COURT OF APPEALS
DECISION
DATED AND FILED

August 2, 2006

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. 2006AP452
2006AP453
2006AP454
2006AP455

Cir. Ct. Nos. 2004TR1839
2004TR2226
2004TR2421
2004TR2612

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: GARY LANGHOFF, Judge. *Affirmed.*

¶1 NETTESHEIM, J.[1] Korry L. Ardell appeals pro se from circuit court orders denying his motion to reopen four default judgments entered against him for operating after suspension (OAS). He argues that a stipulation he signed did not accurately reflect what he thought he agreed to at a plea hearing moments earlier. He contends he discovered this discrepancy when he was later mailed the judgments and fines due. Ardell's argument fails. We conclude that the stipulation is binding under WIS. STAT. § 807.05 and affirm.

BACKGROUND

¶2 In late February and early March of 2004, Ardell received six OAS tickets and one ticket for tire squealing. The six OAS tickets were case numbers 04TR1839, 04TR2226, 04TR2421, 04TR1652, 04TR1723 and 04TR2612; the tire-squealing ticket was case number 04FO402. Three circuit court documents entitled "Order for Pre-Trial, Change of Plea, Trial and Discovery" recite all seven case numbers, as do two letters to Ardell from the circuit court regarding a plea hearing and jury trial on those cases.

¶3 On November 8, 2005, the day trial was set to begin on OAS case number 04TR2612, Ardell decided to change his plea on that charge to no contest. After calling case number 04TR2612, the court stated: "It is the Court's understanding that the parties have come to a stipulation regarding the instant case as well as the other pending cases." The prosecutor then put on the record the agreement the City and Ardell had reached:

[1] This appeal is decided by one judge 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.

> Mr. Ardell will be pleading into this charge and agreeing to the $50.00 forfeiture and as far as the overall agreement, as I understand it including this ticket, there are currently five pending [OAS] tickets and also one other traffic ticket, a tire squealing, an ordinance. The agreement is that he will plead to three of those including this one today … and then the other two [OASs] and the tire squealing would be dismissed. The caveat is that if Mr. Ardell were to receive a ticket for [OAS] or Operating After Revocation at any time prior to August 14, 2006 … those three charges that are being conditionally dismissed would be reopened and the convictions automatically entered at the bond amounts.

This exchange ensued:

> THE COURT: Is that the agreement?
>
> THE DEFENDANT: That's correct.
>
> THE COURT: With respect to today's case, you are changing your plea to no contest?
>
> THE DEFENDANT: Yes.

¶4 The circuit court then accepted Ardell's pleas and instructed Ardell and the prosecutor to go to the prosecutor's office and put the stipulation in writing. They walked to the prosecutor's office where the stipulation was prepared and signed. The stipulation recited a total of six case numbers and stated, "Charge(s): Tire Squealing, OAS x 5" and stated that Ardell "pleads guilty to 04TR1839, 2226 and 2421. $181.00 forfeiture on each. 04FO402, 04TR1652 and 04TR1723 are dismissed without prejudice." Case number 04TR2612, the OAS charge to which Ardell had just pled no contest at the hearing, was not mentioned on the stipulation.

¶5 In a letter filed December 5, 2005, Ardell moved to reopen all seven cases: the six cases recited on the written stipulation and 04TR2612, the OAS charge to which Ardell had pled no contest at the hearing. He claimed that, upon

receiving the judgments and fine amounts in the mail, he saw that he had pled to four OAS charges instead of the three to which he had agreed to plead at the November 8 hearing. Ardell also pointed out that as of that time he had not received any further OAS tickets since the November 8, 2005 hearing.

¶6 By letter dated January 17, 2006, the circuit court stated that it had reviewed the stipulation whereby Ardell:

> pled guilty to the allegations in 04 TR 1839, 04 TR 2226, and 04 TR 2421. All other citations were conditionally dismissed without prejudice….
>
> Pursuant to § 807.05, Stats., the stipulation you reached (from the court's view) is binding upon you and the City of Sheboygan.

The court therefore "[saw] no reason to vitiate the stipulation or reopen any of the cases."

¶7 On February 2, 2006, Ardell wrote a second letter to the circuit court. He pointed out that in its January 17 letter the circuit court did not address case 04TR2612. On February 6, the circuit court summarily denied Ardell's request to reopen 04TR2612. Ardell appeals from that denial.[2]

STANDARD OF REVIEW

¶8 WISCONSIN STAT. § 345.51 governs the reopening of default judgments in traffic cases. "[T]here shall be no reopening of default judgments

[2] Ardell's notice of appeal states that he appeals from the entire judgment of November 8, 2005, but this court denied his motion to extend the time to appeal by order dated January 18, 2006.

unless allowed by order of the trial court after notice and motion duly made and upon good cause shown." ***Id.*** For purposes of § 345.51, default judgments include pleas of guilty and no contest. ***Id.*** This statute, like WIS. STAT. § 806.07, its counterpart addressing relief from judgments in civil matters, vests the circuit court with discretion to reopen judgments. *See* ***Arents v. ANR Pipeline Co.***, 2005 WI App 61, ¶71, 281 Wis. 2d 173, 696 N.W.2d 194 (stating that a ruling on a § 806.07 motion to reopen a judgment is reviewed under an erroneous exercise of discretion standard), *review denied*, 2005 WI 136, 285 Wis. 2d 626, 703 N.W.2d 376 (No. 2003AP1488).

