COURT OF APPEALS
DECISION
DATED AND FILED

March 28, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal Nos. 01-2900-FT
01-2901-FT
01-2902-FT

Cir. Ct. Nos. 01-TR-1637
01-TR-1641
01-FO-83

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

WAUSHARA COUNTY,

PLAINTIFF-RESPONDENT,

V.

CLINTON L. DUHM,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waushara County: LEWIS MURACH, Judge. *Affirmed.*

¶1 ROGGENSACK, J.[1] Clinton Duhm appeals the circuit court's denial of his motion to reopen three default judgments related to two traffic

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (1999-2000), and expedited under WIS. STAT. RULE 809.17 (1999-2000). In addition, all further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise indicated.

violations and a separate citation for underage drinking. He contends the circuit court erred because it applied the wrong legal standard in deciding his motion. We affirm the circuit court's order because the record contains no affidavit or other evidence which sets forth a factual basis sufficient to vacate the default judgments under either the standard applied by the circuit court or that which Duhm contends applies.

BACKGROUND

¶2 On April 15, 2001, police cited Duhm for three separate violations: underage drinking contrary to WIS. STAT. § 125.07(4); operating with a suspended license, first offense, contrary to WIS. STAT. § 343.44(1)(a); and drinking intoxicants in a motor vehicle contrary to WIS. STAT. § 346.935(1). Each citation informed Duhm that he was to appear in court on the afternoon of May 21, 2001. Duhm did not appear in court on the scheduled day, and on May 23, 2001, the court entered default judgments against him on all three citations. As penalties, the court imposed fines and suspended Duhm's driver's license.

¶3 On July 10, 2001, fifty days after Duhm was told default judgments would be entered, he moved to reopen the default judgments. The motion asserted that it was "made with good cause pursuant to Wis. Stat. sec. 345.51," without stating any factual basis for the assertion and without an affidavit to provide a factual basis for a finding of "good cause."

¶4 Despite Duhm's failure to allege any facts in support of his motion, the circuit court held a hearing.[2] At the hearing, no testimony was presented. Instead, Duhm's attorney argued that the basis for reopening the default judgments was that Duhm had inadvertently missed the hearing. According to Duhm's attorney, Duhm had arranged for someone to drive him to the hearing because his license had been suspended, but that person did not show up. When he realized that he had no ride, Duhm purportedly called the clerk of court and was told that the hearing would not be rescheduled and that default judgments would be entered.

¶5 Based on the arguments of counsel, the circuit court denied the motion. Duhm did not object that the circuit court's ruling was based solely on argument, nor did he seek to present any testimony or other evidence in order to develop a factual record in support of his motion. On appeal, Duhm asks this court to reverse the circuit court and reopen the default judgments.

DISCUSSION

Standard of Review.

¶6 Whether to vacate a default judgment is a determination that lies within the sound discretion of the circuit court. *See* ***Dugenske v. Dugenske***, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). When we review a circuit court's exercise of discretion, we examine the record to determine whether the circuit

[2] ***State v. Bentley***, 201 Wis. 2d 303, 310-11, 548 N.W.2d 50 (1996) (concluding that the circuit court is not required to hold hearings on motions that do not contain sufficient facts, which if proved to be true, would entitle the movant to the relief he seeks).

court logically interpreted the facts, applied the proper legal standard and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach. ***Crawford County v. Masel***, 2000 WI App 172, ¶5, 238 Wis. 2d 380, 617 N.W.2d 188.

Good Cause.

¶7 Duhm's primary argument is that the circuit court erred by applying the wrong legal standard to his motion to reopen the default judgments. In particular, he takes issue with the circuit court's determination that Duhm was required to make a showing that he had a meritorious defense to the citations. According to Duhm, the proper standard for a motion brought pursuant to WIS. STAT. § 345.51 is that found in WIS. STAT. § 345.37(1)(b), whether the defendant "shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect." Therefore, he argues, "good cause" cannot reasonably be read to incorporate a requirement that the defendant show a meritorious defense.[3]

¶8 Duhm's argument regarding the proper interpretation of "good cause" is substantially underdeveloped, resting entirely on the assertion that the statute is not ambiguous. Additionally, Duhm's opening brief does not address the state of the record. However in its brief, the County asserts that Duhm's appeal should be dismissed because the record is completely devoid of any evidence that

[3] We note that Duhm does not differentiate between the showing necessary to justify vacating the judgments on his traffic violations and the standard that would apply to vacating the judgment related to the underage drinking violation. As the issue has not been presented for our review, we likewise assume that the standards would be the same.

would support a showing of "good cause" under any standard. Duhm did not file a reply brief. We take this as a concession to the County's argument. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322-23, 525 N.W.2d 99 (Ct. App. 1994). And, although there may be a reason to look beyond the complete lack of an affidavit or any other factual evidence to support Duhm's motion, Duhm has not provided such a reason. We decline to develop Duhm's argument for him. *See* ***Truttschel v. Martin***, 208 Wis. 2d 361, 369, 560 N.W.2d 315 (Ct. App. 1997). It was Duhm's obligation to develop a record sufficient to support the relief he has requested or, at the very least, to explain why we should look past his failure to develop a record. He has not done so, and accordingly, the order of the circuit court is affirmed.

CONCLUSION

¶9 We affirm the circuit court's order because the record contains no affidavit or other evidence which sets forth a factual basis sufficient to vacate the default judgments under either the standard applied by the circuit court or that which Duhm contends applies.

By the Court.—Order affirmed.

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