

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 1, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**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.

**No. 00-3355-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-APPELLANT,**

**V.**

**KAY H. DAWSON,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Door County:  
D. T. EHLERS, Judge. *Affirmed.*

¶1 CANE, C.J.<sup>1</sup> The single issue on appeal is whether a local municipality's posted speed limit sign is unenforceable because it fails to comply

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) and is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

with the minimum height requirements set forth in the Uniform Traffic Control Devices Manual. The trial court concluded that the manual's minimum height requirement is mandatory in order for the local posted speed limit to be enforceable. This court agrees.

¶2 The facts are undisputed. A ranger in the Potawatomi State Park observed Kay Dawson operate her car at twenty-six miles per hour in an area where two posted signs indicated a speed limit of ten miles per hour. Dawson concedes that she saw the signs and was driving twenty-six miles per hour. The ranger issued a traffic citation charging her with speeding sixteen miles per hour over the ten mile-per-hour limit, contrary to WIS. STAT. § 346.57(5). It is undisputed that the traffic signs did not comply with the manual's minimum height requirements. Among her defenses raised at trial, Dawson argued that because it is undisputed that the signs failed to comply with the minimum height requirements as set forth in the manual, the posted speed limit is unenforceable. The trial court agreed and dismissed the citation.

¶3 Both sides agree that the State had to prove three elements under WIS. STAT. § 346.57(5):<sup>2</sup> (1) Dawson drove a vehicle on a highway; (2) at a speed exceeding the established speed limit; and (3) the established speed limit was indicated by official signs.

¶4 For a posted speeding sign to be enforceable, WIS. STAT. § 346.02(7) reads in relevant part:

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<sup>2</sup> WISCONSIN STAT. § 346.57(5) provides in pertinent part:

ZONED AND POSTED LIMITS. In addition to complying with the speed restrictions imposed by subs. (2) and (3), no person shall drive a vehicle in excess of any speed limit established pursuant to law by state or local authorities and indicated by official signs.

APPLICABILITY OF PROVISIONS REQUIRING SIGNPOSTING. No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

¶5 In addition, WIS. STAT. § 349.065 sets forth the standards and requirements for the design, installation and operational use of official traffic signs. The sign is required to conform to the Uniform Traffic Control Manual. This section states:

**Uniform traffic control devices.**<sup>[3]</sup> Local authorities shall place and maintain traffic control devices upon highways under their jurisdiction to regulate, warn, guide or inform traffic. The design, installation and operation or use of new traffic control devices placed and maintained by local authorities after the adoption of the uniform traffic control devices manual under s. 84.02(4)(e) *shall conform to the manual*. After January 1, 1977, all traffic control devices placed and maintained by local authorities *shall conform to the manual*. (Emphasis added.)

¶6 The trial court concluded that although the sign was sufficiently legible to be observed by an ordinarily observant person, it was not in a proper position because it did not comply with the manual's minimum height requirements. It therefore dismissed the citation.

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<sup>3</sup> WISCONSIN STAT. § 340.01(38) defines official traffic control device as synonymous with official traffic signs. It reads:

"Official traffic control device" means all signs, signals, markings and devices, not inconsistent with chs. 341 to 349, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic; and includes the terms "official traffic sign" and "official traffic signal". (Emphasis added.)

¶7 The State appeals, contending that the trial court erred by rejecting its argument that WIS. STAT. § 346.02(7) creates a single objective standard as to whether a reasonably observant person would have seen the sign. It reasons that because Dawson does not dispute that the sign was sufficiently legible to be observed by an ordinarily observant person, the trial court erred by applying a second requirement that the sign must be in a proper position. This court is not persuaded.

¶8 The statutory scheme is very simple. If a local authority such as the DNR wants to impose a speed restriction, it must post a speed limit sign that is both sufficiently legible to be seen by an ordinarily observant person and in a proper position. The fact that the legislature specifically joined the two requirements in WIS. STAT. § 346.02(7) with the conjunction “and” demonstrates that there are two distinct requirements to be met. Because it is undisputed that the signs were not in a proper position as required under the Manual’s minimum height requirements, the posted speed limit was unenforceable. Therefore, the trial court had no alternative but to dismiss the citation.<sup>4</sup>

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<sup>4</sup> Dawson filed a motion with this court arguing that the State’s appeal is frivolous pursuant to WIS. STAT. § 809.25(3). This statute provides in part:

(c) In order to find an appeal or cross-appeal to be frivolous under par. (a), the court must find one or more of the following:

1. The appeal or cross-appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

2. The party or the party's attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

(continued)

*By the Court.*—Judgment affirmed. Costs denied to respondent.

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

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This court is not persuaded that the State's appeal was filed in bad faith or without any reasonable basis in law. Consequently, this court denies Dawson's motion for costs under WIS. STAT. § 809.25(3).

