

## 5: Case Briefing - Procedural History, Disposition, Applicable Statutes and Facts

In this chapter, we are going to explore what goes into writing the Procedural History, Disposition, Applicable Statutes, and Facts sections of your case brief. This is not the order in which the sections will appear in the final case brief – for example, the Procedural History is the first section and the Disposition is the last section. We are drafting our brief this way to take advantage of sections that logically go together (Procedural History and Disposition), as well as to write the two sections that form the foundation of the reviewing court’s decision (Applicable Statutes and Facts).

[We will be writing a case brief for the Miller v. Thomack decision from the Wisconsin Court of Appeals -- click here to open the decision.](#)

### PROCEDURAL HISTORY

The purpose of the Procedural History section is to tell the reader *how the case came before the reviewing court* which has written the decision that is the subject of your case brief. In other words, it explains what has happened in the case so far: Who sued whom, what happened in the Trial Court, who appealed to the Court of Appeals, what happened in the Court of Appeals, and, if applicable, who Petitioned the Supreme Court for Review.

#### Finding and Understanding the Procedural History

An important first step in writing your case brief is making sure you understand who’s who in terms of parties, lower courts and reviewing courts. Much of this information is contained in the caption of the court decision you are briefing, along with a lot of other information about the case.

#### The Parties

In Wisconsin, the parties involved in an appeal to the Court of Appeals will have either the word **Appellant** or the word **Respondent** tacked onto the end of their original party designations of plaintiff or defendant. Below is an example of what you might see in the caption:

Rhonda MILLER, Richard Miller and Kay Miller, Plaintiffs-Appellants, v.  
Craig J. THOMACK, Defendant,  
State Farm Mutual Automobile Insurance Company, a Foreign Corporation,  
Defendant-Co-Appellant, James D. Thomack, ABC Insurance Company, as Insurer  
of James Thomack, Michelle  
Melberg, DEF Insurance Company, as Insurer of Michelle Melberg, Defendants,  
Kimberly Ransom, Defendant-Respondent,  
Fire Insurance Exchange, Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., United Fire &  
Casualty  
Company, a Foreign Corporation, Waupaca County, as Agent for the State of  
Wisconsin, Brian Clary, GHI Insurance, as Insurer of Brian Clary, John Doe, Susan  
Roe, Defendants, Karen Miller, Defendant-Respondent,  
NOP Insurance, as Insurer of Karen Miller, Defendant, Craig J. Thomack, Third  
Party Plaintiff-Co-Appellant, and  
James D. Thomack, Third Party Plaintiff, Jason Beattie, Third Party Defendant-  
Respondent,  
Lee Beattie, Carol Beattie and KLM Insurance Company, as Insurer of Jason  
Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

There are several parties who don’t have either Appellant or Respondent as part of their party designations. Those parties, for whatever reason, did not participate in the appeal. Only Rhonda Miller, Richard Miller, Kay Miller, State Farm Mutual Insurance Company and Craig Thomack participated in this appeal as Appellants, and Karen Miller and Jason Beattie as Respondents.

## The Reviewing Court

In Wisconsin, there are two places where you can find the identity of the reviewing court that wrote the decision you are briefing. One is in the citation. A Court of Appeals decision will have either WI APP in the public domain citation, or Ct. App. In the date parenthetical. A Supreme Court decision will have WI in the public domain citation, or only the year of the decision in the date parenthetical. The other place to look is near the top or the bottom of the caption for the words “Court of Appeals of Wisconsin” or “Supreme Court of Wisconsin.”

## The Lower Court(s)

At least one of the lower courts will nearly always be the Trial Court (also called the Circuit Court). If you are briefing a decision written by the Supreme Court, then the Court of Appeals will also likely be a lower court. Finding the identity of the lower court(s) is a little more complicated. Where you find it depends on whether you are accessing the reviewing court’s decision in a hard copy reporter (book), on Westlaw®, or on FastCase® or the Internet in general.

If you are accessing the reviewing court’s decision in a hard copy reporter (book) or on Westlaw®, the best place to find the identity of the lower court(s) is often in the synopsis, which usually provides at least a general statement of what happened. Below is the synopsis of the *Miller v. Thomack* case in the Court of Appeals.

### Synopsis

Action was brought against bar operators and against minors who had contributed money for purchase of beer intended for consumption by minors to recover for injuries sustained by minor passenger in accident involving vehicle driven by minor, both of whom had consumed beer. The Circuit Court of Waupaca County, Philip M. Kirk, J., denied operators' motion for summary judgment but granted minor defendants' similar motion. Appeals were taken. The Court of Appeals, Vergeront, J., held that: (1) bar operators were not liable absent any evidence that they knew of underage drinking occurring outside bar and involving beer that had been brought onto premises rather than purchased at bar; (2) minors' contribution of money for purchase of beer for consumption by minors amounted to “procurement” within meaning of statute barring procurement and was negligence per se; (3) fact issue existed as to whether any negligence of passenger was greater than that of minor defendants; and (4) statutory exception to immunity from civil liability for injury to third party arising out of procurement of alcoholic beverages applied even though minor passenger's own consumption of beer may have contributed to her injuries.

