

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 30, 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 No. 04-1045-CR
STATE OF WISCONSIN**

Cir. Ct. No. 04CT000077

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

PAUL L. MINNIG,

DEFENDANT-RESPONDENT.

APPEAL from and order of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Reversed and cause remanded.*

¶1 DYKMAN, J.¹ The State of Wisconsin appeals from an order granting Paul L. Minnig's motion to dismiss charges of operating a motor vehicle while under the influence of an intoxicant—second offense, in violation of WIS.

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

STAT. § 346.63(1)(a), and operating a motor vehicle while having a prohibited alcohol concentration—second offense, in violation of § 346.63(1)(b)(2). Minnig was charged after a Dodge County Sheriff’s corporal observed him driving recklessly on the frozen surface of Beaver Dam Lake. The circuit court dismissed the charge, concluding that the frozen surface was not a “premises” under WIS. STAT. § 346.36(1). Because we conclude that a frozen lake surface constitutes a “premises held out to the public for use of their motor vehicles,” we reverse.

BACKGROUND

¶2 The facts are not disputed. On January 25, 2004, at approximately 1:30 a.m., Minnig was driving his truck on the frozen surface of Beaver Dam Lake. Minnig was returning from a tavern on the other side of the lake. Sheriff Corporal Paul Nell responded to a complaint that Minnig was driving recklessly, chasing snowmobilers and ice fishermen. Corporal Nell discovered Minnig sitting in his truck, which was stuck on the frozen surface 300 feet from the shoreline, with a blown tire. Corporal Nell arrested Minnig after smelling alcohol on his breath and observing that his eyes were bloodshot and his speech was slurred.

¶3 The trial court granted Minnig’s motion to dismiss the complaint, concluding that a frozen lake did not constitute a premises held out to the public for use of their motor vehicles under WIS. STAT. § 346.61. The State appeals.

DISCUSSION

¶4 The issue in this case is whether the frozen surface of a public lake constitutes “premises held out to the public for use of their motor vehicles” under

WIS. STAT. § 346.61.² This is a question of statutory interpretation that we review de novo. *In re Commitment of Lombard*, 2004 WI 95, ¶17, __ Wis. 2d __, 684 N.W.2d 103.

¶5 Minnig argues that the frozen surface of a public lake cannot be a premises. He asserts that a lake is not a “premises,” citing *Kenosha v. Phillips*, 142 Wis. 2d 549, 419 N.W.2d 236 (1988). *Phillips* stated that “[t]he term ‘premises’ ... appears to mean any parcel of land or real estate, including any appurtenances thereon.” *Phillips*, 142 Wis. 2d at 556. BLACK’S LAW DICTIONARY, 6th Ed. (1991), p. 1180, defines “premises” as “land with its appurtenances and structures thereon.” Similarly, the five dictionaries cited by the circuit court each indicate that the word “premises” signifies land and structures upon that land. Minnig adds that *Phillips* rejected any attempt to apply the statute in an extremely broad manner. *Phillips*, 142 Wis. 2d at 555.

¶6 However, the issue in *Phillips* was not whether the area on which the offense was committed was a “premises,” but whether the “premises” were “held out” for public use. *Phillips*, 142 Wis. 2d at 556-57. In *Phillips*, a driver was charged with intoxicated operation of a motor vehicle in a privately owned parking

² WISCONSIN STATUTE § 346.61 reads:

Applicability of sections relating to reckless and drunken driving. In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof. Sections 346.62 to 346.64 do not apply to private parking areas at farms or single-family residences.

lot that the State asserted was held out for public use. *Id.* at 552-53. The court disagreed, holding that the lot, which was marked for employees only with a warning that all others would be towed, was not held out for public use. *Id.* at 556. Neither *Phillips*, nor any other Wisconsin case, has addressed the applicability of WIS. STAT. § 346.61 to a frozen lake surface.

