

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 30, 2009

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. 2008AP3154

Cir. Ct. No. 2007CV11889

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

NICKOLA STOJSAVLJEVIC,

PLAINTIFF-APPELLANT,

v.

CITY OF MILWAUKEE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
MEL FLANAGAN, Judge. *Affirmed.*

¶1 CURLEY, P.J.¹ Nickola Stojavljevic appeals the order of the circuit court that affirmed the judgment of the municipal court finding him guilty of violating MILWAUKEE, WIS., ORDINANCE § 101-27-1-b, regulating night

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2007-08).

parking. *See* WIS. STAT. § 800.14 (2007-08) (appeal from decision by municipal court).² Because the transcript of the trial held in the municipal court supports the municipal court’s finding of guilt, this court affirms.

I. BACKGROUND.

¶2 Stojavljevic was issued a nonmoving traffic citation for violating the City of Milwaukee’s night parking rules. The vehicle ticketed was registered to Stojavljevic. Stojavljevic contested the ticket and a trial was held in the Milwaukee Municipal Court.

¶3 A parking checker for the City testified that on June 14, 2007, at 2:00 a.m., he observed a “Freightliner” parked in the 1500 block of South Barclay Street. The parking checker said that he gave the vehicle a citation because the truck was ineligible for night parking.³ According to the parking checker, the vehicle in question was a “Freightliner semi-truck tractor,” which the parking checker believed was prohibited by city ordinance from parking on the city streets between the hours of 2:00 a.m. and 6:00 a.m. During redirect, the parking checker explained that he knew it was a commercial vehicle because of the existence of a business logo on the door of the truck, which also included a phone number. The parking checker said that on the citation he wrote that the truck was a “commercial

² All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

³ MILWAUKEE, WIS., ORDINANCE § 101-27-1-b reads:

1. RESTRICTIONS....

b. No vehicle of any kind or description shall be parked on any highway between the hours of 2 a.m. and 6 a.m. except as otherwise restricted or permitted herein.

vehicle.” The parking checker also testified that he did not see anyone move the truck while he was there. He also explained how permits for night parking can be purchased, and with the aid of a spotlight, he determined that early morning that no current night parking permit was displayed on the truck.

¶4 Stojavljevic attempted to cross-examine the parking checker concerning entries on the court docket, which the circuit court prohibited because the parking checker would have had no knowledge of those entries or whether they were correct. Ultimately, Stojavljevic presented his argument to the court. It was his position that:

The ordinance I’m accused of violating, [ORDINANCE] 101-27[-]4,⁴ states the vehicles that are ineligible. It’s listed what vehicles are. The City has not proven that the vehicle cited is on that list. It did not meet its burden of proof. It is a motor vehicle. It might be a commercial vehicle, but he has to prove that that vehicle is on the ordinance I was accused of violating and believe [sic] I have not done so.

¶5 The municipal judge found that the City had met its burden of proof. The municipal judge found that the parking checker established that the truck listed to Stojavljevic was parked during a period of time that requires a parking permit, and it was, in the opinion of the parking checker, a commercial vehicle, which is ineligible for a night parking permit. The municipal judge remarked that even if Stojavljevic’s truck was eligible for a night parking permit, as

⁴ MILWAUKEE, WIS., ORDINANCE § 101-27-4 reads:

4. CERTAIN VEHICLES NOT ELIGIBLE. Motor trucks, except as provided elsewhere in the code, luxury limousines, as defined in s.100-3-11, motor buses, motor delivery wagons, trailers, semitrailers, camping trailers, motor homes, mobile homes and tractors shall not be eligible for such special privilege parking permits.

Stojsavljevic apparently contends, Stojsavljevic failed to have one on his truck. Consequently, the judge found him guilty and ordered him to pay a \$30.00 fine.

¶6 Stojsavljevic then appealed the matter to the circuit court. A scheduling conference was held on July 16, 2008, at which time the circuit court ordered briefs. In Stojsavljevic's *pro se* brief, he sets out the history of several other citations he has received from the City for parking violations, and notes that in several of them the cases were dismissed. He also complained about the procedures in the municipal court. He argued that pursuant to WIS. STAT. § 345.11(2), a uniform traffic citation should have been used. He also expressed his frustration with the municipal judge's various rulings regarding the prohibiting of questions asked by Stojsavljevic, the refusal to admit evidence requested by Stojsavljevic, and her advice to Stojsavljevic on how to try the case. Stojsavljevic wrote that the word "Freightliner," which was used to describe his truck, is not listed in the ordinance. At the end of his brief, he questioned whether the City proved the case.

