

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 23, 2008

David R. Schanker
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. 2007AP2707

Cir. Ct. No. 2007TR8206

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF FOND DU LAC,

PLAINTIFF-RESPONDENT,

V.

THOMAS W. SCHNEIDER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County:
PETER L. GRIMM, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Thomas W. Schneider appeals from an order denying his motion to reopen a default judgment entered for a civil violation of WIS. STAT. § 346.63(1)(b), operating a motor vehicle with a prohibited blood alcohol concentration (PAC). We affirm.

¶2 Schneider was cited for the PAC violation on August 18, 2007, and entered a plea of no contest to the charge on September 10, 2007. As a result of his plea, a judgment of guilty was entered and the trial court imposed a fine, ordered alcohol assessment, and revoked Schneider's operator's license for six months as mandated for a first civil violation by WIS. STAT. § 343.31(3)(b). Schneider contends that prior to entering his plea he had been informed by a Wisconsin Department of Motor Vehicles (DMV) clerk that he would be eligible for an occupational license allowing for his employment capacity as an emergency services provider. Schneider concedes that he was issued an occupational license on September 12, 2007. However, his employer advised him that he would not be permitted to act as an emergency services provider because WIS. ADMIN. CODE § Trans 117.09(2)(a) (Sept. 2005) limits occupational license emergency service providers to persons employed by a unit of government, who provide services to government, or who provide essential life sustaining services to the public. Schneider avers that he will lose his employment as a result of not being able to act as an emergency services provider under the issued occupational license.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶3 On September 20, 2007, Schneider filed a WIS. STAT. § 806.07(1)(h) motion to reopen the judgment in the PAC charge “in an effort to permit [him] to retain his employment.” The trial court denied the motion and Schneider appeals, contending that the trial court erred in denying his motion to reopen his judgment based upon his receiving erroneous information from a clerk at the DMV regarding the impact of occupational license privileges on his employment.

¶4 Schneider states the appellate standard of review as involving a question of statutory interpretation and constitutional law and contends that this court would address the appellate issue(s) de novo. Schneider is wrong. Schneider’s motion to reopen the judgment specifically requests relief pursuant to WIS. STAT. § 806.07(1)(h). The appellate standard of review concerning § 806.07(1)(h) issues is, as suggested by Fond du Lac county, erroneous exercise of discretion. *See State v. Morford*, 2004 WI 5, ¶49, 268 Wis. 2d 300, 674 N.W.2d 349.

¶5 In addition to being wrong about the applicable standard of review, Schneider brought his motion to reopen the judgment under the wrong statute. The WIS. STAT. § 806.07(1)(h) standard of review cannot apply here because the issue is governed by WIS. STAT. § 345.51, the existence and application of which should have been known to and referred to by both appellant and respondent counsel in both the motion proceedings and in this appeal. Section 345.51 reads in relevant part as follows:

Reopening of default judgment.... [T]here shall be no reopening of default judgments unless allowed by order of the trial court after notice and motion duly made and upon good cause shown.... Default judgments for purposes of this section include pleas of guilty, no contest and forfeitures of deposit.

¶6 When two statutes relate to the same subject matter the more specific statute controls over the general statute. *See Estate of Gonwa ex rel. Gonwa v. DHFS*, 2003 WI App 152, ¶32, 265 Wis. 2d 913, 668 N.W.2d 122. WISCONSIN STAT. § 345.51, therefore, provides the only recourse for attacking a default judgment in traffic regulation cases. It is within the trial court’s discretion to grant a motion to reopen a default judgment, and its order will not be disturbed unless there has been an erroneous exercise of discretion. *See Dugenske v. Dugenske*, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977).

¶7 In denying the motion to reopen the judgment the trial court noted that the motion set forth a hardship concerning employment. Schneider did not present any basis for a defense to the PAC charge, but related that the reason for vacating the judgment was to allow defense counsel to “look over the facts of the case and see what the resolution is.” The trial court concluded that the alleged advice to Schneider from the DMV clerk was collateral to the PAC judgment, and that reopening the judgment would have no impact upon Schneider’s inability to obtain an occupational license that would meet his employment needs. Inherent in those determinations is the court’s conclusion that Schneider failed to present good cause, as required by WIS. STAT. § 345.51, to reopen the PAC judgment.

¶8 The six-month revocation of Schneider’s operator’s license was a direct, mandatory result of his plea and of the resulting PAC judgment. *See Mollet v. DOT*, 67 Wis. 2d 574, 577-78, 227 N.W.2d 663 (1975). His motion does not challenge the revocation of his license imposed under WIS. STAT. § 343.31(3)(b).

Schneider requested and was issued an occupational license during his revocation period. An occupational license is issued in accordance with WIS. STAT. § 343.10, and confers limited authorization to operate a motor vehicle with specified restrictions. *See* WIS. STAT. § 343.01(2)(cr). We agree with the trial court that Schneider's hardship claim, that the occupational license he obtained under § 343.10 is inadequate for his employment purposes, is collateral to the revocation of his driver's license under § 343.31(3)(b). The trial court correctly noted that it would not have to explain the employment consequences involving the limitations of an occupational license to a defendant upon imposing a mandatory PAC revocation. *State v. Madison*, 120 Wis. 2d 150, 160-61, 353 N.W.2d 835 (Ct. App. 1984) (defendant need not be informed of the collateral consequences of a guilty plea).

¶9 In sum, the trial court concluded that the occupational license limitations imposed upon Schneider were collateral to the revocation imposed by the PAC judgment, that reopening the judgment would have no impact upon the occupational license restrictions, and that Schneider's motion presented no other grounds for reopening the judgment. Based upon those trial court conclusions, we are satisfied that Schneider failed to present the trial court with good cause to reopen the PAC judgment, and that the trial court's exercise of discretion was not erroneous. Accordingly, we affirm the order.

By the Court.—Order affirmed.

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

