COURT OF APPEALS
DECISION
DATED AND FILED

October 4, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP490 **Cir. Ct. No. 2005SC170**

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

EUGENE VOGEL AND NANA VOGEL, D/B/A WESTGATE ESTATES,

PLAINTIFFS-RESPONDENTS,

V.

D.J. THOMSEN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Green Lake County: GUY D. DUTCHER, Judge.[1] *Affirmed*.

[1] This case was originally assigned to Judge William M. McMonigal. Judge McMonigal later disqualified himself due to a threat. The case was reassigned to Judge Guy D. Dutcher who presided over the trial and posttrial motion hearing.

¶1 SNYDER, P.J.[2] D.J. Thomsen appeals from an order denying her motion to set aside a default judgment that had been rendered against her on January 5, 2006, when she failed to appear for her court date. Thomsen contends that the circuit court erred when it refused to set aside the judgment and reopen the small claims action because, prior to the trial date, she had moved for a continuance and demonstrated good cause for her motion. We disagree and affirm the order of the circuit court.

PROCEDURAL BACKGROUND

¶2 Eugene and Nana Vogel, d/b/a Westgate Estates (Vogel), initiated a small claims action against Thomsen for nonpayment of rent and eviction from a mobile home park in which Thomsen had a mobile home. The summons and complaint advised Thomsen that she would be required to appear personally to dispute the charges.

¶3 On June 20, 2005, Thomsen appeared in court and filed her answer to the complaint, along with her counterclaim and a motion for change of venue. Vogel opposed the motion and the parties submitted legal memoranda supporting their positions. Vogel also filed a motion for a hearing on Thomsen's demand for production of documents on August 12. The court scheduled a telephonic motion hearing for August 26 at 9:30 a.m. On August 15, Thomsen moved for a continuance, stating that she had to be in court in Indiana at the same time as the motion hearing here.[3] The circuit court changed the date for the telephonic

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

[3] Thomsen is a licensed attorney, whose practice is located in Indianapolis, Indiana.

hearing to August 24. Following arguments by the parties, the circuit court denied Thomsen's motion for a change of venue and Vogel agreed to comply with Thomsen's demand for production of documents.

¶4 In October 2005, the circuit court sent notice to the parties that their trial date was scheduled for January 5, 2006, at 1:00 p.m. On December 19, 2005, Thomsen filed her second motion for continuance and stated that she had a court appearance in Indiana on the morning of January 6, 2006, the day after the hearing date here. Thomsen told the court "[t]hat due to health issues, she [could] not drive the 9 hours after a trial in the above captioned case and be in Court [in Indianapolis] at 9:00 the following morning." The court responded on December 22, stating, "The Court Trial has been placed on the Court's calendar since October 26, 2005. The request for Continuance is denied."

¶5 On January 3, 2006, Thomsen faxed another motion to the court, this time asking for sanctions and reconsideration of her request for a continuance. The court observed that the initial request for a continuance had been denied by the previous judge and denied this request as well. The trial proceeded without Thomsen present and the circuit court granted a default judgment to Vogel.

¶6 On January 19, Thomsen filed a motion to set aside the judgment "to correct error." The circuit court set a hearing date for February 16, 2006. On February 10, Thomsen moved for a continuance, citing a scheduling conflict that required her to appear in court in Indiana. The court responded by letter on February 10, denying the motion and stating that Thomsen could appear by telephone on the 16th. At the hearing, both parties participated and the court

subsequently entered an order denying Thomsen's motion to reopen. It is from this order that Thomsen appeals.[4]

DISCUSSION

¶7 Thomsen argues that she has demonstrated good cause for granting her motion to reopen or set aside the judgment. She directs us to WIS. STAT. § 799.29(1)(a), which addresses motions to reopen a small claims default judgment and states in relevant part: "There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown." Thus, her argument goes, the circuit court erred when it did not grant her motion.

¶8 The determination of whether to vacate a default judgment is within the sound discretion of the circuit court and the circuit court's decision will not be disturbed unless there is an erroneous exercise of discretion. *See* ***Dugenske v. Dugenske***, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). A circuit court's exercise of discretion will be sustained if it has applied the proper law to the established facts and if there is any reasonable basis for the court's ruling. *See* ***State v. Alsteen***, 108 Wis. 2d 723, 727, 324 N.W.2d 426 (1982). Our approach to the review is guided by the principle that the law prefers to afford the litigants a day in court and a trial on the issues. *See* ***Dugenske***, 80 Wis. 2d at 68. Accordingly, we turn to the record to decide whether the court erroneously exercised its discretion in denying Thomsen's motion to reopen.

[4] We have jurisdiction to review only the order denying Thomsen's motion to set aside the judgment, not the default judgment itself. *See* WIS. STAT. § 799.29(1).

¶9 Thomsen presents multiple overlapping arguments, from which we glean three primary contentions. First, she contends that the trial court failed to set forth any reasons for denying her motion to reopen the judgment and, therefore, has not exercised its discretion. Second, Thomsen contends that her first motion for continuance was supported by good cause and therefore, because her reasons were the same, her subsequent motions were likewise supported by good cause. Finally, Thomsen implies that the circuit court was unsympathetic to her situation and adopted a retaliatory stance toward her motions.[5] We take each in turn.

