

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 7, 2009

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. 2008AP2961
2008AP2962
STATE OF WISCONSIN**

**Cir. Ct. No. 2006SC33353
2006SC30498**

**IN COURT OF APPEALS
DISTRICT I**

APPEAL NO. 2008AP2961

GE MONEY BANK,

PLAINTIFF-RESPONDENT,

v.

ANGELA TERRY,

DEFENDANT-APPELLANT.

APPEAL NO. 2008AP2962

GE MONEY BANK,

PLAINTIFF-RESPONDENT,

v.

ADA MERCADO-RIVERA,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
WILLIAM SOSNAY, Judge. *Affirmed.*

¶1 BRENNAN, J.¹ Angela Terry and Ada Mercado-Rivera appeal from orders denying their motions seeking to reopen the default judgments and seeking relief from the default judgments entered in small claims court. Terry and Mercado-Rivera claim that the trial court erred in denying their motions and ask this court to “reverse the trial court denial of the motion[s] ... with directions to permit appellants to file their counter-claims against GE for [Wisconsin Consumer Act] violations, and direct the small claims trial court to vacate the default judgments against each appellant.” Because the claims were not timely under WIS. STAT. § 799.29 (2007-08), which is the exclusive remedy for motions to reopen default judgments, and because we are bound by our decision impacting this issue in *Mercado v. GE Money Bank*, 2009 WI App 73, No. 2008AP1992 (released Apr. 14, 2009 and ordered published May 27, 2009), we affirm.

BACKGROUND

¶2 On August 28, 2006, the Kohn Law Firm, S.C., on behalf of GE Money Bank (GE), filed a small claims summons and complaint against Mercado-Rivera seeking to recover amounts charged to a consumer credit card financed by GE, which Mercado-Rivera had opened and used, but upon which she was not making the required payments. Mercado-Rivera failed to appear in court or

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

respond to the complaint and a default judgment was entered against her in the amount of \$1507.62 on October 20, 2006.

¶3 On September 18, 2006, the Kohn Law Firm, on behalf of GE, filed a small claims summons and complaint against Terry to recover amounts charged to a consumer credit card financed by GE, which Terry had opened and used, but upon which she was not making the required payments. Terry failed to appear in court or respond to the complaint and a default judgment was entered against her in the amount of \$4291.46 on January 4, 2007.

¶4 Neither Mercado-Rivera nor Terry sought relief from the small claims judgments. Subsequent to the entry of the default judgments, GE proceeded to attempt collection on the default judgments.

¶5 On June 20, 2008, Mercado-Rivera and Terry filed motions to reopen the small claims actions so that they each could file a counterclaim against GE for alleged Wisconsin Consumer Act (WCA) violations. They asserted that GE's failure to include language in the pleadings: "that the creditor will submit accurate copies of the writings evidencing the customer's obligation to the court and the customer upon receipt of the customer's written request therefor on or before the return date or the date on which the customer's answer is due" violated the pleading requirements of the WCA, *see* WIS. STAT. § 425.109(1)(h). As a result, they argued that the default judgments should not have been entered. *See* WIS. STAT. § 425.109(3) ("A judgment may not be entered on a complaint which fails to comply with this section.").

¶6 The trial court denied Mercado-Rivera and Terry's motions on September 19, 2008 ruling: (1) that WIS. STAT. ch 799 is the exclusive procedure under which a small claims default judgment may be reopened; (2) that the WCA

does not change that; and (3) any alleged pleading deficiency cannot create a substantive claim based on *Rsidue, L.L.C. v. Michaud*, 2006 WI App 164, ¶19, 295 Wis. 2d 585, 721 N.W.2d 718 (pleading error does not create substantive right for consumer under WCA). An order was entered to that effect. Mercado-Rivera and Terry appeal from that order.

