the facts.

all civil actions and special proceedings.” By its very name and nature, it does not apply to criminal proceedings. We note in addition that § 814.025 allows frivolous-action costs “if an action or special proceeding is commenced or continued by a plaintiff or a counterclaim, defense or cross complaint commenced, used or continued by a defendant.” In proceedings under WIS. STAT. § 968.20, there are no plaintiffs or defendants, nor any opportunities to raise counterclaims, defenses or cross-complaints. The only parties are the petitioner and the responding district attorney or city attorney, whose only response, under the statute, is to object, or not to object, to return of the property. The proceedings are criminal, not civil in nature, and the plain language of the applicable statutes can lead to only one conclusion: that the civil frivolous-action statute, § 814.025, does not apply to criminal-type proceedings commenced under § 968.20.

By the Court.—Order affirmed.

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