¶10 First, Thomsen assails the lack of explanation in the court's order denying her motion to reopen. We agree that the circuit court's order denies Thomsen's motion without elaboration. However, we will generally look for reasons to sustain a discretionary determination. ***Steinbach v. Gustafson***, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993). We may independently search the record to determine whether additional reasons exist to support the circuit court's exercise of discretion. *See* ***Stan's Lumber, Inc. v. Fleming***, 196 Wis. 2d 554, 573, 538 N.W.2d 849 (Ct. App. 1995). Here, the record demonstrates a pattern of delays and an expectation of accommodation by Thomsen regarding her private practice calendar.

¶11 The court's letter to Thomsen denying her third motion for a continuance reveals that the court was concerned about Thomsen's persistent requests to postpone proceedings. The court stated:

> Several factors have contributed to this decision [to deny the continuance requested on February 10, 2006], namely:

[5] This argument is clear in Thomsen's motion to reopen. It is less direct, but still pervasive, in her appellate briefs.

> a. The file regarding this matter reveals a pattern of delays that have been undertaken at your request. These proceedings have already been extended for too long a time.
>
> b. You have not identified the specifics of the proceeding that will command your appearance in the State of Indiana. No information has been provided regarding the name of the Judge, the title of the action, the case number or the type of proceeding involved.
>
> c. That a week has elapsed since this hearing was scheduled and the time you filed the motion for continuance.
>
> d. That the hearing has been scheduled pursuant to a motion that you have brought. The responsibility for obtaining a time and date for a hearing falls upon the party who has initiated the need for that hearing. There is no requirement that the clerk's office initiate contact with you.

¶12 Thomsen's January 19 motion to reopen re-stated many of the same arguments she had used in her three motions for continuance, to wit: her Indiana litigation calendar conflicted with the Wisconsin court calendar and her health issues made travel a concern. The record reveals that the circuit court's order was based on Thomsen's overall pattern of unavailability throughout the course of the proceedings and it supports the court's denial of Thomsen's motion to reopen.

¶13 Next, Thomsen argues that, because the circuit court found good cause to grant her first motion for a continuance, and all subsequent motions alleged similar calendar conflicts and health concerns, the court erroneously changed its mind regarding what constituted "good cause." In Thomsen's words, "[T]he Court denied all three of the following Motions requested by Defendant for a continuance and/or a new trial date … and each of the requests was based upon the business conflict of the Defendant, which was the same reason for the first Motion referred to above …." Nonetheless, Thomsen has presented no legal authority for her proposition that if a business conflict is a good cause for the court

to reschedule a hearing once, it must be considered a good cause to reschedule multiple times and to reopen the judgment if necessary. Arguments unsupported by reference to legal authority need not be considered, and we address this line of assertions no further. *See* ***State v. Lindell***, 2000 WI App 180, ¶23 n.8, 238 Wis. 2d 422, 617 N.W.2d 500.

¶14 Finally, Thomsen asserts that the circuit court was unsympathetic to her situation and adopted a retaliatory stance toward her motions. In her motion to reopen, Thomsen alleged that the court's decisions to deny her motions to continue were "retaliatory in nature, rude and abusive … and violate[d] the code of judicial conduct in any State, including Wisconsin." Again, no legal authority is provided. Thomsen made her business schedule and her health condition clear to the court and to Vogel. It appears that the court attempted to accommodate Thomsen by allowing her to appear by phone instead of in person. It is unclear from the record how the court's actions could be considered retaliatory or abusive.[6] We discern nothing in the record that would lead us to disturb the court's order based on these allegations.

¶15 Thomsen's brief-in-chief and reply are peppered with other undeveloped assertions that do not rise to the level of appellate argument or are not related to the limited scope of this appeal. For example, she states that her Indiana litigation calendar should take priority because her client was a military person home from Iraq, that the Federal Rules of Civil Procedure support her motion to reopen, that Wisconsin's rules of arbitration lend support for a finding

[6] Thomsen alleges that the judge at her initial appearance made remarks about her that were derogatory in nature. No transcript has been provided to verify this.

of judicial misconduct for failure to postpone a hearing, and that the merits of her counterclaim required the case to be removed from small claims court. To the extent we have not addressed a proposition put forth by Thomsen, that proposition is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

CONCLUSION

¶16 We review the denial of a motion to reopen a default judgment under WIS. STAT. § 799.29(1) for an erroneous exercise of discretion by the circuit court. Where, as here, the record demonstrates a reasonable basis for the court's ruling, we will affirm the court's decision. *See* ***Alsteen***, 108 Wis. 2d at 727. We are convinced from our independent review of the record that ample evidence of the court's reasoning exists. Further, we conclude that the court did not erroneously exercise its discretion when it held that there was no good cause for reopening the judgment. We affirm the order.

By the Court.—Order affirmed.

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