If you are accessing the reviewing court’s decision or on FastCase® or the Internet in general, there is no synopsis. Instead, you will need to search the decision for the phrase “Circuit Court” or the phrase “Trial Court” (yes, you can use the “find” function!). Typically, you will see a sentence that looks like this:

Rhonda Miller and her parents appeal from the trial court order granting summary judgment to Kimberly Ransom, Karen Miller, Jason Beattie and their insurers, all of whom contributed money to purchase the beer. They were all under twenty-one

## What Happened in the Lower Court(s)

Lots of things can happen in a trial court that can cause a party to “lose” and want to appeal. Here are some of the most common types of **trial court procedure** that might result in an appeal:

- A **judgment or jury verdict has been entered after a full trial**. The result is that either (1) the plaintiff successfully obtained a judgment against the defendant for one or more of the plaintiff’s claims against the defendant; or (2) the defendant was determined to be not liable for the plaintiff's claims (civil) or not guilty (criminal)
- The plaintiff or the defendant asked the trial court to enter a judgement after the trial began, but before it was completed – this is called a **motion for directed verdict**. If the motion is granted, the result is basically the same as a judgment or jury verdict

entered after a full trial.

- The plaintiff or the defendant asked the trial court to enter a judgment before the trial began, based on facts revealed by discovery – this is called a **motion for summary judgment**. If the motion is granted, the result is basically the same as a judgment or jury verdict entered after a full trial. Motions for summary judgment are used in civil cases only.
- The plaintiff or the defendant asked the trial court to enter an order either allowing or disallowing certain evidence to be used in trial. In civil cases, this can be an evidentiary objection raised during or before the trial (sometimes through a motion *in limine*). In criminal cases, this can be an evidentiary objection raised during or before the trial (sometimes through a motion **to suppress evidence**). If the motion is granted, the person appealing is usually claiming that allowing the improper evidence caused the person to lose. If the motion is denied, the person appealing is usually claiming that the inability to offer the evidence caused the person to lose.
- The defendant asked the trial court to dismiss the plaintiff's claims in a **motion to dismiss**, which is usually requested before discovery has begun in a civil case. If the motion is granted, the result is that the plaintiff is not allowed to sue the defendant for one or more claims raised in the complaint -- the claims against the defendant are dismissed.

The typical options for appellate court procedure that might result in a Petition for Review in the Supreme Court are fewer:

- The Court of Appeals **affirmed** the trial court action (meaning that the appellant loses again)
- The Court of Appeals **reversed** the trial court action (meaning that the appellant wins). A reversal might be coupled with a **remand** to the trial court for additional proceedings (for example, a recalculation of damages, or an order to conduct a full trial or a new trial).

Once again, where you find an explanation of the lower court procedures depends on whether you are accessing the reviewing court's decision in a hard copy reporter (book), on Westlaw®, or on FastCase® or the Internet in general. If you are accessing the reviewing court's decision in a hard copy reporter (book) or on Westlaw®, the best place to find the identity of the lower court(s) is often in the synopsis, which usually provides at least a general statement of what happened. Below is the synopsis of the *Miller v. Thomack* case in the Court of Appeals.

#### Synopsis

Action was brought against bar operators and against minors who had contributed money for purchase of beer intended for consumption by minors to recover for injuries sustained by minor passenger in accident involving vehicle driven by minor, both of whom had consumed beer. The Circuit Court of Waupaca County, Philip M. Kirk, J., denied operators' motion for summary judgment but granted minor defendants' similar motion. Appeals were taken. The Court of Appeals, Vergeront, J., held that: (1) bar operators were not liable absent any evidence that they knew of underage drinking occurring outside bar and involving beer that had been brought onto premises rather than purchased at bar; (2) minors' contribution of money for purchase of beer for consumption by minors amounted to "procurement" within meaning of statute barring procurement and was negligence per se; (3) fact issue existed as to whether any negligence of passenger was greater than that of minor defendants; and (4) statutory exception to immunity from civil liability for injury to third party arising out of procurement of alcoholic beverages applied even though minor passenger's own consumption of beer may have contributed to her injuries.

If you are accessing the reviewing court's decision or on FastCase® or the Internet in general, there is no synopsis. Instead, you will need to search the decision for the phrase "Circuit Court" or the phrase "Trial Court" (yes, you can use the "find" function!). Typically, you will see a sentence that looks like this:

Rhonda Miller and her parents appeal from the trial court order granting summary judgment to Kimberly Ransom, Karen Miller, Jason Beattie and their insurers, all of whom contributed money to purchase the beer. They were all under twenty-one

If you were briefing a Supreme Court decision, the procedure in the Court of Appeals would be found in the same area.

### Writing the Procedural History

It's important to provide a full and detailed explanation of what occurred prior to the appeal that resulted in the reviewing court's decision that you are briefing. Procedural history can get confusing if there are multiple appeals by different parties who are unhappy about what happened in the lower court for different reasons. It usually helps to begin by diagramming the parties involved in the appeal(s), briefly describing what they are appealing and why. Below is a simple table that you can use for this purpose.

Elements	Appeal #1 (describe)	Appeal #2 (describe)
Appellants/Petitioners		
Respondents/Respondents		
What is being appealed?		

We'll use the *Miller v. Thomack* Court of Appeals decision to complete this table step by step.

