

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 16, 2002**

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. 01-1042  
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-307

**IN COURT OF APPEALS  
DISTRICT II**

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**LEWIS LLOYD,**

**PLAINTIFF-APPELLANT,**

**v.**

**FIRSTAR BANK FOND DU LAC, MICHAEL HENDRICKS,  
CLAUDIA VOPAL, LYNN HARDNER AND INVESTOR DOE,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Fond du Lac County:  
ROBERT J. WIRTZ, Judge. *Affirmed.*

Before Nettesheim, P.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Lewis Lloyd appeals from the order denying various motions, including his motion to vacate the order dismissing the underlying action. The issue on appeal is whether the appellant established excusable neglect for his failure to appear at two hearings on his motion to vacate.

Because we conclude that the appellant has not established excusable neglect, we affirm the order of the circuit court.

¶2 Lloyd brought suit against Firststar Bank and the other respondents (hereafter referred to collectively as Firststar) for fraud and misrepresentation in processing a loan. In response to the complaint, Firststar moved to dismiss the complaint on the grounds of res judicata. Firststar asserted that Lloyd's claims had already been adjudicated in a prior foreclosure action between the parties. When Firststar mailed the notice of motion and motion to Lloyd, it used a Pennsylvania address it had used in the previous action. The motion date was set for October 6, 2000. On October 2, 2000, Firststar became aware that Lloyd had other addresses, including an address in Fond du Lac. Firststar then sent the notice of motion and motion to that address as well as another address in Pennsylvania.

¶3 The hearing was held on October 6, 2000, and Lloyd did not appear. At the very start of the hearing, Firststar's counsel explained to the court that they had mailed the notice of motion and motion to the Pennsylvania address first and then on October 2 to the other addresses. The court then heard counsel's argument and granted the motion to dismiss.

¶4 Lloyd subsequently asked the court to vacate the order dismissing the case. The trial court set the matter for another hearing on November 17, 2000. The hearing was held and again Lloyd did not appear. The court denied Lloyd's motion to vacate the dismissal order, and awarded Firststar costs. Lloyd did not appeal from either of these two orders.

¶5 Lloyd then brought other motions before the court, including another motion to vacate the dismissal order. The court again granted Lloyd a hearing on his motions. The matter was heard on February 22, 2001. At this hearing, the

court asked Lloyd why he had failed to appear at either of the prior two hearings. He replied: “I wasn’t aware of the October 6<sup>th</sup> requirement for appearance. As far as the November 17<sup>th</sup>, I draw a total blank on that, Your Honor.” The court denied the motion to vacate the dismissal order, as well as the other motions brought. The court found that Lloyd had failed to appeal any of the prior orders, that his continued filing of motions was done to “prolong, harass, and continue a litigation process which has no termination point, no reasonable end,” and was “vexatious, frivolous, and harassing.” The court also stated: “I find it bothersome that you haven’t answered why you failed to appear at the November 17<sup>th</sup> hearing, in particular, as well as the October 6<sup>th</sup> hearing.” The order entered after this hearing, dated March 1, 2001, is the order which is the subject of this appeal.

¶6 On appeal, Lloyd argues the merits of the underlying action. The issue before this court, however, is whether he has established excusable neglect for failing to appear at the prior hearings. WISCONSIN STAT. § 806.07(1)(a) (1999-2000) provides that a party may obtain relief from an order for “[m]istake, inadvertence, surprise, or excusable neglect.” Excusable neglect has been defined as “neglect which might have been the act of a reasonably prudent person under the same circumstances.” *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982) (citation omitted). It is not synonymous with “neglect, carelessness or inattentiveness.” *Id.* (citation omitted).

¶7 First, we note that while Lloyd states that the mailing address on the first notice of motion and motion was incorrect, he does not argue that he did not receive it. In fact, when the circuit court asked why he did not appear at the first hearing on October 6, he said only that he did not know his appearance was required. He offered no reason whatsoever for his failure to appear at the second

hearing. The circuit court found that Lloyd had not offered a sufficient reason for his failure to appear and would not reconsider its decision to dismiss the action.

¶8 We agree with the circuit court that these are not sufficient reasons to establish that he is entitled to relief from judgment. Since we have concluded that the circuit court properly refused to vacate the order dismissing the case, we need not address the other issues raised. For the reasons stated, the order of the circuit court is affirmed.

*By the Court.*—Order affirmed.

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

