COURT OF APPEALS
DECISION
DATED AND FILED

August 2, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP558 **Cir. Ct. No. 2003CT640**

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

TERRY L. GLAMANN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Marathon County: DOROTHY L. BAIN, Judge. *Reversed and cause remanded.*

¶1 HOOVER, P.J.[1] The State of Wisconsin appeals an order dismissing its case against Terry Glamann for operating while intoxicated (OWI), fourth offense. The State argues the circuit court erred when it found that Glamann was not operating a motor vehicle in an area held out to the public and therefore the OWI statute did not apply. Because the area where Glamann parked

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

was designated for employees, we conclude the OWI statute does apply and reverse the order.

BACKGROUND

¶2 Each year in the Township of Norrie there is a gathering of Vietnam veterans, called the Summer Twister, at the Wildlife Campgrounds. Persons wishing to attend the Twister must purchase a ticket to enter the property. The ticket also allows them to drive their vehicles on the premises and park in designated areas. Glamann worked at the Twister as a "runner" and was able to park in a lot that was designated for employees as well as Twister attendees driving motorcycles.

¶3 On July 27, 2003, at approximately 1 a.m., a police deputy was summoned to the campground to respond to a vehicle crash. Glamann had been driving a vehicle in the employee and motorcycle parking lot and struck a parked motorcycle. Glamann was ultimately arrested and charged with OWI as well as operating a motor vehicle with a prohibited alcohol concentration (PAC), fourth offense.

¶4 Glamann filed a motion to dismiss, arguing the property was a private campground not open to the general public and therefore he could not be charged with OWI. The circuit court concluded:

> I cannot find that this premises was held out to the public. Rather the premises was held out to that sector of the public which was willing to pay a fee of either $50 or $75 to enter; and further, the premises where the actual drunk driving occurred was limited access to only those individuals either parking a motorcycle or who were working at the event and parking their vehicles there.
>
> Clearly this is an insignificant sub-group of the public and not the public in general.

Thus, the court dismissed the action.

DISCUSSION

¶5 The issue in this case is whether the parking lot where Glamann was driving falls under the dictates of WIS. STAT. § 346.61, labeled "Applicability of sections relating to reckless and drunken driving," which states:

> 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 employees 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.

We accept the circuit court's findings as to the parking lot's use as not clearly erroneous. *See* ***State v. Johnson***, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990) (circuit court's findings of fact will not be disturbed unless they are clearly erroneous). Based on these findings, this case's resolution turns on a question of statutory interpretation that we review de novo. *See* ***Truttschel v. Martin***, 208 Wis. 2d 361, 364-65, 560 N.W.2d 315 (Ct. App. 1997).

¶6 The court noted two things it considered important when determining whether, under WIS. STAT. § 346.61, the drunk driving laws applied in this case. First, people wishing to park in the lot had to pay a rather large fee; and second, only those driving motorcycles or who were employees could park in the lot. Thus, it concluded the premises were not held out to the public.

¶7 We need not determine whether the court correctly concluded that the area where Glamann parked was held out to the public because we conclude it was an area provided for employee parking. WISCONSIN STAT. § 346.61 contains

several types of premises to which the OWI laws apply, one being is a "premises held out to the public." However, the statute also provides that the OWI laws apply on "premises provided by employers to employees." Here, there is no dispute that Glamann was an employee of the campground or that the accident occurred in a lot designated for employees. Thus, WIS. STAT. § 346.61 specifically makes the OWI law applicable in this case.

¶8 Furthermore, regarding the payment of a fee, WIS. STAT. § 346.61 specifically says that the OWI laws apply to a premises "whether or not a fee is charged." While we accept the circuit court's implicit determination that the fee required here is fairly high, nothing in the statute indicates that a fee of a particular dollar level takes a premises outside the statute.

¶9 Because the area where the accident occurred falls under the provisions of WIS. STAT. § 346.61, the OWI laws apply to this case. Therefore, the circuit court erroneously dismissed the matter.

By the Court.—Order reversed and cause remanded.

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