¶7 The City's brief explained that uniform traffic citations were not required; that the result of other cases concerning citations Stojsavljevic has received are not relevant to whether this citation was proper; and concluded that the testimony of the parking checker satisfied the burden of proof.

¶8 On the date set for oral argument and decision, Stojsavljevic did not appear. This date was included in the briefing schedule which was entered when Stojsavljevic was present. Apparently the circuit court orally affirmed the municipal judge's decision and dismissed the appeal.⁵ Stojsavljevic then filed a

⁵ There is no transcript of the circuit court's decision in the record.

motion to reopen. In his moving papers, he stated that: “this case was for review of transcript, not oral decision.” In a written decision, the circuit court refused to reopen the matter, noting that “the court found that the record supports the decision of the Municipal Court.” Stojavljevic has appealed that decision.

II. ANALYSIS.

¶9 Stojavljevic, now represented by an attorney, has claimed in his briefs to this court that the municipal court, as well as the circuit court, have erred because the City has not complied with WIS. STAT. § 349.13(1e)(c)1. This particular statute, in relevant part, reads: “no prohibition, limitation or restriction on parking imposed under this section is effective unless official traffic signs or markers or parking meters have been placed or erected indicating the particular prohibition, limitation or restriction.” *Id.*

¶10 The standard of review for this court of a municipal decision under WIS. STAT. § 800.14(5) is limited to determining whether evidence supports the municipal court’s determination. *Village of Williams Bay v. Metzl*, 124 Wis. 2d 356, 361, 369 N.W.2d 186 (Ct. App. 1985). Section 800.14(5) states that “an appeal shall be based upon a review of a transcript of the proceedings.” In addition, we will not reverse a factual determination unless the facts are clearly erroneous. *Metzl*, 124 Wis. 2d at 361.

¶11 A review of the transcript supports the municipal judge’s determination that the night parking restriction was violated. MILWAUKEE, WIS., ORDINANCE § 101-27-1-b prohibits parking on any highway between 2:00 a.m. and 6:00 a.m. Section 101-27-2-a creates an exception to the earlier mentioned parking restriction for vehicles purchasing parking permits. Section 101-27-2-b states that a “motor truck” used for a commercial purpose is not eligible to

purchase a parking permit. Finally, § 101-27-4, entitled “CERTAIN VEHICLES NOT ELIGIBLE,” lists various vehicles that are not eligible for parking permits. Among those listed as being ineligible are “semitrailers” and “tractors.”

¶12 The transcript of the court trial reflects that during the restricted parking hours, Stojsavljevic’s truck, described as a “Freightliner semi-truck tractor,” was parked on a city street. In addition, the transcript supports a finding by the municipal judge that even if Stojsavljevic’s vehicle was eligible for a parking permit, his truck did not have one displayed on the date he received the citation.

¶13 On appeal, Stojsavljevic now argues, for the first time, that both the municipal court judge and the circuit court judge erred because the City failed to prove that signs restricting parking were ever displayed. The City has responded that because the issue of signage was never raised at the trial, the matter has been waived. This court agrees.

¶14 This court has repeatedly held that it will not consider an issue raised for the first time on appeal. See *Tomah-Mauston Broad. Co. v. Eklund*, 143 Wis. 2d 648, 657-58, 422 N.W.2d 169 (Ct. App. 1988). Although this court may exercise its own discretion to reach an issue, in view of Stojsavljevic’s repeated waiver of this issue at the municipal and circuit court, this court declines to review the issue of signage.⁶

⁶ Were this court to address the merits of the argument posed by Stojsavljevic, it appears that the City would still prevail. Stojsavljevic’s reliance on WIS. STAT. § 349.13(1e)(c)1. may be misplaced. Instead, as the City points out, night parking restrictions seem to be governed by § 349.13(1e)(c)2., which states, in relevant part:

(continued)

¶15 For the reasons stated, this court affirms.

By the Court.—Order affirmed.

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

Parking regulations that prohibit, limit or restrict the parking of vehicles ... during any hours between 12 midnight and 7 a.m., or any portion thereof ... shall be effective in the municipality upon a two-thirds vote of its respective governing body ... when official traffic signs have been placed or erected at or reasonably near the corporate limits of the municipality on all state and county trunk highways and connecting highways informing motorists that ... night parking regulations ... are in effect in the municipality.

Therefore, according to the City, signs were not required to be placed on South Barclay Street. See *City of Milwaukee v. Hoffmann*, 29 Wis. 2d 193, 138 N.W.2d 223 (1965).

