

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 26, 2008

David R. Schanker
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. 2008AP1615

Cir. Ct. No. 2008TR280

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE REFUSAL OF HOWARD M. STELZER, JR.:

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

HOWARD M. STELZER, JR.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Manitowoc County:
FRED H. HAZLEWOOD, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Howard M. Stelzer, Jr., appeals from an order denying relief from the revocation of his operating privilege due to his refusal to submit to an implied consent blood alcohol test in violation of WIS. STAT. § 343.305(2). The trial court denied Stelzer’s motion for a refusal hearing as being untimely. We agree and affirm the order.

¶2 The facts concerning Stelzer’s request for a refusal hearing are undisputed. On December 18, 2007, Stelzer was arrested for operating a motor vehicle while intoxicated, refused to submit to a request for a blood alcohol evidentiary test, and was issued a Notice of Intent to Revoke Operating Privilege and Temporary Driving Receipt (Notice) pursuant to WIS. STAT. § 343.305(9). The Notice contained the § 343.305(9)(a)4. required information concerning Stelzer’s statutory right to request a refusal hearing:

That the person may request a hearing on the revocation within 10 days by mailing or delivering a written request to the court whose address is specified in the notice. If no request for a hearing is received within the 10-day period, the revocation period commences 30 days after the notice is issued.

¶3 Stelzer requested a refusal hearing on January 15, 2008. The trial court denied Stelzer’s motion to reinstate his right to a refusal hearing because of his “not having timely filed a request for a refusal hearing within [the] statutory time limits.” The State asserts that Stelzer requested the refusal hearing twenty-eight days after he received the notice of his right to do so. Stelzer claims that under WIS. STAT. § 801.15(1)(b), Saturdays, Sundays, and holidays would be excluded when calculating the ten-day period and that his refusal hearing request

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

was therefore due on January 7, 2008, which amounted to twenty days after he received notice. Either way, Stelzer's January 15 request for a refusal hearing was not timely under WIS. STAT. § 343.305(9)(a)4.

¶4 The appellate issue, consistent with the trial court's basis for denying the motion for a hearing, is whether Stelzer's untimely filing of his request deprived the trial court of the power to exercise its authority over a refusal hearing. We conclude that it did.

¶5 A trial court's competency to proceed is a question of law which we review de novo. *State v. Bollig*, 222 Wis. 2d 558, 563, 587 N.W.2d 908 (1998). The controlling statute requires that a request for a refusal hearing must be made within ten days of the date of the refusal. Under the agreed facts, the trial court's holding that Stelzer's hearing request was untimely is correct. Stelzer, conceding that he received the Notice on December 18, 2007, does not contend that the Notice failed to contain the information required by WIS. STAT. § 343.305(9)(a)4.

¶6 Failure of a party to comply with a statutory mandate will result in a loss of competency preventing the court from deciding the issue presented. *See Achtor v. Pewaukee Lake Sanitary Dist.*, 88 Wis. 2d 658, 663-64, 277 N.W.2d 778 (1979). Stelzer's failure to file his request for a refusal hearing within ten days deprived the trial court of competence to address the issues he raised before the trial court. We need not address any of Stelzer's other appellate arguments in light of his failure to timely request a hearing resulting in the loss of the trial court's competency to rule further in the matter. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (where there is at least one sufficient ground to support the trial court order, we need not discuss other grounds).

By the Court.—Order affirmed.

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

