

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 11, 2002

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. 02-0306-FT

Cir. Ct. No. 99-JV-12D

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF MARK H.K.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MARK H.K.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Trempealeau County:

JOHN A. DAMON, Judge. *Reversed.*

¶1 HOOVER, P.J.¹ Mark H.K. appeals a dispositional order adjudicating him delinquent for criminal damage to property, contrary to WIS. STAT. § 943.01(1).² He argues that the evidence that he urinated on post office property was insufficient to prove criminal damage to property. This court concludes that § 943.01(1) does not contemplate urination as damage because it requires only cleaning and not repair. Damage connotes more than impermanent, inconsequential soiling. Accordingly, the order is reversed.

BACKGROUND

¶2 The State filed a petition alleging that Mark was delinquent because he had caused criminal damage to property by urinating on the lobby floor³ of the Osseo Post Office. At trial to the court, post office employee Connie Solfest testified that on March 3 at about 10 a.m., she heard liquid dripping and observed a yellow liquid coming through the post office boxes. She then observed a yellow puddle on the lobby floor and saw that Mark was the only person in the lobby. Solfest “cleaned up the mess,” using a \$50 cleaning kit and taking about forty-five minutes to clean.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f), 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.

² WISCONSIN STAT. § 943.01(1) provides, “Whoever intentionally causes damage to any physical property of another without the person’s consent is guilty of a Class A misdemeanor.”

³ The record implies that it was a hard floor.

¶3 Mark testified that he went into the post office to check his mailbox and noticed what appeared to be urine in the lobby. He testified that he did not urinate in the post office.⁴

¶4 The court found Solfest's testimony more credible than Mark's. It concluded that Mark had committed criminal damage to property by urinating in the post office lobby and found him delinquent. The court entered a dispositional order applicable to both this case and another. Mark appeals that portion of the order addressing his criminal damage to property.

DISCUSSION

¶5 Mark argues that the evidence that he urinated on post office property was insufficient to prove criminal damage to property because there was no evidence of damage to the post office lobby. The precise issue here is whether urinating on a floor constitutes damage in violation of WIS. STAT. § 943.01(1). This court concludes that urinating does not cause damage, and that cleaning up urine is not the same as repairing. Damage connotes more than a superficial, transient alteration. It involves some degree of inherent structural alteration.

¶6 WISCONSIN STAT. § 943.01(1) provides that "Whoever intentionally causes damage to any physical property of another without the person's consent" is guilty of a misdemeanor. This case turns on the interpretation of § 943.01(1). The interpretation of a statute and its application to a set of facts are questions of law we review de novo. *Reyes v. Greatway Ins. Co.*, 227 Wis. 2d 357, 364-65,

⁴ On appeal, Mark concedes that sufficient evidence supports the trial court's finding that he urinated in the post office lobby.

597 N.W.2d 687 (1999). "The purpose of statutory interpretation is to discern the intent of the legislature," and we look to the plain language of the statute to determine intent. *Id.* at 365. Only if the language of the statute renders legislative intent ambiguous do we resort to judicial construction. *Id.*

¶7 The definition of “damage” includes “loss due to injury” and “injury or harm to person, property, or reputation.” WEBSTER’S THIRD NEW INT’L DICTIONARY 571 (unabr. 1993). The first element of criminal damage to property requires that the defendant caused damage to physical property: “The word ‘damage’ includes anything from mere defacement to total destruction.” WIS JI—CRIMINAL 1400.

¶8 To “deface” means “to destroy or mar the face or external appearance of : DISFIGURE : injure, spoil, or mar by effacing important features or portions” thereof. WEBSTER, *supra*, at 590. “Deface” does not include soiling the external appearance of property. There was no evidence in this case that any post office property was disfigured, injured, spoiled or marred by the urine.

¶9 WISCONSIN STAT. § 943.01 establishes a penalty structure that varies according to the amount that the property is “reduced in value.” The reduction in value is defined “by the amount which it would cost either to repair or replace it, whichever is less.” WIS. STAT. § 943.01(2)(d). Therefore, property is “damaged” if a reduction in the property’s value results, as measured by cost of repair or replacement.

¶10 Here, there was no evidence that the post office was reduced in value or that post office property had to be repaired or replaced. Solfest testified that she cleaned up the urine—an act that does not constitute repair. To “repair” is “to restore by replacing a part or putting together what is torn or broken”

WEBSTER, *supra*, at 1923. Nothing was torn or broken in this case. It was merely soiled.

¶11 The second element of criminal damage to property “requires that the defendant intentionally caused damage to physical property. The term ‘intentionally’ means that the defendant had the mental purpose to damage the property or was aware that the conduct was practically certain to cause that result.” WIS. STAT.—CRIMINAL 1400. Someone like Mark, who intentionally urinates in a post office, should be aware that cleaning will be necessary. However, it is highly unlikely that the action is “practically certain” to reduce the value of the post office. It is difficult to show that Mark intended to damage the post office or that he knew damage was practically certain when damage did not result.

¶12 The graffiti statute, WIS. STAT. § 943.017, is additional evidence that the legislature did not intend for criminal damage to include soiling. There, the definition of “reduction in value” includes the cost to repair, replace “or to remove the marking, drawing, writing or etching” WIS. STAT. § 943.017(2)(d). That language shows that the legislature differentiated cleaning from repair and replacement. In contrast, WIS. STAT. § 943.01 does not include soiled property in the definition of criminal damage to property. Nor does it include the cost of cleanup in a property’s “reduction in value.” *Id.* Mark’s urination did not damage the post office lobby, and therefore no violation of WIS. STAT. § 943.01(1) resulted.⁵

⁵ This opinion does not address whether other statutes may have been violated.

By the Court.—Order reversed.

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

