

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 06, 2007

David R. Schanker
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. 2006AP2983

Cir. Ct. No. 1989PA86017

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE PATERNITY OF A.L. D.

TINA PEARSON,

PETITIONER-RESPONDENT,

V.

JOHN L. DYE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. John L. Dye, Jr., appeals from the order that denied his motion to reopen a determination of paternity. We conclude that the circuit court properly denied the motion, and affirm.

¶2 In 1990, a paternity judgment was entered against Dye when he did not appear for the hearing. In 2006, he brought a motion to have genetic testing done to determine if he was the child's father. The circuit court denied the motion finding that Dye had not served the mother and that the motion to reopen was not timely, given the age of the child. He argues that he did serve the mother and that it would be better to have his paternity determined biologically rather than based on a default.

¶3 Tina Pearson, the mother of the child, is named as the respondent to this appeal. She did not file a brief. The failure to file a responsive brief may be the basis to summarily reverse the order of the circuit court. *See* WIS. STAT. RULE 809.83(2) (2005-06).¹ Pearson was notified by an order dated April 10, 2007, that the appeal could be summarily reversed if she failed to file a brief. Nevertheless, we opt not to summarily reverse.

¶4 Dye is seeking to reopen a judgment of paternity that was entered seventeen years ago. A motion to reopen a judgment must be made within a reasonable amount of time. *See* WIS. STAT. § 806.07(2). A motion to vacate a default judgment is addressed to the circuit court's discretion. *Baird Contracting, Inc. v. Mid Wisconsin Bank of Medford*, 189 Wis. 2d 321, 324, 525 N.W.2d 276 Ct. App. 1994). "A defendant may obtain relief from a default judgment by

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

showing excusable neglect and a meritorious defense to the action.” *Id.* Neglect is excusable if it “might have been the act of a reasonably prudent person under the circumstances.” *Id.* Dye asserted in his motion for DNA testing that he defaulted in 1990 because he was incarcerated. Dye has not explained, however, why he waited so long to seek to reopen the default judgment. Further, the child is now over the age of eighteen so Dye is no longer liable for future child support although we have no information as to what obligation may have accrued for her benefit to date. Because Dye has not provided sufficient information to the court, and because the matter is mooted by the age of the child, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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

