

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 20, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2800-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANIEL HALEY,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Chippewa County: THOMAS J. SAZAMA, Judge. *Affirmed.*

MYSE, J. Daniel Haley appeals a summary judgment finding him guilty of operating an unregistered motor vehicle on a public street in violation of § 341.04(1), STATS., and operating a motor vehicle not properly equipped upon a public highway in violation of WIS. ADMIN. CODE § MVD 5.06 (December 1989).¹ Haley contends that the trial court erred when it granted summary judgment because the Kawasaki Mule 2010, which he was operating on the public streets of the City of Chippewa Falls: (1) is not a motor vehicle as defined by ch. 341, STATS.; (2) is exempt from registration as road machinery under the provisions of § 341.05(16), STATS., and (3) was authorized to be driven

¹ This is an expedited appeal under RULE 809.17, STATS.

on the highway because it had a slow moving vehicle emblem attached to it. Because this court concludes that the Kawasaki Mule is a motor vehicle as defined by ch. 341, that it is not a piece of road machinery, and that the attachment of a slow moving vehicle emblem does not authorize an otherwise unauthorized vehicle to be operated on the public highways, the judgment is affirmed.

Haley operates Haley Construction Company located in Chippewa Falls. Haley purchased a Kawasaki Mule for the purported purpose of utilizing it for his construction business. The Kawasaki Mule is self-propelled, has a bench-type seat upon which passengers are transported and a bed in the rear in which things may be hauled. The Kawasaki Mule is capable of hauling heavy loads and is unable to achieve speeds in excess of twenty-five miles per hour. It was designed for off-highway use and is not equipped with parking lamps, directional signals, backup lamps, windshield wipers, mirrors or speed indicators. At the time of purchase, Haley attempted to register the motor vehicle but the DMV refused to register it pursuant to § 341.10, STATS.

Haley was operating the vehicle on a public street in Chippewa Falls transporting a single piece of metal conduit in the rear of the vehicle from a hardware store to his home when a police officer stopped him. The officer issued Haley a citation, and the district attorney later filed a complaint alleging that Haley operated an unregistered motor vehicle on a public street contrary to § 341.04(1), STATS., and that he operated a motor vehicle that was not properly equipped on a public highway contrary to WIS. ADMIN. CODE § MVD 5.06. Haley filed a motion to dismiss and the State filed a motion for summary judgment. After two hearings, the trial court denied Haley's motion to dismiss and granted the State's motion for summary judgment.

This court reviews a grant of summary judgment de novo, applying the same standards employed by the trial court. *Green Spring Farms v. Kersten*, 136 Wis.2d 304, 316-17, 401 N.W.2d 816, 820 (1987). Summary judgment is appropriate where the facts as to a particular issue are undisputed and only a question of law remains. *Krause v. Massachusetts Bay Ins. Co.*, 161 Wis.2d 711, 714, 468 N.W.2d 755, 756 (Ct. App. 1991). Each of the issues Haley raises requires the application of a statute to undisputed facts. Therefore, this court reviews the issues without deference to the trial court's determination. *State v. Williams*, 104 Wis.2d 15, 21-22, 310 N.W.2d 601, 604-05 (1981).

Haley was charged with violating § 341.04, STATS., which provides:

It is unlawful for any person to operate or for an owner to consent to being operated on any highway of this state any motor vehicle, mobile home, trailer or semitrailer or any other vehicle for which a registration fee is specifically prescribed unless at the time of operation the vehicle in question is either registered in this state, or, except for registration under s. 341.30 or 341.305, ... or is exempt from registration.

Under the clear and unambiguous language, no motor vehicle may be operated upon a highway unless it is registered or exempt from registration. Haley concedes that the vehicle is not registered despite his attempts to register it with the DMV. However, Haley contends that a Kawasaki Mule is not a motor vehicle as defined by ch. 341, STATS. Chapter 341 adopts the definition of motor vehicle set forth in § 340.01(35), STATS. *See* § 341.01, STATS. The definition in § 340.01(35) provides:

"Motor vehicle" means a vehicle including a combination of 2 or more vehicles or an articulated vehicle, which is self-propelled, except a vehicle operated exclusively on a rail. "Motor vehicle" includes, without limitation, a commercial motor vehicle or a vehicle which is propelled by electric power obtained from overhead trolley wires but not operated on rails. A snowmobile and all-terrain vehicle shall only be considered motor vehicles for purposes made specifically applicable by statute.

This court concludes that the Kawasaki Mule is a motor vehicle as defined in § 340.01(35). The Kawasaki Mule is a self-propelled vehicle that does not operate exclusively on rail. As such, it is specifically encompassed within the definition of motor vehicle.

Haley next contends that the vehicle was exempt from registration as a piece of road machinery under § 341.05(16), STATS. The definition of road machinery is found in § 340.01(52), STATS., which provides:

"Road machinery" means a piece of mobile machinery or equipment ... such as ditch digging apparatus, power shovels, drag lines and earth-moving equipment, or a piece of road construction or maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, gravel crushers, screening plants, scrapers, tractors, earth movers, front-or rear-end loaders, conveyors, road pavers, or construction shacks. The foregoing enumeration is intended to be illustrative and does exclude other similar vehicles which are within the general terms of this subsection, whether used for road construction and maintenance or not, which are not designed or used primarily for transportation of persons or property and only incidentally operated or moved upon a highway.

Haley contends that he intended to use the Kawasaki Mule in his construction business. This argument assumes that Haley's subjective state of mind determines whether this vehicle qualifies as road machinery. The vehicle's status is determined by the definition in the statute, not by the subjective intent of the owner. The vehicle is road machinery only if it meets the definition as provided by law. Not only is the Kawasaki Mule greatly dissimilar from the illustrative types of road machinery set forth in the statute, the statute specifically provides that vehicles that are designed or used primarily for transportation of persons or property are not within the definition of road machinery. The Kawasaki Mule specifically fits the statutory language because its primary purpose is to carry people and property. This court therefore concludes that the Kawasaki Mule is not a piece of road machinery as defined by § 340.01(52), STATS., notwithstanding whatever intent Haley may have had.

Finally, Haley contends that § 347.245(1), STATS., authorizes the operation of this vehicle on the highways as long as it is marked with a slow moving vehicle emblem. Section 347.245(1) provides:

[N]o person may operate on a highway, day or night, any vehicle or equipment, animal-drawn vehicle, or any other machinery, including all road machinery, that usually travels at speeds less than 25 miles per hour ... unless there is displayed on the most practicable visible rear area of the vehicle or combination of vehicles, a slow moving vehicle (SMV) emblem

Haley argues that because the Kawasaki Mule is incapable of going in excess of twenty-five miles per hour and was marked with a SMV emblem, he is authorized under this statute to operate the vehicle on the public highways. Nothing in the applicable statute, however, authorizes the operation of the vehicle. The statute requires an additional piece of equipment for slow moving vehicles and prohibits slow moving vehicles from operating on the roadways without the proper emblem being displayed. It does not authorize an otherwise unregistered vehicle to be operated on the roadway because a SMV emblem has been affixed.

Based on the foregoing, this court concludes that the trial court properly granted summary judgment. Therefore, the judgment is affirmed.

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.