COURT OF APPEALS
DECISION
DATED AND FILED

December 19, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1979 **Cir. Ct. No. 02-SC-121**

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

RAY A. PETERSON D/B/A MASTER BUILDERS,

PLAINTIFF-APPELLANT,

V.

MARK BAKER, MENARDS MONONA STORE AND JEFF WERSAL,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: MICHAEL N. NOWAKOWSKI, Judge. *Affirmed*.

¶1 ROGGENSACK, J.[1] Ray Peterson appeals an order denying his motion to reopen a default judgment entered against him in a small claims action.

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Peterson claims that the circuit court erroneously exercised its discretion by determining (1) that he did not demonstrate excusable neglect for his failure to appear at a scheduled court trial and (2) that he failed to demonstrate a reasonable prospect of success on the merits if the case were reopened. We agree that Peterson's proffered reason for failing to appear at the trial does not amount to excusable neglect and conclude that the circuit court exercised proper discretion in refusing to reopen the judgment. Therefore, we do not address Peterson's second argument. Accordingly, we affirm the circuit court's order.

BACKGROUND

¶2 In February 2001, Peterson purchased one hundred cartons of prestige oak laminated flooring from Menards, Inc., a retail hardware store, for $2663. Peterson arranged to pick up the flooring during the course of the year. According to Menards, Peterson picked up the last of the cartons of flooring in late October of 2001. Peterson disputed this and filed a complaint in small claims court alleging that he did not receive twenty cartons of flooring and requested $1065.32 in monetary judgment.[2]

¶3 Menards denied the allegations in the complaint and a small claims trial was held before a court commissioner. The commissioner found in Menards' favor and dismissed Peterson's complaint. Peterson demanded a trial *de novo*, and a trial to the circuit court was scheduled for July 19, 2002.

[2] In addition to Menards, Inc., Peterson named as defendants Mark Baker, the store manager and Jeff Wersal, the flooring manager.

¶4 Peterson failed to appear for the scheduled court trial. The circuit court entered a default judgment against him, dismissing the case with prejudice and awarding costs in the amount of $100 to each defendant. Peterson moved to reopen based on what he claimed was excusable neglect. He argued that his failure to appear at the circuit court trial was justified because he had an "emergency" at a building he owned, and he had to comply with a building inspector's orders that day. The circuit court denied Peterson's motion after finding he failed to establish excusable neglect and a reasonable prospect of success on the merits. Peterson appeals.

DISCUSSION

Standard of Review

¶5 Whether to reopen a default judgment is a decision that lies within the sound discretion of the circuit court. *See* ***Dugenske v. Dugenske***, 80 Wis. 2d 64, 68, 257 N.W.2d 865, 867 (1977). We will not overturn a discretionary determination if the court considered the relevant facts, applied the proper standard of law, and, using a demonstrative rational process, reached a conclusion that a reasonable judge could reach. *See* ***Rodak v. Rodak***, 150 Wis. 2d 624, 631, 442 N.W.2d 489, 492 (Ct. App. 1989).

Excusable Neglect

¶6 Peterson argues that the circuit court erroneously exercised its discretion by failing to grant his motion to reopen the default judgment entered in favor of Menards. He claims that the reasons given by the circuit court for denying his motion are "superfluous" and reflect a predisposed prejudice against him. We disagree.

¶7 A court may enter judgment against a plaintiff in a small claims case for failure to appear on the date set for trial. WIS. STAT. § 799.22(1). Although default judgments are not favored, "countervailing factors of public policy which favor finality of judgments and discourage litigation delay" justify its remedial use. ***Hollingsworth v. American Fin. Corp.***, 86 Wis. 2d 172, 184, 271 N.W.2d 872, 878 (1978). Additionally, this court has noted that small claims actions are summary and designed to be terminated more readily than other kinds of civil proceedings. *See* ***King v. Moore***, 95 Wis. 2d 686, 690, 291 N.W.2d 304, 307 (Ct. App. 1980).

¶8 WISCONSIN STAT. § 799.29(1) provides the exclusive procedure for reopening a default judgment in small claims proceedings. ***Id.*** It provides in relevant part: "There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown." Section 799.29(1). To determine whether good cause exists to reopen a default judgment, the circuit court may consider the factors set forth in WIS. STAT. § 806.07(1), which include mistake, inadvertence and excusable neglect. Peterson contends that his failure to appear at the scheduled court trial was the result of excusable neglect.

¶9 In ***Hollingsworth***, the supreme court held that relief from a default judgment requires a showing of two distinct elements: (1) that the failure to appear resulted from excusable neglect and (2) that the defaulting party has a meritorious claim or defense. ***Hollingsworth***, 86 Wis. 2d at 184, 271 N.W.2d at 878. If there is no showing of the first requirement, the court need not reach the second. ***Id.*** at 184-85, 271 N.W.2d at 878. With regard to the first element, the basic question is whether the dilatory party's conduct was excusable under the circumstances, "since nearly any pattern of conduct resulting in default could

alternatively be cast as due to mistake or inadvertence or neglect." ***Hansher v. Kaishian***, 79 Wis. 2d 374, 391, 255 N.W.2d 564, 573 (1977). Excusable neglect is "that neglect which might have been the act of a reasonably prudent person under the same circumstances." ***Martin v. Griffin***, 117 Wis. 2d 438, 443, 344 N.W.2d 206, 209 (Ct. App. 1984) (citation omitted). However, it does not include situations brought about by the moving party's own carelessness or inaction. ***Id.***

¶10 Peterson contends that he failed to appear at the trial because he was "inadvertently detained by [a] Madison Building Inspector." This is not excusable neglect. Peterson presents his "excuse" stripped of any type of supporting facts to show that his failure to appear was not the result of his own carelessness or inaction. He does not explain why he was unable to request a continuance or, at a minimum, contact the court prior to the scheduled hearing. In short, he offers no facts under which a court could reasonably conclude that his neglect was comparable to that of a reasonably prudent person under the same circumstances. Peterson is solely responsible for the loss of his right to have a trial. The circuit court's order denying Peterson's motion to reopen the judgment was a proper exercise of its discretion. Because we conclude that there was no showing of excusable neglect, we need not reach the question of whether Peterson's claim had arguable merit. Accordingly, we affirm the circuit court.

CONCLUSION

¶11 Because Peterson's proffered reason for failing to appear at the trial does not amount to excusable neglect, we affirm the circuit court's order that denied Peterson's motion to reopen the judgment.

By the Court.—Order affirmed.

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