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DISTRICT II

January 5, 2018

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You are hereby notified that the Court has entered the following opinion and order:

2016AP1257

County of Sheboygan v. Jennifer L. Schoenefeld
(L.C. # 2015TR5872)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

We granted Sheboygan County's petition for leave to appeal a nonfinal circuit court order determining that pursuant to *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), the county could not present Horizontal Gaze Nystagmus (HGN) test testimony through the arresting officer because "such testimony is expert testimony ... which requires a medical expert to testify at trial."

Contrary to this court's understanding at the time we granted leave to appeal, it appears from the appellate record and briefing that the arresting officer was unable to successfully administer the HGN test to Schoenefeld. As such, this case does not raise the issue(s) which led us to grant interlocutory review. We therefore determine that the county's petition for leave to appeal was improvidently granted. We summarily dismiss the appeal and remand the case to the circuit court for further proceedings.

Upon the foregoing reasons,

IT IS ORDERED that the appeal is summarily dismissed pursuant to WIS. STAT. RULE 809.21 and the cause remanded to the circuit court for further proceedings.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Acting Clerk of Court of Appeals