#### Step 1: Determine the number of appeals and describe them.

Most decisions involve only a single appeal to the Court of Appeals. In that situation, you would write "Court of Appeals" where it says "(describe)" under Appeal #1 in the middle column. The column for Appeal #2 remains blank unless you are briefing a Supreme Court decision; in that situation, you would write "Supreme Court" where it says "(describe)" under Appeal #2 in the right-side column. Sometimes, as in the *Miller v. Thomack* appeal, there are multiple appeals by different parties. We know this because there are two full captions, each with its own appellate docket number. Below is the full caption of the *Miller v. Thomack* appeal to the Court of Appeals. Notice how there is a horizontal line between the two full captions, each of which begins with Rhonda MILLER, Richard Miller, and Kay Miller (the plaintiffs). In the first caption, the Plaintiffs are the Appellants (circled in blue) and in the second caption, the Plaintiffs are the Respondents (outlined in a red box). At the bottom of the second caption, you see the two appellate docket numbers outlined in a green box.

Rhonda MILLER, Richard Miller and Kay Miller, Plaintiffs-Appellants, v.  
Craig J. THOMACK, Defendant,  
State Farm Mutual Automobile Insurance Company, a Foreign Corporation,  
Defendant-Co-Appellant, James D. Thomack, ABC Insurance Company, as Insurer  
of James Thomack, Michelle  
Melberg, DEF Insurance Company, as Insurer of Michelle Melberg, Defendants,  
Kimberly Ransom, Defendant-Respondent,  
Fire Insurance Exchange, Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., United Fire &  
Casualty  
Company, a Foreign Corporation, Waupaca County, as Agent for the State of  
Wisconsin, Brian Clary, GHI Insurance, as Insurer of Brian Clary, John Doe, Susan  
Roe, Defendants, Karen Miller, Defendant-Respondent,  
NOP Insurance, as Insurer of Karen Miller, Defendant, Craig J. Thomack, Third  
Party Plaintiff-Co-Appellant and  
James D. Thomack, Third Party Plaintiff, Jason Beattie, Third Party Defendant-  
Respondent,  
Lee Beattie, Carol Beattie and KLM Insurance Company, as Insurer of Jason  
Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

Rhonda MILLER, Richard Miller, and Kay Miller, Plaintiffs-Respondents, v.  
Craig J. THOMACK, Defendant-Appellant,  
State Farm Mutual Automobile, James D. Thomack, ABC Insurance Company,  
Michelle Melberg, DEF Insurance Company, Kimberly Ransom, Fire Insurance  
Exchange, Waupaca County, Brian Clary, GHI Insurance Company, John Doe,  
Susan Roe, Karen Miller, and NOP Insurance Company, Defendants, Craig J.  
THOMACK, and James D. Thomack, Third Party Plaintiffs,  
Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., and United Fire & Casualty Company,  
Defendants-Appellants, v.  
Jason BEATTIE, Lee Beattie, Carol Beattie, and KLM Insurance Company, an  
Insurer of Jason Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

Nos. 95-1684, 95-1766.

Based on what we see in the caption, here is what our diagram box would look like so far:

Elements	Appeal #1 (95-1684) Rhonda, Richard & Kay Miller	Appeal #2 (95-1766) Thomack and Pamperins
Appellants/Petitioners		
Respondents/Respondents		
What is being appealed?		

## Step 2: Fully describe the parties involved in each appeal.

Look at the full caption of the case and write down the name of each person or entity involved. Then write each person's party designation next to his/her/its name. Pay particular attention to parties with the following designations: appellant, appellee, respondent, co-appellant, co-appellee, co-respondent, cross-appellant, cross-appellee, cross-respondent, petitioner, co-petitioner and cross-petitioner. These are the parties participating in the appeal. If someone only has a plaintiff or defendant designation, that party is not participating in the appeal.

Based on what we see in the caption, here is what our diagram box would look like so far:

Elements	Appeal #1 (95-1684) Rhonda, Richard & Kay Miller	Appeal #2 (95-1766) Thomack and Pamperins
Appellants/Petitioners	Rhonda, Richard & Kay Miller (Plaintiff-Appellants) State Farm Mut. Ins. Co. (Defendant-Co-Appellant)	Craig Thomack, Kurt Pamperin Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (Defendants-Appellants)
Respondents/Respondents	Kimberly Ransom, Karen Miller (Defendants- Respondents) and Jason Beattie (Third Party Defendant-Respondent)	Rhonda, Richard & Kay Miller (Plaintiff-Respondents)
What is being appealed?		

### Step 3: Briefly describe the lower court action involved in each appeal.

As mentioned earlier, read the synopsis and the reviewing court's decision to determine the nature of the lower court action the Appellant is appealing. Was a motion granted? Was a motion denied? Did the Appellant lose after a jury trial? What happened to the Appellant as a result of the lower court's action? We know from the synopsis that in Appeal #1, the "minor defendants" filed a Motion for Summary Judgment that was granted. To learn more, we must read the decision until we see a more detailed explanation. We find it on page 5 of the decision, in the "Background" section:

