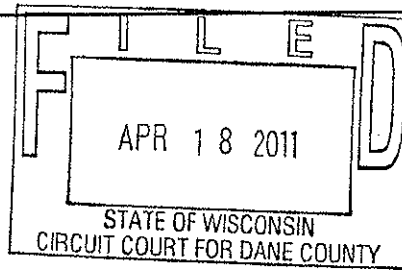

CITY OF MADISON
Plaintiff/Petitioner
vs.
CESILEE A. DEAN
Defendant/Respondent



ORDER OF DISMISSAL

Case No. 10CV6196

PROCEDURAL HISTORY

This case involves a citation for disorderly conduct (in violation of Madison Gen Ord. §24.02(1) issued to the defendant, Cesilee Dean, on June 19, 2010. Ms. Dean appeared for her initial appearance and entered a not guilty plea. The matter was set for trial, but before trial, counsel for Ms. Dean filed a motion to dismiss arguing that her conduct did not constitute disorderly conduct as a matter of law. The motion to dismiss was supported by an affidavit of defense counsel and an affidavit of the defendant. On November 5, 2010, the motion was heard by municipal court judge Jim Olds. The motion was construed as a motion for summary judgment. Judge Olds granted the motion and dismissed the case.

Assistant City Attorney Lana J. Makes filed a Notice of Appeal/Request for De Novo Review. The notice said in part that it was:

an appeal of the November 5, 2010 decision of Municipal Court Judge Jim Olds to dismiss this case prior to trial. The City of Madison specifically requests a De Novo review. This appeal is brought pursuant to §800.14(1)(4), Wis. Stats.

The case was assigned to this branch and Assistant City Attorney Makes asked that a briefing schedule be issued regarding the motion to dismiss. Briefs were received from both parties under that schedule and a motion hearing was held on April 18, 2011. The City was represented by Attorney Makes, and Cesilee Dean appeared with her attorney, Dan Bach. For reasons set forth below, the appeal of the City was dismissed, rendering Judge Olds' order of dismissal a final order in this matter.

DISCUSSION

The briefs of the parties covered both procedural and substantive issues. The City took the position that the municipal judge had no authority to grant summary judgment in this case. Dean argued that the summary judgment was proper, not only procedurally, but on the merits.

At the hearing I indicated that my conclusion was that summary judgment was not available in a Chapter 800 municipal court proceeding involving a citation. I determined this based on the holdings in the following cases. *State v. Hyndman*, 170 Wis. 2d 198 (Ct.

App. 1992) (Summary judgment not available in criminal cases; not guilty plea creates material issues of fact); *State v. Schneck*, 257 Wis. 2d 704 (2002) (Summary judgment not permitted in traffic forfeiture action under Wis. Stat. ch 345); *State v. Baratka*, 258 Wis. 2d 342 (Ct. App. 2002) (Summary judgment not available in refusal proceedings).

Defendant relied on *State v. Ryan*, which discussed summary judgment in the context of a civil enforcement action and said:

Wisconsin Stat. § 23.55 prescribes the contents of the complaint as well as the summons, which directs the defendant to answer the complaint. Thus, in an instance where a plaintiff initiates a claim via a complaint and summons pursuant to §§ 23.52 and 23.55, the trial court would be able not only to examine the complaint to determine whether it states a claim, but would also be able to evaluate the defendant's answer—written or otherwise—to determine whether it joins an issue of material fact.

State v. Ryan, --- N.W.2d ----, 2011 WL 77420 Wis.App.,2011.

I believe the prosecution of Ms. Dean that began with a citation to which she entered a not guilty plea, is most similar to the case types in which summary judgment has been found not to apply.

However determination of that issue turned out not to be necessary to dispose of this case, and therefore the above thoughts are merely dicta. I offer them only because I am aware that there are a number of citations pending against others involved in the same activity that Ms. Dean participated in, and they were put on hold pending a decision in this case. I offer my thoughts for whatever weight the parties and judge(s) in those other citation matters might place upon them.

I decided this case based on the holdings in several other Wisconsin cases. In *Village of Menomonee Falls, v. Meyer*, 229 Wis. 2d 811 (Ct. App. 1999) the Court of Appeals held that a full trial in municipal court is a condition precedent to a new trial in circuit court. In that case, the municipality suppressed evidence presented by the municipality. As a result, the municipality did not have sufficient evidence to go forward and the court dismissed the charges. The municipality requested a hearing de novo in circuit court under Wis. Stat. §800.14(4). The circuit court held the trial over the objection of the defendant. The defendant appealed. The Court of Appeals held that a full trial of the parties' issues in the municipal court is a condition precedent to a new trial in the circuit court. Before a case can be tried for an additional time it must have been fully litigated at an earlier time. However the court noted that the Village had a remedy for seeking review of the municipal court actions suppressing the evidence. That option was an appeal to the circuit court pursuant to Wis. Stat. §800.14(5). "When a Circuit Court conducts a review of the Municipal Court judgment, it applies the same standard of review to the issue presented as an appellate court applies in reviewing a trial court." *Id.* at 817. In a later case, the Wisconsin Supreme Court agreed that you must have an actual trial in the municipal court before you can request a trial de novo in the circuit court. *City of Pewaukee v. Carter*, 276 Wis. 2d 333 (2004). The court also commented on the option of seeking relief from the dismissal under Wis. Stat. §800.14(5). If that option had been selected, the circuit court would

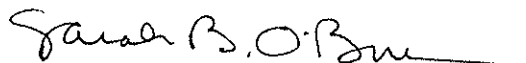
have reviewed the record of the Municipal Court to determine the validity of the dismissal of the action. *Id.* at 340.

In the present case the city asked for de novo review under Wis. Stat. 800.14(4). The city is not entitled to review under that section, because no trial was held in the municipal court. The city asked this court at the hearing to consider the request as one filed under Wis. Stat. 800.14(5). I declined to do so. Clearly it wasn't filed under that section because no transcript of the municipal court motion hearing was requested by the city or filed in the circuit court file. It is difficult to grant leniency regarding the mistaken choice of avenue of review to an assistant city attorney who should be familiar with the intricacies of municipal law. I also denied her request because I believe enough judicial resources have been used for the litigation of this minor citation.

Therefore the request for hearing de novo under Wis. Stat. §800.14(4) is denied.

Dated: April 18, 2011

By the Court:



Sarah B. O'Brien
Circuit Court Judge