

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 10, 2010

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. 2009AP897

STATE OF WISCONSIN

Cir. Ct. Nos. 2006CV165
2007CV170

**IN COURT OF APPEALS
DISTRICT II**

ESTATE OF WILLIAM F. HECKRODT,

PLAINTIFF-RESPONDENT,

V.

BRENDA RADER, A/K/A BRENDA NEELANDS,

DEFENDANT-APPELLANT,

CYNTHIA MCKEAN, LINDA CLENDENNING AND JENNY KNOWLES,

DEFENDANTS.

APPEAL from an order of the circuit court for Calumet County:
DALE L. ENGLISH, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Snyder, J.

¶1 PER CURIAM. Brenda Rader appeals from the order of the circuit court that denied her motion for relief from judgment. Rader argues that the

circuit court erred when it found that she had not established excusable neglect or extraordinary circumstances under WIS. STAT. § 806.07(1)(a) and (h) (2007-08), to warrant reopening a default judgment entered against her.¹ Because we conclude that the circuit court properly exercised its discretion when it denied the motion to reopen judgment, we affirm.

¶2 In 2006, William Heckrodt filed a summons and complaint naming Rader, among others, as a defendant. Rader, represented by counsel, filed an answer to the complaint alleging that she had not been properly served and the court, therefore, lacked jurisdiction over her. Rader's attorney withdrew from the case in July 2007. In August 2007, Heckrodt filed an amended complaint that named only Rader as a defendant. Shortly afterwards, Rader appeared by telephone at a court hearing. Rader never filed an answer to the amended complaint. Trial was set for March 2008.

¶3 On February 6, 2008, Rader voluntarily admitted herself to a hospital in Colorado for treatment of depression. On February 11, 2008, the court held a pretrial conference, and Rader did not participate. On February 13, 2008, the court received an email from Rader's daughter providing Rader's address and phone number at the hospital in Colorado. At some point, Rader had conversations with Heckrodt's attorney during which she informed him that she would not be attending a scheduled deposition. A telephone status conference was held on February 15, 2008, which Rader also did not attend.

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶4 On February 18, 2008, Rader and Rader's psychologist both called the court. Rader informed the court that she was still in the hospital, and she did not know when she would be discharged. On February 19, 2008, Heckrodt's counsel sent a letter to Rader at the hospital reminding her that the trial was in two weeks. On February 20, 2008, Rader's doctor sent the court a letter in which he said that Rader had been admitted to the hospital and her discharge date was uncertain. On February 25, 2008, Heckrodt's counsel sent a letter to Rader by fax reminding her that trial was in one week.

¶5 On the morning of the trial, March 3, 2008, Rader faxed a handwritten note to the court asking to have the trial adjourned because she was in the hospital. The court found Rader to be in default because she had not shown up for trial and because she had not answered the amended complaint. The court discharged the jury, and took testimony about the damages. On March 4, 2008, Rader discharged herself from the hospital. The court entered judgment against Rader on April 11, 2008.

¶6 In July 2008, Rader filed a motion for relief from judgment under WIS. STAT. § 806.07. The court held a hearing and denied the motion with a decision from the bench. The court stated that it had entered a default judgment against Rader because she did not appear for trial and because she had not answered the amended complaint.

¶7 Rader first claimed that the amended complaint was defective because it said she had to answer in twenty days rather than the required forty-five days. The circuit court rejected this argument and concluded that the defect in the complaint was technical and did not prejudice Rader because she neither filed an answer nor moved to extend the time within either the twenty or the forty-five day

limit. Since she did not file any answer, the court said it did not see how she was prejudiced by the error in the stated deadline.

¶8 Rader also claimed that she had proven excusable neglect for failing to answer the amended complaint and for not appearing at trial. Rader testified at the hearing. The court found that Rader's testimony was "so inconsistent" as to not be credible. The court considered that Rader was hospitalized until one day after the trial. The court also considered her testimony that she was so heavily medicated that she could not contact the court, but then "the next day they said, are you suicidal? She said no, and they said, okay, you're free to go home. That doesn't make any sense to me whatsoever."

¶9 The court also found that her testimony about her condition while she was hospitalized was contradicted by the hospital's records. The court concluded:

And so quite honestly, I just don't buy the testimony. It's technically contrary to everything that's in the records. She was able to participate without a lawyer in August; she did not want the trial adjourned. The other remaining defendants showed up; she did not. She faxed a letter that morning asking that the matter be adjourned, yet didn't take any steps until the morning of trial to have it rescheduled.

She was able to contact my clerk by phone, she talked to [opposing counsel] while she was there I was waiting for something from somebody about adjourning the trial. I never got anything from anybody.

So all of a sudden the morning of trial there's a request to adjourn it, and the Court declined to do that. Then, she didn't show up. That's a basis for default judgment, and I guess I don't buy it because I don't believe what she testified to today. It doesn't make sense. It's contradicted by the records, and so I don't believe there was excusable neglect, and therefore I am not going to reopen the judgment on the 806.07(1)(a) analysis.

¶10 The court also rejected her argument that there were extraordinary circumstances for reopening the default judgment under WIS. STAT. § 806.07(1)(h). The court noted that “extraordinary circumstances are those in which the sanctity of the final judgment is outweighed by the incessant command of the court’s conscience that justice can be done in light of all the facts.” The court considered all of the factors and then said:

And I come down the same way there. I guess I just don’t buy the testimony. I just don’t see how there are extraordinary circumstances which would dictate that after this entire tortured procedural history, and not showing up, and having a jury panel there and ready to go, that based on what I’ve heard today and based on what I’ve read [in] the records and the other exhibits, I just don’t see there being a basis.

The court denied the motion to reopen the default judgment.

¶11 Rader renews her argument to this court that she is entitled to have the default judgment reopened on the basis of excusable neglect and extraordinary circumstances. We review denial of motion to reopen a default judgment on the basis of excusable neglect or extraordinary circumstances for an erroneous exercise of discretion. See *J.L. Phillips & Associates, Inc. v. E & H Plastic Corp.*, 217 Wis. 2d 348, 364, 577 N.W.2d 13 (1998); *Allstate Ins. Co. v. Brunswick Corp.*, 2007 WI App 221, ¶5, 305 Wis. 2d 400, 740 N.W.2d 888. We will sustain a discretionary act of the circuit court if that court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W. 2d 175 (1982).

¶12 Rader argues that the circuit court erred because there was an “overwhelming” amount of evidence to support her position. The circuit court,

however, found otherwise. The court did not find Rader's testimony to be credible, and further found that it was contradicted by the documentary evidence. The court also found that any defect in the amended complaint was technical, and did not prejudice Rader, and that the plaintiff did not waive its right to a default judgment when it did not move for a default prior to trial. In sum, the court applied the correct standard of law, considered all of the appropriate factors, analyzed the matter thoroughly, and reached a conclusion that a reasonable judge could reach. We conclude that the circuit court properly exercised its discretion, and, consequently, we affirm.

By the Court.—Order affirmed.

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

