COURT OF APPEALS
DECISION
DATED AND FILED

February 17, 2004

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. 03-1287
03-1288
03-1289
03-1290

Cir. Ct. Nos. 02TR008903
02TR008904
02FO000249
02FO000250

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

VILLAGE OF HALES CORNERS,

PLAINTIFF-RESPONDENT,

V.

MICHAEL V. HENDRICKS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: JOHN E. McCORMICK, Judge. *Affirmed*.

¶1 SCHUDSON, J.[1] In these four consolidated cases, Michael V. Hendricks, *pro se*, appeals from the circuit court's March 24, 2003 orders denying his motions for reconsideration. In those orders, the circuit court denied reconsideration of its December 19, 2002 orders dismissing Hendricks' appeals from judgments entered by the Village of Hales Corners Municipal Court. This court affirms.

¶2 On January 23, 2002, default judgments were entered against Hendricks finding him guilty of possession of marijuana, obstructing an officer, and two charges of operating while suspended. On February 12, 2002, Hendricks' father filed a "Notice of Appeal to Circuit Court" form with the Village in each case. Each form included a line under which were printed the words, "Signature of Defendant." Neither Hendricks nor anyone on his behalf signed any of the forms. Instead, on that line, in hand-written cursive, are the words, "Failed to appear to sign." In addition, Hendricks failed to either post the forfeiture amounts or pay the appeals fees. Despite these omissions, the forms were sent to the Milwaukee County Clerk of Courts who, in turn, returned them to the Village and canceled a scheduled March 14, 2002 proceeding based on Hendricks' failure to comply with WIS. STAT. § 800.14. More than eight months later, on December 6, 2002, Hendricks filed a motion to: (1) compel the Village of Hales Corners to provide him with an "appeal order," and (2) stay the Village's commitments for nonpayment of judgments, which the circuit court denied.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) & (c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶3 Denying Hendricks' motions to provide him with an "appeal order" and to stay the commitments, the circuit court concluded:

> The court does not know why the Notice of Appeal forms were not signed by either the defendant or his father. However, a valid appeal does not commence without the forms having been properly completed. This must be done within the time period set forth in section 800.14(1), Stats., and the burden is on the defendant to sign the form. Because the defendant did not comply with the proper procedure, this court has no jurisdiction, there being no valid appeal. Consequently, the court is without jurisdiction to entertain the defendant's motion to stay the commitments issued by the Village for nonpayment of the judgments.

¶4 In addition to the unsigned "Notice of Appeal to Circuit Court" forms, the records include a document titled, "Defendant's Agent's Appeal of Municipal Court Decision to the Circuit Court," signed by Frederick J. Hendricks, "Pro-Se Defendant's Power-of-Attorney' [sic] Agent." The circuit court, considering that signed document in determining the motion for reconsideration, concluded:

> The power of attorney form executed by the defendant was not sufficient to authorize his father to represent him in court or to act on his behalf for purposes of initiating an appeal from the municipal court judgments. The Court of Appeals recently considered this very issue in its unpublished decision relating to two other cases of the defendant, State v. Hendricks, Nos. 02-1153 & 02-1154 (filed February 4, 2003). In that case, as here, Frederick [J.] Hendricks attempted to represent his son in court as his power of attorney in connection with two unrelated convictions for operating while intoxicated and operating after suspension. The Court of Appeals held that the trial court correctly determined that Hendricks' father was not authorized to represent Hendricks in court.

Hendricks claims that the circuit court erred in concluding that his failure to personally, or by authorized agent, timely file a notice of appeal deprived the court of jurisdiction.[2] This court cannot agree.

¶5 A circuit court's jurisdiction over an appeal from a municipal court "can only be acquired … under the rules of appealability established by the legislature." ***Walford v. Bartsch***, 65 Wis. 2d 254, 258, 222 N.W.2d 633 (1974). "In order for there to be a right of appeal some statute must grant it *and a party seeking to appeal must follow the method prescribed in the governing statute*." ***City of Mequon v. Bruseth***, 47 Wis. 2d 791, 794, 177 N.W.2d 852 (1970) (emphasis added). WISCONSIN STAT. § 800.14(1) provides: "Appeals from judgments of municipal courts may be taken by either party to the circuit court of the county where the offense occurred. *The appellant shall appeal* by giving the municipal judge written notice of appeal within 20 days after judgment." (Emphasis added.)

