COURT OF APPEALS
DECISION
DATED AND FILED

December 7, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal Nos. 2005AP1991
2005AP1992

Cir. Ct. Nos. 2003TR7784
2003TR7952

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

CITY OF SHEBOYGAN,

PLAINTIFF-RESPONDENT,

V.

KORRY L. ARDELL,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed*.

¶1 NETTESHEIM, J.[1] Korry L. Ardell appeals pro se from a circuit court order denying his motion to reopen two traffic forfeiture judgments. The judgments were entered pursuant to a stipulation signed by the city attorney and Ardell's attorney. On appeal, Ardell contends that his attorney was not authorized to enter into the stipulation. The trial court rejected Ardell's motion as untimely. We affirm.

BACKGROUND

¶2 The relevant facts are not in dispute. Ardell had accumulated a slew of traffic citations, including the two speeding citations at issue on this appeal. On October 1, 2003, the City and Ardell's attorney entered into a written stipulation under which Ardell entered pleas of no contest to reduced levels of speeding as to these two charges.[2] The stipulation further provided that judgment would not be entered against Ardell on these reduced charges until January 1, 2004, to allow Ardell sufficient time to complete a traffic safety course. Finally, the stipulation stated that the parties' agreement was conditioned upon Ardell not receiving any additional moving traffic violations from the City of Sheboygan Police Department on or before April 1, 2004. If Ardell received such additional citations, the City could, without further notice to Ardell, apply to the circuit court

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[2] The stipulation also dismissed or otherwise resolved certain of the other charges against Ardell. The City's brief states that two other stipulations resolved still other of the many pending charges against Ardell. Those stipulations are not in the record in this case, and the charges addressed in those stipulations are not before us.

to reinstate the original charges and to have judgment entered against Ardell as to those charges.[3]

¶3 Ardell, in fact, received additional citations from the City of Sheboygan Police Department. As a result, the City moved on February 4, 2003, for judgment against Ardell on the original speeding charges. Pursuant to the stipulation, the City did not provide Ardell with notice of this application. On the same date, the circuit court granted the City's motion.

¶4 Nearly two years later, on January 24, 2005, Ardell wrote a "letter/motion" to the circuit court asking that the court reopen one of the speeding forfeiture judgments. In support, Ardell stated that he was unaware that the stipulation would render him a habitual traffic offender. On March 30, 2005, Ardell followed with a further "letter/motion" to the circuit court asking that the court reopen both speeding forfeiture judgments. In support, Ardell contended that the written stipulation did not comport with his attorney's earlier verbal representation of the agreement to him. On this basis, Ardell reasoned, his attorney did not have his authority to enter into the stipulation and therefore the court should declare the stipulation void.[4]

¶5 At the hearing on Ardell's motion, the circuit court denied the motion as untimely. Ardell appeals.

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[3] This provision of the stipulation also covered other charges that had been either dismissed or reduced.

[4] Ardell's letter also argued other grounds in support of his request to vacate the judgments, including a renewal of his earlier contention that he was not aware that the stipulation would render him a habitual traffic offender.

DISCUSSION

¶6 On appeal, Ardell renews his circuit court argument that his attorney's verbal representation of the stipulation to him was not in accord with the actual terms of the written stipulation and, therefore, the circuit court should have declared the stipulation void. The City responds on the same basis that the circuit court ruled—that Ardell's motion was not timely under WIS. STAT. § 345.51.

¶7 Ardell has not filed a reply brief in response to the City's argument. On that basis alone, we affirm the circuit court's ruling. In ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994), we noted the general rule that if a party on appeal does not refute an argument, the argument is taken as confessed. We then added:

> We think the same holds true when an appellant ignores the ground upon which the trial court ruled and raises issues on appeal that do not undertake to refute the trial court's ruling. *This is especially so where the respondent raises the grounds relied upon by the trial court, and the appellant fails to dispute these grounds in a reply brief.*

Id. (emphasis added).

¶8 We acknowledge that Ardell's appellate brief does state that he wrote to the circuit court back in October 2003 raising the claim that his attorney was not authorized to enter into the stipulation. We also acknowledge that Ardell's March 25, 2005 "letter/motion" to the court makes the same claim. However, no such October 2003 letter appears in the appellate record. We therefore conclude that Ardell has not mounted any response supported by the record against the City's argument. On that basis, we affirm.

¶9 However, we also address the City's timeliness argument on the merits. Chapter 345 of the Wisconsin Statutes is entitled "Vehicles—Civil and Criminal Liability." Within this chapter, WIS. STAT. § 345.51, entitled "Reopening of default judgment," states that no default judgment shall be reopened unless "upon good cause shown" and that such a motion "shall be filed within 6 months after the judgment is entered in the court record." Ardell's 2005 "letter/motions" to reopen the default forfeiture judgments came long after this deadline. Even if we were to allow that this deadline could be extended for good cause, akin to the procedure under WIS. STAT. § 806.07(1)(h),[5] Ardell has failed to explain why he waited this extended period of time to seek relief from the default judgments.

CONCLUSION

¶10 We uphold the circuit court's ruling that Ardell's motion to vacate the default judgments was untimely.

By the Court.—Judgments and order affirmed.

[5] In ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 551, 363 N.W.2d 419 (1985), the supreme court held that the one-year time limitation governing relief from a judgment or order under the then language of WIS. STAT. § 806.07 did not apply when the relief was sought under para. (1)(h) of the statute.

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