Procedural History, Miller Appeal	<p>Rhonda and her parents sued Thomack, Karen, Ransom, the Pamperins and their respective insurers. Thomack joined Beattie, his parents and their insurer, alleging that Beattie aggravated Rhonda's injuries when he extricated her from the vehicle.</p> <p>There were various cross-claims among the defendants. Karen, Ransom, Beattie and the Pamperins moved for summary judgment. The court ruled that contributing money to purchase the beer did not constitute furnishing alcohol to a minor in violation of §§ 125.035 or 125.07, STATS. It determined as a matter of law that Rhonda Miller was more negligent than Karen Miller or Kimberly Ransom and dismissed them from the action. It dismissed Beattie because there was no evidence that he</p>
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Now we know that "the minor defendants" are Kimberly Ransom, Karen Miller and Jason Beattie. We also know that as a result of the Trial Court granting their Motions for Summary Judgment, the Millers' claims against them were dismissed. So, we add that information to our table:

Elements	Appeal #1 (95-1684) Rhonda, Richard & Kay Miller	Appeal #2 (95-1766) Thomack and Pamperins
Appellants/Petitioners	Rhonda, Richard & Kay Miller (Plaintiff-Appellants) State Farm Mut. Ins. Co. (Defendant-Co-Appellant)	Craig Thomack, Kurt Pamperin Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (Defendants-Appellants)
Respondents/Respondents	Kimberly Ransom, Karen Miller (Defendants- Respondents) and Jason Beattie (Third Party Defendant-Respondent)	Rhonda, Richard & Kay Miller (Plaintiff-Respondents)
What is being appealed?	Grant of summary judgment dismissing Plaintiff Millers' complaint against Kimberly, Karen and Jason	

In those same paragraphs, we also see an explanation of what happened in Appeal #2:

Procedural History, Pamperin Appeal	<p>... and the Pamperins moved for summary judgment. The court ruled that contributing money to purchase the beer did not constitute furnishing alcohol to a minor in violation of §§ 125.035 or 125.07, STATS. It determined as a matter of law that Rhonda Miller was more negligent than Karen Miller or Kimberly Ransom and dismissed them from the action. It dismissed Beattie because there was no evidence that he caused, exacerbated or contributed to Rhonda's injuries. The trial court denied the Pamperins' motion for summary judgment, concluding that there were disputed</p>
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This tells us the Pamperins also tried to get the Plaintiff Millers' claims against them dismissed by filing a Motion for Summary Judgment, but they were unsuccessful.

Elements	Appeal #1 (95-1684) Rhonda, Richard & Kay Miller	Appeal #2 (95-1766) Thomack and Pamperins
<b>Appellants/Petitioners</b>	Rhonda, Richard & Kay Miller (Plaintiff-Appellants) State Farm Mut. Ins. Co. (Defendant-Co-Appellant)	Craig Thomack, Kurt Pamperin Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (Defendants-Appellants)
<b>Respondents/Respondents</b>	Kimberly Ransom, Karen Miller (Defendants- Respondents) and Jason Beattie (Third Party Defendant-Respondent)	Rhonda, Richard & Kay Miller (Plaintiff-Respondents)
<b>What is being appealed?</b>	Grant of summary judgment dismissing Plaintiff Millers' complaint against Kimberly, Karen and Jason	Denial of summary judgment seeking to dismiss Plaintiff Millers' complaint against the Pamperins. The claim was allowed to continue.

#### Step 4: Write the Procedural History in Your Case Brief.

Based on this diagram, we now have enough information to write the Procedural History for each appeal. Resist the temptation to simply copy and paste from the reviewing court's decision! Instead, put it into your own words. There are many correct ways to do so; just make sure your Procedural History contains all of the following content:

- The identity of the Appellant (or, if this is a Supreme Court decision, the Petitioner), including the Appellant's name and full party designation
- A complete description of the lower court action being appealed, and the impact/result of the lower court's action on the parties' claims
- If you are briefing a Supreme Court Decision, a description of what the Court of Appeals did with the lower court's action, and a statement that the Supreme Court granted a petition for review.

Here's how the Procedural History for the *Miller v. Thomack* Court of Appeals decision could be written:

In the first appeal, Plaintiff-Appellants, Rhonda Miller, Richard Miller & Kay Miller (the Millers), and Defendant-Co-Appellant, Craig Thomack, appeal the Trial Court's grant of Summary Judgment dismissing the Millers' claims against Kimberly Ransom, Karen Miller and Jason Beattie. In the second appeal, Defendants-Appellants, Kurt D. Pamperin, Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (the Pamperins), appeal the trial court's refusal to grant summary judgment dismissing claims made against them in the Complaint.

That's it. No facts about underage drinking, and no statement about what the Court of Appeals did in its decision.

*A further example ...*

If someone has petitioned the Supreme Court for Review, you will also see the word **Petitioner** and another **Respondent** tacked onto the end. Ultimately, the Wisconsin Supreme Court granted a Petition for Review of the Court of Appeals' decision in *Miller v. Thomack*. The caption of this same case, after a Petition for Review was granted by the Wisconsin Supreme Court, looks like this:

Rhonda MILLER, Richard Miller and Kay Miller, Plaintiffs-Appellants-Respondents,  
v.  
Craig J. THOMACK, Defendant,  
State Farm Mutual Automobile Insurance Company, a Foreign Corporation,  
Defendant-Co-Appellant, James D. Thomack, ABC Insurance Company, as Insurer  
of James Thomack, Michelle  
Melberg, DEF Insurance Company, as Insurer of Michelle Melberg, Defendants,  
Kimberly Ransom, Defendant-Respondent-Petitioner,  
Fire Insurance Exchange, Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., United Fire & Casualty  
Company, a Foreign Corporation, Waupaca County, as Agent for the State of Wisconsin, Brian Clary, GHI Insurance, as Insurer of Brian Clary, John Doe, Susan  
Roe, Defendants, Karen Miller, Defendant-Respondent-Petitioner,  
NOP Insurance, as Insurer of Karen Miller, Defendant, Craig J. Thomack, Third  
Party Plaintiff-Co-Appellant, and  
James D. Thomack, Third Party Plaintiff, Jason Beattie, Third Party Defendant-Respondent,  
Lee Beattie, Carol Beattie and KLM Insurance Company, as Insurer of Jason Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

