

**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 No. 2005AP1389

Cir. Ct. No. 2003TR4997

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITY OF SHEBOYGAN,

PLAINTIFF-RESPONDENT,

V.

KORRY L. ARDELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County:
L. EDWARD STENGEL, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Korry L. Ardell seeks to avoid the consequences of a stipulation resolving eight traffic cases in several branches of the Sheboygan

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.

County Circuit Court entered into by his attorney of record. Ardell argues that because he did not sign the stipulation, it is not valid. Ardell is appealing from the trial court's denial of his untimely motion to reopen and we affirm because the trial court lost competency to act on the motion to reopen six months after Ardell entered his plea.

¶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 this case because "[a]lthough the stipulation for this charge and several other citations I received from the Sheboygan Police Department is different then (sic) from what my attorney ... told me over the phone." The trial court took no action on Ardell's request.

¶3 On February 5, 2004, the trial court granted the City's motion to reopen several cases that had been dismissed under the terms of the stipulation. Ardell did not appeal.

¶4 Ardell did not stir into action until he filed a pro se motion to reopen on January 24, 2005. In a letter dated January 27, 2005, the trial court denied this request. Ardell filed another motion to reopen on May 13, 2005. It was denied in a May 18, 2005 letter from the trial court. Ardell filed a notice of appeal on May 23, 2005.²

² While Ardell fails to specify the order or judgment from which he is appealing, we conclude that he is appealing from the trial court's letter of May 18, 2005.

¶5 WISCONSIN STAT. § 345.51 provides the only recourse of attacking a default judgment in traffic regulation cases:

[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.”).

¶6 Ardell's 2005 requests, made more than fifteen months after his plea, were untimely and could not have been granted by the trial court. *See Wisconsin Natural Gas Co. v. Kletsch*, 95 Wis. 2d 691, 696-97, 291 N.W.2d 640 (Ct. App. 1980) (When 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. In establishing a six-month window of opportunity to reopen a default judgment, the legislature divested the trial court of the authority to consider a motion to reopen filed after six months. *See State v. Schertz*, 2002 WI App 289, ¶6, 258 Wis. 2d 351, 655 N.W.2d 175 (Where statutory time limits are mandatory, the trial court loses its competency to exercise its jurisdiction over the proceedings upon the expiration of the time limits.). We cannot consider the matter further because we do not have jurisdiction to consider appeals from orders the trial court was not competent to enter.

By the Court.—Order affirmed.

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

