

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 14, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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.

**Appeal Nos. 2005AP1067
2005AP1068**

**Cir. Ct. Nos. 2003TR7432
2003TR7343**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITY OF SHEBOYGAN,

PLAINTIFF-RESPONDENT,

V.

KORRY L. ARDELL,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Sheboygan County:
TIMOTHY M. VAN AKKEREN, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Korry L. Ardell seeks to avoid the consequences of a stipulation resolving eight traffic cases Sheboygan County Circuit Court

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

entered into by his attorney of record. Ardell argues that because he did not sign the stipulation, it is not valid. Ardell did not timely appeal from the trial court's denial of his motion to reopen and we affirm.

¶2 On October 6, 2003, Ardell's attorney entered into a stipulation with the City of Sheboygan resolving eight traffic cases. A Sheboygan county court commissioner approved the stipulation that same day. Ardell, appearing pro se, wrote the trial court on October 9, 2003, seeking to reopen the cases because "the stipulation for these charges and several other citations I have from the Sheboygan Police Department is different then from what my attorney ... told me over the phone."

¶3 At a motion hearing on November 18, 2003, the trial court heard argument from Ardell, his former attorney and the assistant city attorney. The court concluded that Ardell was suffering from "buyer's remorse" and denied his motion to reopen. Ardell did not appeal.

¶4 On February 2, 2004, the trial court granted the City's motion to reopen several cases and enter findings of guilty that had been dismissed under the terms of the stipulation. Ardell did not appeal.

¶5 Ardell did not stir into action until he filed a pro se motion to reopen on January 24, 2005. His new attorney withdrew the motion on March 23, 2005. Once again appearing pro se, Ardell filed motions to reopen on March 30, 2005, and April 12, 2005. Both were promptly denied in letters from the trial court. Ardell filed a notice of appeal on April 26, 2005. While he failed to specify the order or judgment being appealed, we conclude that he is appealing from the trial court's letters of April 1 and 18, 2005.

¶6 An appeal from the final disposition of a traffic regulation case must be filed within ninety days of the docket entry confirming disposition. *City of Sheboygan v. Flores*, 229 Wis. 2d 242, 598 N.W.2d 307 (Ct. App. 1999); WIS. STAT. RULE 809.40(2); WIS. STAT. § 808.04. His two requests in 2005 to reopen the stipulation were not timely.

¶7 WISCONSIN STAT. § 345.51 provides:

[T]here shall be no reopening of default judgments unless allowed by order of the trial court after notice and motion duly made and upon good cause shown. The notice of motion shall be filed within 6 months after the judgment is entered in the court record. Default judgments for purposes of this section include pleas of guilty, no contest and forfeitures of deposit.

This section applies to Ardell's no contest plea entered via the stipulation. *See* WIS. STAT. § 345.20(2)(a) (“[T]he trial of forfeiture actions for the violation of traffic regulations shall be governed by ss. 345.21 to 345.53. Where no specific procedure is provided in ss. 345.21 to 345.53, ch. 799 shall apply to such actions in circuit court.”). Ardell's 2005 requests were untimely and could not have been granted by the trial court. *See Wisconsin Natural Gas Co. v. Kletsch*, 95 Wis. 2d 691, 696, 291 N.W.2d 640 (Ct. App. 1980) (Where a specific statute controls the reopening of default judgments a motion to reopen that is untimely cannot be granted.). He cannot appeal from a decision that the trial court was not competent to make.

¶8 In 2003 Ardell did make a timely request to reopen the judgment. His plea was entered on October 6, 2003. The trial court conducted a hearing and denied the motion to reopen on November 18, 2003, well within the statutory six-month period to challenge a judgment in a traffic case. Ardell did not file a notice

of appeal within ninety days of the November 18, 2003 final order of the trial court. The April 26, 2005 notice of appeal was untimely as to the November 18, 2003 order and this court lacks jurisdiction over Ardell's appeal. *Flores*, 229 Wis. 2d at 248-49.

By the Court.—Orders affirmed.

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