If you were briefing that case, here's what the procedural history would look like:

Defendants-Respondents-Petitioners, Kimberly Ransom and Karen Miller, seek review of the Court of Appeals' decision in their case. The Court of Appeals reversed the Trial Court's grant of Summary Judgment that dismissed the Millers' claims against them, which resulted in the Millers' claims being reinstated. The Supreme Court granted the Petition for Review.

## DISPOSITION

The purpose of the Disposition section is to tell the reader *what the reviewing court whose decision you are briefing did with the case*. Essentially, it is the end of the procedural story of the case, like skipping to the end of a murder mystery novel book to find out who did it.

### Finding and Understanding the Disposition

The easiest place to find the reviewing court's disposition is at the end of the majority opinion. In Wisconsin, it will typically be one of these options, printed in italics:

- *Judgment affirmed*
- *Judgment reversed* (or *Judgment reversed and remanded*)

Once again, if you are accessing the reviewing court's decision in a hard copy reporter (book) or on Westlaw®, you can also find it at the end of the synopsis, usually in italics.

You can also find it in the reviewing court's decision, typically right near the procedural history:

Procedural  
History,  
Pamperin  
Appeal

The Pamperins and their insurer, United Fire & Casualty Company, appeal the trial court's denial of their motion for summary judgment, raising a number of issues. We address only the issue of their liability under § 125.07(1)(a) 3, STATS., because that is dispositive. We conclude that there are no issues of fact concerning whether the Pamperins violated the statute and that they are entitled to judgment as a matter of law. We therefore reverse the trial court's denial of their motion for summary judgment.

Disposition,  
Pamperin  
Appeal

Procedural  
History,  
Miller  
Appeal

Rhonda Miller and her parents appeal from the trial court order granting summary judgment to Kimberly Ransom, Karen Miller, Jason Beattie and their insurers, all of whom contributed money to purchase the beer. They were all under twenty-one

3

at the time. Rhonda contends that the trial court erred as a matter of law in ruling that these three did not violate § 125.07(1)(a) 1, STATS., which provides that "no person may procure for, sell, dispense, or give away" any alcohol beverages to an underage person. She contends that the court also erred in ruling that their negligence, if any, was less than hers. We conclude that contributing money to the purchase of alcohol under the circumstances presented by this record violates the statute and is therefore negligence per se. We also conclude that the issue of comparative negligence should be decided by the jury. Finally, we conclude that Karen, Ransom and Beattie are not immune from liability under § 125.035, STATS. We therefore reverse the grant of summary judgment to these defendants.

Disposition,  
both  
Appeals

## Writing the Disposition

Again, resist the temptation to simply copy and paste from the reviewing court's decision! Instead, put the Disposition into your own words. There are many correct ways to do so; just make sure your Disposition contains all of the following content:

- The name of the Appellant (or, if this is a Supreme Court decision, the Petitioner). You can include the Appellant's full party designation if you wish, but it's not required
- A statement of the what the reviewing court did to the **lowest court's action** that is being reviewed
- A description of the impact/result of the reviewing court's action on the parties' claims

Here's how the Disposition for the *Miller v. Thomack* Court of Appeals decision could be written:

The Court of Appeals reversed the trial court's grant of summary judgment in favor of Karen, Ransom and Beattie, and ordered the Millers' claims against those parties reinstated. The Court of Appeals also reversed the trial court's denial of summary judgment to the Pamperins and ordered that the Millers' claims against the Pamperins be dismissed.

That's it. No facts about underage drinking, and no explanation of why the Court of Appeals reversed the Trial Court.

*A further example ...*

As you know, the Wisconsin Supreme Court granted a Petition for Review of the Court of Appeals' decision in *Miller v. Thomack*. As it turned out, the Supreme Court agreed with (or affirmed) the Court of Appeals' decision. If you were briefing the Supreme Court decision, your Disposition could look nearly identical to what you saw as the Disposition for the Court of Appeals' decision.

The **Supreme Court reversed the trial court's grant of summary judgment** in favor of Karen, Ransom and Beattie, and ordered the Millers' claims against those parties reinstated. The Court of Appeals also reversed the trial court's denial of summary judgment to the Pamperins and ordered that the Millers' claims against the Pamperins be dismissed.

That's because what we really want to know is what the Supreme Court ultimately did with the parties' claims that began in the Trial Court. That being said, if you want to include all of the details, you could write the Disposition this way:

The **Supreme Court affirmed the Court of Appeals' reversal of the trial court's grant of summary judgment** in favor of Karen, Ransom and Beattie, and ordered the Millers' claims against those parties reinstated. The Court of Appeals also reversed the trial court's denial of summary judgment to the Pamperins and ordered that the Millers' claims against the Pamperins be dismissed.

