

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 27, 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. 2006AP1588

Cir. Ct. No. 2006FO124

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

CITY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

v.

LAWRENCE C. STEARNS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
PAUL R. VAN GRUNSVEN, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Lawrence C. Stearns appeals from a June 16, 2006 order denying his petition to reopen his appeal from a municipal court judgment and affirming the dismissal and remand of this case to the municipal court.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2003-04).

Because we determine that the circuit court did not erroneously exercise its discretion when it denied Stearns' petition to reopen his appeal of the municipal court decision, we affirm.

BACKGROUND

¶2 On September 18, 2005, Stearns was issued a City of Milwaukee municipal citation for violation of Ordinance no. 106-1, disorderly conduct. At a municipal court trial held on February 22, 2006, Stearns was found guilty of disorderly conduct and judgment was entered against him in the amount of \$167.00.

¶3 On February 28, 2006, Stearns appealed the judgment to Milwaukee County Circuit Court, requesting a trial *de novo* before a six-person jury. The trial court set a pretrial conference for June 6, 2006, at 8:30 a.m. Stearns failed to appear at the pretrial conference and the trial court dismissed Stearns' case and remanded it to municipal court. Later that same day, the case was recalled when Stearns appeared in the trial court, and the trial court reaffirmed its dismissal and remand of Stearns' case at that time.

¶4 On June 9, 2006, Stearns filed a petition to reopen the case, noting that his missing the "first pretrial was due to illness and health problem's [sic] beyond [his] control," but offering no information as to what those health problems involved. On June 16, 2006, the trial court issued its decision and order denying Stearns' petition to reopen his case, stating "[t]he court has reviewed the defendant's petition to reopen and declines to alter its original decision in this matter."

¶5 Stearns appealed the dismissal of his case to this court on June 26, 2006. On July 25, 2006, Stearns filed his statement on transcript, checking the box that noted that “[s]atisfactory arrangements with the court reporter(s) have been made for the filing and service of the following transcript(s), as certified below by the court reporter.” No transcripts were designated. In the certification area for the court reporter, the following language was handwritten: “Paul Van Grunven’s [sic] court was on vacation 6/25/06 Rm. 622 L.S.” No transcripts were included in the record before this court. Additional facts are provided below as necessary.

DISCUSSION

¶6 The City of Milwaukee argues that Stearns’ motion to reopen his case appears to fall within WIS. STAT. § 806.07 (2003-04).² Section 806.07³ grants

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

³ WISCONSIN STAT. § 806.07 states, in pertinent part:

Relief from judgment or order. (1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);

(c) Fraud, misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released or discharged;

(continued)

to courts the “power to relieve parties from judgments, orders and stipulations.” *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶9, 282 Wis. 2d 46, 698 N.W.2d 610. Motions brought under § 806.07 “are reviewed for erroneous exercise of discretion.” *Kovalic v. DEC Int’l*, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994). We do not decide whether we would have granted Stearns’ motion, but rather, “whether the trial court’s decision was within the wide band of decisions that a reasonable trial court could have made.” *Id.* We will “affirm a discretionary decision if the [trial] court examined the relevant facts, applied the correct law, and using a rational process reaches a reasonable result.” *Lenticular Europe, LLC v. Cunnally*, 2005 WI App 33, ¶9, 279 Wis. 2d 385, 693 N.W.2d 302. “Because the exercise of discretion is so essential to the trial court’s functioning, we generally look for reasons to sustain discretionary determinations.” *Sukala*, 282 Wis. 2d 46, ¶8.

¶7 Stearns appeals both the trial court’s June 6, 2006 denial of his motion to reopen his case, following the trial court’s dismissal and remand to municipal court because Stearns failed to appear at a previously scheduled pretrial conference, and failed to notify the trial court of the reason for his non-appearance, and the trial court’s June 16, 2006 denial of Stearns’ subsequent petition to reopen the case (*i.e.*, his motion for reconsideration). Stearns argues in his brief to this court that he “had serious asthmatic, bronchial complication’s [sic]

(f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;

(g) It is no longer equitable that the judgment should have prospective application; or

(h) Any other reasons justifying relief from the operation of the judgment.

along with sinitus [sic], laryngitis [sic] [,] L.P. reflux, arthritis etc. on the morning of 6/6/06[.] These health problem's [sic] don't give Lawrence Stearns warning." Stearns goes on to note that he "tried to call [Judge] Vangrunsven's [sic] court but couldn't get threw [sic] tape recordings phone's [sic] that rang and nobody answred [sic]." He also states that he "made [a] good faith effort to rectify this unintended act by showing that afternoon after feeling well enough to do so [and] requested having [Judge] Vansgrunsven's [sic] morning desion [sic] to dismiss and remand case to municipal court." (Quotations reproduced as text appears in original.)