¶6 Reviewing a previous appeal from Hendricks, this court explained:

> It would appear that Hendricks faults the trial court for failing to permit his father to appear for him and to argue his request to reopen the operating after suspension judgment and to permit him to substitute a guilty plea to a charge of not having a license on his person in lieu of operating after suspension. He asserts that because he signed a power of attorney as found in WIS. STAT. § 243.10 in favor of his father, that [sic] his father became his designated attorney. Hendricks misunderstands the law.

[2] Hendricks' arguments are virtually unintelligible; hence, this court relies heavily on the Village's interpretation of his argument and the circuit court's written orders to structure this opinion.

> Hendricks reads too much into his "Power of Attorney." WISCONSIN STAT. § 243.10 specifically notes that the power of attorney form set forth in the statutes is confined for use in "finances and property." Indeed, the statute cautions that "some transactions may not permit use of this document." One such prohibited use is representing another as that person's attorney. As the County points out, only attorneys admitted to the State Bar of Wisconsin are allowed to practice law in this state. While Hendricks could represent himself, he could not designate another person to represent him in court. To permit Hendricks' father to represent him in court would be tantamount to conferring attorney status on anyone named in a power of attorney. Thus, the trial court correctly found that Hendricks' father was not authorized to represent Hendricks in court.

State v. Hendricks, No. 02-1153, unpublished slip op., ¶¶6-7 (Wis App Feb. 4, 2003) (citations and footnote omitted). *See also* ***Jadair Inc. v. United States Fire Ins. Co.***, 209 Wis. 2d 187, 212-13, 565 N.W.2d 401 (1997) (non-lawyer signing notice of appeal is rendering legal service precluded by the statute prohibiting unauthorized practice of law); WIS. STAT. § 757.30; SCR 20:5.5; SCR 21.15(2); SCR 22.001(1); SCR 40.02. While this court's previous decision is correct with regard to the prohibition against an attorney-in-fact making in-court appearances, the law is not absolutely clear with regard to the precise issue presented here. In fact, in yet another one-judge appeal, this court certified the issue of whether "a notice of appeal signed by a non-attorney on behalf of another individual invoked this court's jurisdiction when the appellant granted the non-lawyer the authority to 'sign in [the appellant's] name all [legal] documents or pleadings of every description' under WIS. STAT. § 243.10 (Wisconsin's basic power of attorney for finances and property statute)?" ***Dude v. Lesperance***, No. 01-2262, unpublished slip op. (Feb. 5, 2002), *cert. granted*, 2002 WI 48 (April 22, 2002), *appeal dismissed*, Sept. 30, 2002. Although the supreme court granted the certification, it ultimately dismissed the appeal based on the appellant's failure to brief the issue.

¶7 Still, even if an attorney-in-fact's signature on a notice of appeal could invoke this or the circuit court's jurisdiction, the result here would be the same—no jurisdiction because here the notice of appeal was *not* signed, by either Hendricks or his father, and even when brought to Hendricks' attention, the defect was never cured. *See* ***State v. Seay***, 2002 WI App 37, ¶, 250 Wis. 2d 761, 641 N.W.2d 437 (per curiam) (failure of a pro se appellant to sign a notice of appeal is not a fatal defect as long as a signature is supplied later), *review denied by* ***State v. Tillman***, 2002 WI 121, 257 Wis. 2d 116, 652 N.W.2d 889 (Sept. 3, 2002) (No. 00-3530). Thus, the circuit court correctly concluded that it had no jurisdiction. ***Todorvic v. Hirschberg***, 172 Wis. 14, 15, 177 N.W. 884 (1920) ("It is manifest that an appellate court does not acquire jurisdiction of a case until the jurisdiction of the lower court is superseded. The lower court retains jurisdiction of the case until everything necessary to perfect the appeal has been done.").[3]

By the Court.—Orders affirmed.

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

[3] The Village offers several other arguments supporting additional bases for affirmance of the circuit court orders. Although these arguments also may be sound, this court need not address them. *See* ***State v. Mikkelson***, 2002 WI App 152, ¶17 n.2, 256 Wis. 2d 132, 647 N.W.2d 421 (generally, appellate courts should resolve cases on narrowest possible grounds).