Either way is fine; I just find the second version to be a bit confusing since there are two dispositional words (affirmed, reversed) used.

Remember, when you prepare your final draft of your case brief, the Disposition will go at the end. I just think it's helpful to write the Disposition right after you write the Procedural History because the two are so closely related.

## APPLICABLE STATUTE(S)

Many, but not all, court decisions that you brief will involve decisions that interpret and apply statutes or administrative regulations. Because it forms the basis of the reviewing court's decision, it's important to take the time to identify the statute/regulation and the specific words or phrases in the statute/regulation, that are being interpreted and applied.

### Finding and Understanding the Applicable Statute(s)

The first step is to find the actual statute that is being interpreted and applied to the parties involved in the appeal. This can be tricky because reviewing courts also typically mention statutes that define the procedure that must be followed in the appeal (sometimes called the Standard of Review). The reviewing court may also mention the statute that gave the parties the right to file a certain motion (such as a Motion for Summary Judgment or a Motion to Dismiss). That means the first statute you come across in the decision might not be the substantive statute being interpreted in the decision and applied to the parties' claims.

Finding applicable statutes can be complicated. Where you find it depends on whether you are accessing the reviewing court's decision in a hard copy reporter (book), on Westlaw®, or on FastCase® or the Internet in general.

If you are accessing the reviewing court's decision in a hard copy reporter (book) or on Westlaw®, you will see a series of **headnotes** below the synopsis. Some of them may contain brief overviews of statutes discussed in the decision, along with (improperly formatted) citations to statutes:

#### [2] **Alcoholic Beverages** Owners or lessors of premises

Under statute pursuant to which no adult may knowingly permit or fail to take action to prevent illegal consumption of alcoholic beverages by underage person on premises owned or controlled by adult, bar operators were not liable for injuries sustained by minor passenger in accident involving minor driver who had consumed beer outside bar, in parking lot and on adjacent beach; operators had not provided beer, which was brought onto premises by driver and others, and there was no evidence that operators knew of underage drinking occurring in parking lot and beach area on evening of accident. W.S.A. 125.07(1)(a)3.

The purpose of the headnote is to allow the reader to jump to the portion of the decision that discusses the topic summarized in the headnote:

Applicable statute --  
Authority being interpreted -- Pamperin appeal

#### [2] The statute the Pamperins are alleged to have violated is § 125.07(1)(a) 3, STATS., which provides

No adult knowingly may permit or fail to take actions to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

If you are accessing the reviewing court's decision or on FastCase® or the Internet in general, there are no headnotes.

Regardless of whether you have headnotes to help you locate the applicable statute(s), it is critically important to read the entire decision *thoroughly and carefully* and use a highlighter or other methods to mark the statutes the reviewing court is interpreting and applying. Look for portions of the decision discussing the meaning and/or application of words or phrases in a statute beyond just a citation of the statute.

### Writing the Applicable Statute(s)

Once you have found the statute(s) the reviewing court is interpreting and applying in its decision, writing the Applicable Statutes section of your case brief is fairly simple:

- Start with the complete and proper *Bluebook* citation of the statute
- Copy and paste the actual language of the statute and put it in quotation marks
- If the statute is long or contains a lot of words and phrases that aren't directly relevant to the legal questions on appeal, revise the statute by taking words out or paraphrasing it.

Do not include the reviewing court's interpretation of the statute, or an explanation of its meaning. Include only the words of the statute itself. Here are the applicable statutes in the *Miller v. Thomack* case brief.

Section 125.07(1)(a)1., Wis. Stat. (1996): "No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

Section 125.07(1)(a)3., Wis. Stat. (1996): "No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control."

The reviewing court expressly stated it was focusing on the phrase "procure for" (see below),

Applicable  
statute --  
Authority  
being  
interpreted  
-- Miller  
appeal

**[6]** In this case, we focus on the term "procure for." **"Procure" is not defined in the statute. We therefore construe the word according to its ordinary and accepted meaning, and we may consult a dictionary for that purpose. In the Interest of Christopher D., 191 Wis.2d 680, 704, 530 N.W.2d 34, 43 (Ct.App.1995).**

Thus, it would be fine to write the first statute this way:

Section 125.07(1)(a)1., Wis. Stat. (1996): "No person may procure ... any alcohol beverages [for] any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

## FACTS

All court decisions are based on a certain set of substantive facts. Although appellate courts do not review issues of fact, the substantive facts provide a context for the legal issues being reviewed. Thus, to get a true understanding of the legal impact of the reviewing court's decision, you need to have a good grasp of the substantive facts.

### Understanding the Facts

The substantive facts tell us what happened to the persons involved in the appeal. Unlike procedural facts (which we detailed in the Procedural History and Disposition sections of the case brief), the substantive facts are the who, what, when, where, why (sometimes) and how of the contract, accident, transaction, etc., that forms the basis of the original court action. There are generally three different types of facts: legally significant, contextual (background) and irrelevant.

**Legally significant facts** are those facts that directly lead to or otherwise affect the legal outcome of the case. If the legally significant facts are changed, the outcome would likely change as well. Whether a fact is legally significant depends upon the legal issue in question. For example, the date of an accident would be legally significant if there was a question as to whether the statute of limitation had passed. In contrast, if there is no issue as to the statute of limitation, the date of the accident is merely background information.

