

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 29, 2006

Cornelia G. Clark
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. 2004AP2713

Cir. Ct. No. 2004CV1229

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

PATRICIA L. GUY,

PLAINTIFF-APPELLANT,

V.

MAURICE A. PULLEY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
CLARE L. FIORENZA, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Patricia Guy (“Guy”) appeals *pro se* from an order dismissing her claim for \$250,000 that she filed against Maurice A. Pulley.¹ The

¹ Guy proceeded *pro se* throughout the case.

trial court also found Guy's claims frivolous and awarded Pulley actual attorney fees of \$1000. We affirm.

BACKGROUND

¶2 Guy is the daughter of Mary Guy ("Mary"), now deceased, who was involved in a real estate transaction with Pulley in 1993 pursuant to which Pulley, Pulley's wife, and Mary became joint tenants of a piece of property. Guy's complaint asserted that Pulley is not the proper owner of the real estate in question because he engaged in fraud. Guy sought \$250,000.

¶3 When Pulley failed to answer within forty-five days, Guy filed a motion for default judgment the next day. Several days later, Pulley filed a *pro se* answer to the complaint. Pulley then retained counsel and moved the trial court for additional time to file an answer. The trial court granted the motion, finding that Pulley had established excusable neglect and a potentially meritorious defense.²

¶4 Pulley moved for summary judgment on numerous grounds, including that Guy did not have standing to bring the action on behalf of her mother's estate because Guy is not the personal representative of the estate. Pulley also noted that prior to her death, Mary herself brought a legal action against Pulley challenging the joint tenancy. *See Guy v. Pulley*, No. 02-CV-001374 (Milwaukee County Cir. Ct. Nov. 25, 2002). This action was dismissed in

² Unlike the transcript of the motion for summary judgment, the transcript of this hearing is in the record.

July 2002, approximately eleven months before Mary's death. No appeal was filed.

¶5 Guy filed a brief in opposition to the motion for summary judgment. She argued that the trial court should have defaulted Pulley, and that Guy had standing pursuant to the "Seventh Amendment of the United States Constitution."

¶6 A motion hearing took place on October 12, 2004. The trial court's written order that followed dismissed Guy's claims "based upon the arguments and all of the files and proceedings had herein..." It also found Guy's complaint frivolous and granted Pulley actual attorney fees of \$1,000.

¶7 Guy appealed. Although she made arrangements to have the summary judgment motion hearing transcribed, she failed to pay for the transcript and it was not provided. This court issued an order directing Guy to make the necessary arrangements to pay for the transcript within ten days, indicating that if she did not do so, the appeal would proceed without it. On February 22, 2005, this court issued an order indicating that Guy had not responded to the court's order or made arrangements to pay for the transcript. We ordered that the appeal would proceed without transcripts.

DISCUSSION

¶8 Guy's brief is difficult to interpret. It appears to argue two main points: (1) default judgment should have been granted against Pulley for not filing

a timely answer, and (2) Guy had standing under the Seventh Amendment.³ We examine each in turn.

I. The late-filed complaint

¶9 The trial court’s determination whether to grant a default judgment or a concomitant motion for enlargement of time within which to answer is reviewed under an erroneous exercise of discretion standard. *Oostburg State Bank v. United Sav. & Loan Ass’n*, 125 Wis. 2d 224, 238, 372 N.W.2d 471 (Ct. App. 1985) *aff’d*, 130 Wis. 2d 4, 386 N.W.2d 53 (1986) (citation omitted). A court properly exercises its discretion if it “examine[s] the relevant facts, applie[s] a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach.” *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶10 A defendant is required to respond to a complaint within forty-five days of receiving the summons. WIS. STAT. § 801.095(1) (2003-04).⁴ The court may grant a default judgment to the plaintiff if the defendant fails to meet that deadline. WIS. STAT. § 806.02; *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶15, 242 Wis. 2d 153, 624 N.W.2d 375. The time for filing an answer may be enlarged after the deadline has already passed if the delinquency was the result of excusable neglect. WIS. STAT. § 801.15(2)(a). Excusable neglect is “neglect which might have been the act of a reasonably prudent person under the same circumstances.”

³ Guy’s brief does not address the trial court’s finding that Guy’s action was frivolous, or the award of actual attorney fees. We therefore affirm without discussion that component of the order.

⁴ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Hedtcke v. Sentry Ins. Co., 109 Wis.2d 461, 468, 326 N.W.2d 727 (1982) (citation omitted).

¶11 Guy argues that Pulley “did not put forth any reason for ‘excusable neglect’” for failure to timely answer the summons and complaint. She also asserts that Pulley lied about the law and his reasons for not filing the answer on time. However, she makes no attempt to address the trial court’s contrary findings, or its exercise of discretion. We discern no basis to disturb the trial court’s exercise of discretion and do not consider this issue further. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court will not address issues inadequately briefed).

II. Standing

¶12 The trial court granted summary judgment, although we do not know on what basis. When the appellate record is incomplete in connection with an issue raised by the appellant, we assume that the missing material supports the trial court’s ruling. *See Duhamel v. Duhamel*, 154 Wis. 2d 258, 269, 453 N.W.2d 149 (Ct. App. 1989). Here, we are considering the grant of Pulley’s motion for summary judgment. In reviewing a grant of summary judgment, we apply the standards set forth in WIS. STAT. § 802.08(2) in the same manner as the circuit court. *Badger State Bank v. Taylor*, 2004 WI 128, ¶12, 276 Wis. 2d 312, 688 N.W.2d 439. That statute permits summary judgment where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Sec. 802.08(2).

¶13 Based on the materials submitted in support and opposition to Pulley’s motion for summary judgment, we conclude that there is no genuine issue of material fact with respect to standing. Guy is attempting to assert rights

belonging to Mary, who is deceased. Only an estate's personal representative can bring such a claim, *see Pietraszwicz v. Pietraszwicz*, 173 Wis. 523, 529-30, 181 N.W. 722 (1921), and it is undisputed that Guy is not the personal representative. A person who is not licensed to practice law in Wisconsin may not represent the interest of any third parties or other entities in legal proceedings in Wisconsin. *State ex rel. Baker v. County Court of Rock County, Branch I*, 29 Wis. 2d 1, 9, 138 N.W.2d 162 (1965). Guy is not an attorney. She is prohibited from representing an estate. Therefore, summary judgment against Guy was appropriate.

¶14 Guy's only support for her standing argument is her assertion that she has standing by virtue of the Seventh Amendment and *Marbury v. Madison*, 5 U.S. 137 (1 Cranch) (1803). She has not filed a reply brief in response to Pulley's arguments; hence, we do not consider her arguments further. *See Pettit*, 171 Wis. 2d at 646; *State v. Alexander*, 2005 WI App 231, ¶15, 287 Wis. 2d 645, 706 N.W.2d 191 ("Arguments not refuted are deemed admitted.").

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