DISCUSSION

I. Standard of Review

¶7 This appeal arises from the trial court’s denial of motions seeking to reopen small claims default judgments. Our review on motions to reopen is whether the trial court erroneously exercised its discretion. See *Kovalic v. DEC Int’l*, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994). We will uphold a discretionary determination if the trial court considered the pertinent facts, applied the correct law and reached a reasonable determination. *Id.*

II. Chapter 799

¶8 Mercado-Rivera and Terry argue that the trial court erroneously exercised its discretion by denying their motions seeking to reopen the default judgments entered against them. They argue that the provisions of the WCA should operate to enlarge the time limitation set forth in WIS. STAT. § 799.29 and that we should overrule the decision in *Rsidue*. We decline to reach either argument. See *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (“[C]ases should be decided on the narrowest possible ground[s].”).

¶9 This appeal comes to us after the trial court denied Mercado-Rivera and Terry’s motions to reopen and motion for relief from small claims default judgments. WISCONSIN STAT. ch. 799 governs “SMALL CLAIMS ACTIONS.”

WISCONSIN STAT. § 799.29 governs “**Default judgments.**” It states that “[t]here shall be no appeal from default judgments” but the trial court may grant motions to reopen if good cause is shown and notice of the motion is “made within 12 months after entry of judgment.” *Id.*

¶10 The trial court applied this statute to deny the motions because Mercado-Rivera and Terry failed to file notice of their motions within the twelve-month time deadline. As noted above, default judgments were entered in October 2008 and January 2007. The notices of motion and motion to reopen were not filed until September 2008, well beyond the twelve-month time deadline. In denying the motions, the trial court also relied on *King v. Moore*, 95 Wis. 2d 686, 291 N.W.2d 304 (Ct. App. 1980). In *King*, the appellate court held that the predecessor statute to WIS. STAT. § ch. 799, WIS. STAT. § 299.29(1),² “provides the exclusive procedure for reopening a default judgment in small claims proceedings,” and when the statutory time period to bring the motion has expired, the “trial court [has] no jurisdiction to grant the relief requested.” *Id.*, 95 Wis. 2d at 690-91. We are bound to follow the precedent set forth in *King*. Accordingly, we conclude that the trial court did not erroneously exercise its decision in denying the motions to reopen in this case. The trial court correctly ruled that WIS. STAT. § 799.29 controls these small claims actions and Mercado-Rivera and Terry’s motions to reopen could not be granted because each failed to comply with the time deadline in § 799.29.

² We note that in *King v. Moore*, 95 Wis. 2d 686, 291 N.W.2d 304 (Ct. App. 1980), the small claims chapter of the Wisconsin statutes was ch. 299. The change in the numbering of the small claims chapter does not affect the holding in *King*.

¶11 Mercado-Rivera and Terry also argue that even if their motions to reopen were untimely, they should be able to proceed on their motions for relief under WIS. STAT. § 806.07. We cannot agree. In *Wisconsin Natural Gas Co. v. Kletsch*, 95 Wis. 2d 691, 291 N.W.2d 640 (Ct. App. 1980), the court held that: “Sec. 806.07, Stats., which provides for relief from judgments in other types of civil actions, does not provide an alternative procedure for reopening default judgments in small claims actions.” *Kletsch*, 95 Wis. 2d at 696-97. The motion for relief under § 806.07 attempts to do exactly what was prohibited in *Kletsch*. Thus, Mercado-Rivera and Terry are precluded from seeking relief under § 806.07.

¶12 Further, we are bound by our decision in the collateral case of *Mercado v. GE Money Bank*, wherein we recently concluded that Mercado-Rivera and Terry’s only basis for relief from the default judgments was to move to reopen those judgments within twelve months of their entry, pursuant to WIS. STAT. § 799.29. *Mercado*, 2009 WI App 73, ¶11. Accordingly, we hold the trial court did not erroneously exercise its discretion and that it correctly ruled that ch. 799 was the exclusive remedy for relief in this case and that Mercado-Rivera and Terry’s failure to timely seek that relief ends the matter.

By the Court.—Orders affirmed.

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