**Contextual facts** provide you some background or “flavoring” of the case. Although such facts do not impact the legal issue, they do help us understand the issue better. Think of contextual facts as similar to supporting characters in a movie or book. Often, they help us to understand the main character and the plot, and their interaction with the main character adds interest.

**Irrelevant facts** are neither legally significant nor contextual. They really don’t add to our understanding and simply take up space. Usually, irrelevant facts relate to minor details, such as the color of the car the defendant was driving, or the name of the hairstylist the plaintiff uses. If you always keep the legal issue in front of you, it’s easy to determine which facts are irrelevant. If they don’t directly affect the legal issue, or help you to understand it, they are irrelevant.

Suppose the issue is whether the defendant breached a legal duty (one of the elements of negligence). A witness tells you the defendant drove a new blue SUV through a red light and smashed into the plaintiff’s old white Geo Metro. The fact that the defendant failed to stop at a red light is legally significant. The fact that the defendant drove a blue car is irrelevant. The location of the accident, the facts that the defendant drove a large SUV and the plaintiff drove a sub-compact, are contextual.

### *Finding the Facts*

The facts are usually pretty easy to find. Typically, there is a distinct “facts” section of each decision. Sometimes the court uses a heading, as in the *Miller v. Thomack* case on page 133 (it’s titled “Background”). In shorter decisions, the facts section starts with a paragraph that states something like, “The following facts are before us on this appeal.” The synopsis also usually has a general statement of the facts. **Be careful!** Sometimes the “facts” or “background” section of the decision doesn’t contain *all* of the facts. The court may include additional legally significant facts when it discusses its holding or its reasoning. It can be helpful to highlight all instances of facts as you read the decision and decide later if the facts are legally significant, contextual or irrelevant.

Like many decisions, the *Miller v. Thomack* decision has a “Background” section that contains most of the facts:

## BACKGROUND

Facts

For purposes of this appeal, these facts are not disputed. Early in the evening of June 12, 1990, Thomack picked up Rhonda and her cousins, Karen and Ransom. There was discussion among the four about getting beer and they drove to a parking lot where young people were gathered. Brian Clary, who was twenty-one, said he would buy beer for them. He bought either a twelve pack or a case of beer for them at a local liquor store. Karen and Ransom contributed money for the purchase of the beer, as did Beattie. The beer was put in Thomack's car and Thomack drove Rhonda, Karen and Ransom to a nearby unoccupied cabin, where they consumed some of the beer. No one served anyone else beer.

Facts

From the cabin, Thomack drove the other three to the parking lot of Pamperin's Bear Lake Bar & Hall on Bear Lake. The beer either remained in the back of the car, was placed beside it, or on the trunk, and any of the group who wanted a beer took one. No one distributed or passed the beer purchased by Clary to others, and consumption was voluntary. Thomack, Rhonda and others consumed beer on the beach area. None of the alcohol consumed by Thomack or Rhonda was purchased from Pamperin's Bear Lake Bar & Hall. The Pamperins leased the tavern from a relative of the person who owns the Bear Lake Campground, which is located next to the tavern. The leased property includes the tavern building, the parking lot to the east of the building and "outback." "Outback" means the area between the building and the lake, which includes a block of lake frontage. The lake shore is approximately 300 feet from the tavern.

Facts

Rhonda left Bear Lake in the early morning of June 13 as a passenger in Thomack's car. While passing another car, Thomack lost control of his car and it went off the road and struck a tree. Rhonda was seriously injured. She was not wearing a seat belt and was not then in the habit of wearing a seat belt.

As you might have noticed, the facts relating to both appeals (the Millers' and the Pamperins') are recited together. This is not the only place in the decision that contains the facts. Later on in the decision, when discussing the appeal by the Millers against Kimberly Ransom, Karen Miller and Jason Beattie, the Court repeated these facts:

Facts

[7] Clary was willing to purchase the beer for the underage persons in the car, but he needed money, and a reasonable inference from the undisputed facts is that he was not going to use his own. For purposes of this appeal, it is undisputed that when Karen, Ransom and Beattie contributed the money, they knew Clary was going to use it to purchase beer for the persons in the car, including Thomack, and they knew Thomack was underage.

constitutes a violation of § 125.07(1)(a) 1, STATS., and is therefore negligence per se.

Facts

Karen and Ransom argue that cases from other jurisdictions support their position that underage persons who do nothing more than contribute to a common fund for the purchase of alcohol do not "furnish" alcohol to other underage persons. However, because the statutory language and controlling precedent in those cases differ from our own, we do not find them persuasive. The attempt to distinguish the conduct of underage persons drinking with friends from the conduct of adults is not, in our view, a viable distinction after *Kappell*. And we do not view contributing money for the purchase of the beer as somehow less significant in making the beer available than the act of handing a beer to a friend, which was the conduct found to violate the statute in *Kappell*.