¶8 Stearns' June 9, 2006 petition to reopen the case, *i.e.*, his motion for reconsideration, states:

PETITION TO REOPEN CASE

CASE # 2006FO000124

I, LAWRENCE C. STEARNS HEREBY
 PETITION THE COURT BR. 9 ROOM 622
 HONORABLE PAUL VAN GRUNSVEN PRESIDING
 TO REOPEN THE CASE #2006FO000124 The MISSED
 FIRST PRETRIAL WAS DUE TO ILLNESS AND
 HEALTH PROBLEM'S [sic] BEYOND MY CONTROL.

/s/ Lawrence C. Stearns
 DEFENDANT

(Reproduced as text appears in original.) Stearns' petition provides no specific information regarding the illness which Stearns claims prevented him from appearing at the scheduled pretrial conference on the morning of June 6, 2006. Nor does his petition tell the trial court the reason why he was unable to contact the trial court to inform it of his illness and inability to so attend. Stearns argues in his brief to this court that he "made [a] good faith effort to rectify" his earlier absence by appearing in court later that same day. Stearns also states that he was

told that he could “petition the court in writing” and to inform the Assistant City Attorney if he did so. Stearns argues that the trial court erred in not providing him with a hearing at which both he and the Assistant City Attorney could appear so that Stearns “would [be] given a chance to show” the trial court and the Assistant City Attorney “medical documents.” Finally, Stearns argues that the trial court and the Assistant City Attorney already knew about his medical health issues from Stearns’ affidavit of indigency filed on March 3, 2006, which he notes was part of the court record in this case. The City argues that “Stearns[’] petition failed to provide any information regarding the nature of his illness, and of greater importance, the petition failed to indicate how this undefined illness prevented Stearns from attending the scheduled pretrial,” and, therefore, the trial court’s denial of Stearns’ petition to reopen “was not a clear abuse of discretion.”

¶19 When we determine whether a trial court properly exercised its discretion, we first look to the court’s on-the-record explanation of its reasons for its decision. *Kovalic*, 186 Wis. 2d at 166. Stearns, however, did not include in the record provided to this court a copy of the transcript of his June 6, 2006 appearance. See *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993) (it is appellant’s responsibility to ensure that the appellate record is complete). Because this court does not have a copy of the transcript, the record is incomplete and “when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court’s ruling.” *Id.* Accordingly, “[g]iven an incomplete record, we will assume that it supports every fact essential to sustain the trial court’s exercise of discretion.” *State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986) (citation omitted); see also *Oxmans’ Erwin Meat Co. v. Blacketer*, 86 Wis. 2d 683, 689, 273 N.W.2d 285 (1979) (if no

transcripts provided to appellate court, facts stated by trial court are presumptively established).

¶10 Our review of the trial court’s decision is also limited to that information which the trial court had available to it when it made its decision. *See State v. Flynn*, 190 Wis.2d 31, 46 n.4, 527 N.W.2d 343 (Ct. App. 1994) (appellate court is “limited to the record as it comes to us from the trial court”); *Kushman v. State ex rel. Panzer*, 240 Wis. 134, 140, 2 N.W.2d 862 (1942) (“We can only consider the record upon which the circuit judge made his decision.”). In reviewing the record provided, we find that Stearns’ indigency affidavit merely states that he has certain medical conditions (asthma, sinusitis [sic], laryngitis [sic], arthritis) which require him to expend significant sums of money. Contrary to Stearns’ assertion in his brief, the mere listing of these medical conditions did not put the trial court on notice that Stearns would not be able to attend the June 6, 2006 pretrial conference or that he would be unable to contact the trial court or the Milwaukee County Circuit Court Clerk’s Office regarding his inability to attend the scheduled pretrial conference. In fact, Stearns was able to and did appear later that same day. Stearns’ petition includes no specific information regarding what medical problems he suffered on the morning of June 6, 2006, nor does it provide documentation of his claimed medical incapacity or request a hearing on the motion. Stearns had the obligation to provide the trial court with enough specific information to justify the relief he requested. The state of the record supports the trial court’s implicit conclusion that Stearns failed to do so.

¶11 The trial court, in its decision and order denying Stearns’ request to reopen his case, made the following findings:

The defendant appealed a municipal judgment for disorderly conduct to the circuit court, and a pre-trial

conference was scheduled in this court for June 6, 2006. The defendant was not in court when the case was called, and the court dismissed the case and remanded the matter to the municipal court. The case was recalled later that same day when the defendant appeared in court, and the court reaffirmed its decision. The court has reviewed the defendant's petition to reopen and declines to alter its original decision in this matter.

The trial court heard and evaluated Stearns' testimony on June 6, 2006, and because the trial court, in its decision to deny the petition to reopen Stearns' case, specifically stated that it had reviewed the information provided to it by Stearns in making its decision, we conclude, based on the limited record before us, that the trial court did not erroneously exercise its discretion in denying Stearns' petition to reopen his case. We therefore, affirm the trial court's June 16, 2006 order denying Stearns' petition. *See Fiumefreddo*, 174 Wis. 2d at 26-27; *Arndt*, 129 Wis. 2d at 423.

By the Court.—Order affirmed.

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

