COURT OF APPEALS
DECISION
DATED AND FILED

March 20, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2065

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

CARL RUCKER,

PLAINTIFF-APPELLANT,

V.

LAIDLAW TRANSIT, INC.
AND DAVE HORNBURG,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS R. COOPER, Judge. *Affirmed*.

¶1 SCHUDSON, J.[1] Carl Rucker, *pro se*, appeals from the circuit court judgment dismissing, with prejudice, his complaint against Laidlaw Transit, Inc.,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a), (3) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

and Dave Hornburg (collectively, "Laidlaw"), subsequent to the court's decisions to: (1) grant Laidlaw's motion to reopen the default judgment against Laidlaw; and (2) vacate the judgment against Laidlaw. Rucker argues that the circuit court had no jurisdiction to entertain Laidlaw's motion to reopen because the proceedings in his small claims action had been before a court commissioner. He also argues that "[Laidlaw's] claim[] not to have received notice of pre[]trial date is false" and, therefore, that the default judgment should be reinstated. Rucker's arguments are incorrect and, accordingly, this court affirms.

¶2 On May 26, 2000, Rucker filed a small claims action alleging that, on a daily basis since about January 2000, Laidlaw school bus drivers blew the horns of their buses repeatedly next door to his home. He alleged that "Hornburg agreed that the blowing of the horn was illegal, and he had told the drivers to stop," but that Hornburg had refused to "give the plate number" for one of the offending buses to him or to the police. Rucker alleged that Hornburg's actions "seem to show a blatant disregard for the laws of the city and state," and that he (Rucker) had "lost 16 work days due to noisemaking" by Laidlaw.

¶3 On June 12, 2000, counsel for Laidlaw filed a notice of retainer stating, in part, "we hereby demand that copies of all proceedings in this action subsequent to the Summons and Complaint be served upon us" at the law firm's office.[2] Thus, consistent with WIS. STAT. § 799.22(4),[3] the defendants did not

[2] The notice of retainer was filed on behalf of Laidlaw Transit, Inc. At the subsequent hearing before the circuit court, however, Laidlaw Transit's counsel clarified that she also was representing Hornburg.

[3] WISCONSIN STAT. § 799.22(4) provides, in part:

> PLEADING IN LIEU OF APPEARANCE. (a) Any circuit court may by rule permit a defendant to join issue in any of the actions specified in s. 799.01 [regarding applicability of small claims procedure] without appearing on the return date by

(continued)

appear in person or by counsel before the small claims court on the return date of June 19, 2000. Accordingly, the court commissioner adjourned the matter for a pretrial on June 27, 2000.

¶4 Instead of sending the notice of the pretrial hearing to Laidlaw's counsel, the court clerk sent it to Laidlaw Transit's office. That office did not forward the notice to counsel until after the June 27 pretrial. When no one appeared for Laidlaw on June 27, the court commissioner granted a default judgment in Rucker's favor.

¶5 Counsel for Laidlaw learned of the default judgment and, on July 7, 2000, moved to vacate the judgment and reopen the case. While Rucker opposed the motion, he did not object to the circuit court's jurisdiction to consider it. At the hearing on the motion, the court accepted counsel's explanation for failing to appear at the pretrial hearing, implicitly found that the clerk had mistakenly failed to send the notice to counsel, and concluded that counsel's failure to appear was justified as "excusable neglect." Accordingly, the court granted Laidlaw's motion to reopen.

¶6 The court then considered the merits and concluded that the school bus horn blowing was "one of those many aggravations in life that do not result in a money judgment being awarded." Accordingly, the court vacated the default judgment and dismissed Rucker's claim with prejudice.

¶7 Rucker first argues that the circuit court lacked jurisdiction to reopen the default judgment because it had been entered by a court commissioner. Rucker is incorrect. WISCONSIN STAT. § 799.29(1)(a) provides: "There shall be no

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> answering, either by mail or by telephone, within such time and in such manner as the rule permits.

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." Additionally, Milwaukee County Circuit Court (First Judicial District) Rule 397 provides, in part, that the jurisdiction of the circuit court small claims judge includes "motions to reopen." Thus, regardless of the fact that earlier proceedings had been before a court commissioner, the circuit court had jurisdiction to decide Laidlaw's motion to vacate the default judgment and reopen the case.

¶8 Rucker asserts that Laidlaw's claim not to have received notice of the pretrial was false. He offers nothing, however, in support of this assertion, other than references to two documents that are not part of the record on appeal: (1) the sheriff's department process report; and (2) a brochure published by John Barrett, Milwaukee County Clerk of Circuit Court/Director of Court Services, which clearly states that it is "intended only as a summary of basic procedures and information for small claims matters." Arguments in appellants' briefs must be supported by "citations to the authorities, statutes and parts of the record relied on," WIS. STAT. RULE 809.19(1)(e), and this court need not address unsupported assertions, ***Murphy v. Droessler***, 188 Wis. 2d 420, 432, 525 N.W.2d 117 (Ct. App. 1994).

¶9 Here, however, this court also recognizes that counsel offered a perfectly plausible explanation for the nonappearance at the pretrial, and that the explanation was corroborated by court records. As we have previously explained:

> A motion to vacate a default judgment is addressed to the sound discretion of the trial court, and this court will not disturb the trial court's determination absent an erroneous exercise of that discretion. A trial court properly exercises its discretion when it examines the relevant facts, applies the proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach.

> A defendant may obtain relief from a default judgment by showing excusable neglect and a meritorious defense to the action. Excusable neglect is that neglect which might have been the act of a reasonably prudent person under the circumstances.

Baird Contracting, Inc. v. Mid Wis. Bank of Medford, 189 Wis. 2d 321, 324, 525 N.W.2d 276 (Ct. App. 1994) (citations and footnote omitted). "[A] meritorious defense is a defense good at law that requires no more and no less than that which is needed to survive a motion for judgment on the pleadings." ***J.L. Phillips & Assoc. v. E&H Plastic Corp.***, 217 Wis. 2d 348, 363, 577 N.W.2d 13 (1998). Additionally, we have noted:

> In considering a motion to vacate a default judgment, the trial court is required to bear three factors in mind: (1) that the statute relating to the vacation of default judgments is remedial in nature and should be liberally construed; (2) that the general policy of the law favors giving litigants their day in court with an opportunity to try the issues; and (3) that default judgments are regarded with disfavor in the eyes of the law. The prompt action of the defendant in seeking relief from the judgment is also a factor to be considered.

Baird, 189 Wis. 2d at 325 (citation omitted).

¶10 Laidlaw made the requisite showings. At the August 1, 2000 motion hearing, Laidlaw's counsel stated:

> The grounds for our motion are as follows: Although we had entered an appearance and had filed a written answer, notice was sent to the insureds, Laidlaw Transit, at their offices here in Milwaukee, and the insureds there did not forward notice of the hearing to us.
>
> I had called the court on June 28, which was the day after the hearing, because it had been a week from the initial return date and I wanted to find out if in fact a hearing date had been set, and I was informed that it had been the day before which was on June 27.
>
> In my experience from being in Small Claim's Court, a hearing date usually isn't set that quickly after the initial return date, so I felt like I was being prudent in following up after a week to find out when there was a hearing date set, if at all. Basically since the insured never

> forwarded the notice of hearing date to the attorneys—to us—we did not know that there was a hearing date, and that is why we did not appear and why we're requesting the case to be reopened at this time.

¶11 Under the circumstances, the court properly exercised discretion by: (1) determining that the nonappearance resulted from excusable neglect; (2) vacating the default judgment; and (3) dismissing Rucker's action.

By the Court.—Judgment affirmed.

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