Similarly, when discussing the Pamperins' appeal, the Court added the following facts:

Facts

[3] There was evidence that Clary and his uncle asked the person bartending that evening, Kurt Pamperin, Jr., for permission for Clary and his friends to swim because there was a sign saying "No swimming after dark." According to Clary, Pamperin agreed. Since Pamperin testified he did not recall this, or recall that anyone was on the beach area that evening, there is a genuine factual issue as to

Facts

Pamperin testified that he did not go outside that evening, did not see any young people and did not know about any drinking that evening. There is no evidence, or reasonable inferences from evidence, that disputes this. There was testimony from some of the young people that they were being loud and were afraid someone would complain. But Clary testified that when he was inside the tavern having a beer with his uncle at the bar, he could not hear the others outside. It is undisputed that none of the group went inside the tavern except Rhonda, Karen and Ransom, who used the bathroom. They could be seen from the bar, and their clothes were wet, but there is no evidence that anything about their behavior in the tavern suggested they were drinking alcohol.

Facts

We have also considered whether there is evidence or reasonable inferences from evidence that Pamperin, from inside the tavern, saw young people drinking, or saw the beer cans on the picnic table near the beach area. There are windows in the tavern facing the lake and Pamperin testified that when he is serving at the bar he can see the lake. Rhonda testified that "you can see from the bar where the beach is." But Clary, who was sitting at the bar that night, testified that you could not see the beach from the bar at night unless you went right up to the window. Since

Pamperin saw beer cans on the picnic table or young people on the beach drinking alcohol that night. Thomack's testimony that he saw "the owner" in the bar through the window when he, Thomack, was outside also

Facts

Facts

Rhonda points to Pamperin's testimony that he knew there "was the potential" for underage drinking on the beach. He testified he had such problems three times in the past four years. On those occasions, he simply told the people to leave and that he would lock the gate if there were continuing problems. There is no evidence that the beach area had a reputation as a place underage persons could drink or that any of the underage persons drinking there that evening had done so before. Pamperin denied that he knew any of these particular young people before the accident, and no evidence suggests otherwise.

When facts are repeated in the reviewing court's decision, or discussed in the portion of the decision that explains the reviewing court's legal analysis, there's a good chance those facts are legally significant.

Based on what we see in the decision, we know that:

With respect to the Millers' appeal, the **legally significant facts** are those that relate to:

- Who contributed money toward the purchase of the beer
- Whether the people who contributed money to buy the beer knew that underage persons would be drinking it

With respect to the Millers' appeal, the **contextual facts** are those that relate to:

- Who actually purchased the beer (Brian Clary) and from where (a liquor store)
- Where the minors drank the beer
- Where the beer was located while the minors drank it
- Whether someone served or distributed the beer or everyone who drank the beer helped themselves to it
- A description of the accident which injured Rhonda Miller

With respect to the Pamperins' appeal, the **legally significant facts** are those that relate to:

- Who actually purchased the beer (Brian Clary) and from where (a liquor store)
- Where on the Pamperins' property the minors drank the beer
- Contact the Pamperins may have had with one or more of the minors
- Actual knowledge the Pamperins had that the minors were on the property drinking beer
- Circumstances that should have led the Pamperins to believe that the minors were on their property drinking beer (what could/should the Pamperins have seen or heard with respect to the minors' activities on the Pamperins' property)

With respect to the Pamperins' appeal, the **contextual facts** are those that relate to:

- How the minors purchased the beer (with whose money, whose ID, etc.)
- Where the minors drank the beer other than on the Pamperins' property
- A description of the accident which injured Rhonda Miller

### Writing the Facts

As with many of the other sections of your case brief, resist the temptation to simply copy and paste from the reviewing court's decision! Instead, write the facts in your own words. Think about how you want to organize the facts. Most of the time you'll write the facts as a chronological story about what happened. Here's one way you could write the facts for the *Miller v. Thomack* appeal:

On the night of the accident which injured Rhonda Miller, Rhonda arranged for Brian Clary, who was 21 years old, to buy beer for her, for her two cousins, Kimberly Ransom and Karen Miller, for Craig Thomack and for Jason Beattie, all of whom were minors under the age of 18 and could not purchase beer legally. Kimberly contributed \$5.00 toward the purchase; it is assumed that Karen and others also contributed money. Clary bought the beer and placed it in Craig's car.

After drinking some of the beer at an unoccupied cabin, Craig drove Rhonda, Karen and Kimberly to the parking lot of Pamperin's Bear Lake Bar and Hall. Rhonda, Craig, Karen, Kimberly and Jason consumed the beer on the beach area behind the tavern. No one distributed or served the beer; they all helped themselves.

Testimony indicated that one of the minors may have asked the bartender if the group could swim at the lake, and that one or more of the minors may have used the tavern's restroom. None of the minors purchased any alcohol from the tavern; all of the beer they consumed was purchased by Brian Clary at a liquor store. Several of the minors testified that they could see into the bar that evening. However, testimony from persons inside the tavern that evening, including Brian Clary, indicated that the minors could not be seen or heard from inside the bar.

Rhonda and Craig later left the beach area in Craig's car, with Craig driving. Rhonda was not wearing her seat belt. At some point, Craig lost control of the vehicle in a rainstorm, resulting in an accident that severely injured Rhonda.

If you compare the above paragraphs to what you read in the *Miller v. Thomack* decision, you can see that the legally significant facts are included in detail, whereas contextual facts (most notably the facts about the accident and Rhonda's injuries) are merely summarized.

Now that you have the Procedural History, Disposition, Applicable Statutes and Facts of the *Miller v. Thomack* decision, you have a good foundation for understanding and writing the case brief sections that explain the Court of Appeals' legal analysis: The Issues, Holdings, and Reasoning sections.

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