¶9 A circuit court's discretionary decision will not be reversed unless the court erroneously exercised its discretion. ***Sukala v. Heritage Mut. Ins. Co.***, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. A discretionary decision contemplates a process of reasoning that depends on facts that are in the record, or reasonably derived by inference from them, and a conclusion based on the application of the correct legal standard. ***Id.*** However, whether a settlement is binding and thus enforceable by a court is a question of law that we decide de novo. ***Cavanaugh v. Andrade***, 191 Wis. 2d 244, 264, 528 N.W.2d 492 (Ct. App. 1995), *reversed on other grounds*, 202 Wis. 2d 290, 550 N.W.2d 103 (1996).

DISCUSSION

¶10 The crux of Ardell's argument is that the stipulation he signed was not the stipulation he agreed to during the proceedings moments earlier in the circuit court. He contends that he agreed to plead to three OAS citations but discovered later that he had pled to four. He asserts that he was hustled from the courtroom to the city attorney's office without being given a chance to review the

stipulation before signing it to verify "that it was the same three case numbers that I agreed to plead into."

¶11 Ardell argues that the circuit court should have ordered the cases reopened because his letter demonstrated good cause, apparently referring to WIS. STAT. § 345.51. However, the court found that the agreement by which Ardell pled guilty to 04TR1839, 04TR2226, and 04TR2421 and the other citations were conditionally dismissed was binding under WIS. STAT. § 807.05. As we have noted, whether a settlement agreement is binding and thus enforceable by a court is a question of law we decide de novo. ***Cavanaugh***, 191 Wis. 2d at 264.

¶12 WISCONSIN STAT. § 807.05 provides:

> No agreement, stipulation, or consent between the parties or their attorneys, in respect to the proceedings in an action or special proceeding shall be binding unless made in court or during a proceeding conducted under s. 807.13 or 967.08 and entered in the minutes or recorded by the reporter, or made in writing and subscribed by the party to be bound thereby or the party's attorney.

Oral stipulations made in court and recorded by a reporter are binding, as are written stipulations that are signed by the "party to be bound thereby." ***Id.*** As the City observes, three of the cases were disposed of by written stipulation and the fourth, 04TR2612, was disposed of by oral stipulation at the plea hearing.

¶13 We recognize that the prosecutor stated that "*including this ticket* [04TR2612], there are currently five pending [OAS] tickets" and that Ardell would "plead to three of those *including* this one [04TR2612] today." (Emphasis added.) We acknowledge that the phrasing might have been better. But when

read in context of the entire hearing and the case history, the meaning becomes clear.

¶14 The circuit court called case number 04TR2612 and stated its understanding that the parties had reached a stipulation "regarding the instant case *as well as the other pending cases*." (Emphasis added.) Although the prosecutor responded that "including" 04TR2612 there were five pending OAS tickets, he went on to say that Ardell agreed to "plead to three of those including this one today … and then the other two [OASs] and the tire squealing would be dismissed." "Three of those" had to mean three cases *not* including 04TR2612 because the court dealt with 04TR2612 separately after the agreement was put on the record.

¶15 Ardell's assertion that he thought he pled only to three, one being 04TR2612, also makes no numeric sense. The parties and the circuit court all were aware that seven citations were to be disposed of at the hearing. Numerous documents, including two letters from the court personally addressed to Ardell, referenced the seven cases. If "five pending [OAS] tickets" included 04TR2612, the tire squealing ticket brings the total only to six. Similarly, agreeing to plead to "three of those" could not have included 04TR2612 because dismissing "the other two [OASs] and the tire squealing" again would yield only six cases.

¶16 Ardell offers no explanation for what he thought the disposition of the seventh citation might have been. In his letter to the circuit court seeking to reopen his case, Ardell explained the difficulty of gaining and maintaining employment without a driver's license and that even "one extra traffic citation could play a great role in the future of me not being able to obtain a driver's

license once again." We are not unsympathetic to his plight, but we suspect he may be seizing on the prosecutor's unfortunate choice of words to keep to a minimum the number of strikes against his driving record.

CONCLUSION

¶17 The written stipulation reflected the three OAS citations to which Ardell pled guilty *in addition to* 04TR2612, the case he orally stipulated to as a discrete matter. The stipulation Ardell signed is binding, and the circuit court properly exercised its discretion in refusing to reopen the case. We affirm.

By the Court.—Orders affirmed.

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