¶7 When a term is not defined within a statute, definitions of that term from other statutes may provide insight into the meaning of the term. *See Storm v. Legion Ins. Co.*, 2003 WI 120, ¶44, 265 Wis.2d 169, 665 N.W.2d 353. Definitions of “premises” in contexts involving statutes which (like the statute before us) serve a public safety purpose impart broad meaning to the term “premises.” A statutory subsection relating to the regulation of toxic substances allows the Department of Natural Resources to define “premises” by rule where necessary to capture all “classes of buildings and facilities” found “to pose a significant risk of contributing to the lead poisoning or lead exposure of children under 6 years of age.” WIS. STAT. § 254.11 (10m)(b). In the same chapter, a section that forbids the sale of tobacco to minors states that “[t]obacco vending machine premises’ means any area in which a tobacco vending machine is located.” WIS. STAT. § 254.911(10). Likewise, a statute relating to penalties for violent crimes committed in a school zone defines “school premises” as “any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.” WIS. STAT. § 939.632(1)(c). Each of these examples show a legislative intent to define “premises” broadly when the term is used in a statute that seeks to promote public safety.

¶8 Moreover, BLACK’S LAW DICTIONARY explains that when “premise” is used in a property and estates context, it is “an elastic and inclusive term, and it does not have one definite and fixed meaning; its meaning is determined by its

context and is dependent on circumstances in which used, and may mean ... any definite area.” BLACK’S, 6th Ed., pp. 1180-1181, citing *Allen v. Genry*, 97 So.2d 828, 832 (Ala. Ct. App. 1957).

¶9 While the meaning of “premises” is important to our interpretation of the statute, we disagree with Minnig that our analysis must end with a definition of this word. “[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper and intended effect.” *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. To ascertain meaning, statutory terms and phrases should not be isolated, but considered in context. “Context is important to meaning Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Kalal*, 271 Wis. 2d 633, ¶46 (citation omitted).

¶10 In this case, the context in which “premise” appears provides meaning relevant to the present case. The statute reads: “In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles.” WIS. STAT. § 346.61. By § 346.61, the legislature sought to prohibit drunken driving upon areas not captured under WIS. STAT. §§ 346.62 to 346.64 but nonetheless “held out” for public use. This context shows that the section’s purpose was to expand application of §§ 346.62 to 346.64 to areas where public safety might be threatened by drunk drivers. Its purpose was not to limit these sections to intoxicated operation occurring on only certain types of surfaces. Here, “premises” is necessary to express the legislature’s intent to protect persons from drunk drivers upon surfaces “held out for public use.”

¶11 In *La Crosse v. Richling*, 178 Wis. 2d 856, 505 N.W.2d 448 (Ct. App. 1993), another parking lot case, we established a test to determine when an area is held out for public use: “whether, on any given day, potentially any resident of the community with a driver’s license and access to a motor vehicle could use the parking lot in an authorized manner.” *Richling*, 178 Wis. 2d at 860. A frozen lake surface meets this test. Roads run up to the shoreline of a lake, often providing the only access points to the lake. The legislature recognized that motor vehicles are frequently driven on frozen lakes by giving municipalities the authority to enact ordinances that regulate this practice. WIS. STAT. § 30.81(1).³ When a lake is solidly frozen, motorists can and do drive upon its surface on any given day, subject to the right of municipalities to regulate or prohibit such driving.

¶12 Furthermore, “[l]aws ... must be interpreted considering [their] legal and practical consequences” *Panzer v. Doyle*, 2004 WI 52, ¶160, 271 Wis. 2d 295, 680 N.W.2d 666 (Abrahamson, C.J. dissenting). Many people drive their cars and trucks on frozen lakes during Wisconsin’s winter months. Here, Minnig is alleged to have been chasing ice fishermen and snowmobilers. Ice fishing and snowmobiling are but two activities that Wisconsinites enjoy on lakes during the winter months. Frozen lakes do not contain established driving lanes for motorists; this makes recreational users of lakes particularly vulnerable to accidents caused by impaired drivers. It is unlikely that the legislature intended to exempt from the protections of our drunk-driving laws law-abiding motorists, ice

³ WISCONSIN STAT. § 30.81(1) reads, in pertinent part: “Any town, village or city, in the interest of public health or safety, may enact ordinances that are not inconsistent with this chapter, relative to the use or operation of boats and other craft, including snowmobiles and other motor vehicles, on icebound inland lakes”

fishermen, ice boaters, skaters and other users of our frozen lakes. But this is the result that would follow from an interpretation of WIS. STAT. § 346.61 that would exempt motorists from drunk-driving laws based on the type of surface upon which they drive.

¶13 In sum, we conclude that WIS. STAT. § 346.61 prohibits intoxicated operation of a motor vehicle upon a frozen lake surface. We therefore reverse and remand for further proceedings.

By the Court.—Order reversed and cause remanded.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

