

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 10, 2011**

A. John Voelker  
Acting 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. 2009AP3055**

**Cir. Ct. No. 2009SC10899**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**JAKE MANSFIELD,**

**PLAINTIFF-RESPONDENT,**

**V.**

**PAUL SMITH,**

**DEFENDANT-APPELLANT,**

**WANDA SMITH,**

**DEFENDANT.**

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APPEAL from an order of the circuit court for Dane County:  
SARAH B. O'BRIEN, Judge. *Affirmed.*

¶1 VERGERONT, P.J.<sup>1</sup> Paul Smith appeals the order denying his motion to reopen the case, in which a default judgment for replevin of his vehicle had been entered. He argues that his failure to appear at the initial hearing was caused by excusable neglect and, if the case were reopened, he would prevail. We affirm the circuit court's decision.

## BACKGROUND

¶2 Smith purchased a vehicle from a friend, Jake Mansfield, for \$5,000. When Smith failed to make payments as agreed, Mansfield filed a small claims action seeking replevin of the vehicle. Smith failed to appear at the hearing, and default judgment was entered for return of the vehicle and \$182.80 in costs.

¶3 Smith filed a motion to reopen, arguing that he failed to appear because he had car trouble. He stated that, if the case were reopened, he would prevail because he had paid \$4900 of the debt and the balance due was only \$100. After a hearing, the circuit court denied the motion. Smith appeals.

## DISCUSSION

¶4 On appeal Smith argues that the circuit court erred because it did not consider the amount he had paid on the loan, as well as amounts he had paid for maintenance and repairs on the vehicle. He argues that, instead of ordering the car returned to Mansfield, the court should have granted Mansfield a judgment for the

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) and (3) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

balance due on the loan and should have established a timeframe for Smith to pay that amount.

¶5 Mansfield argues that Smith failed to make the payments required by the contract, and that the court correctly granted a default judgment of replevin.

¶6 The granting of a default judgment is within the circuit court's discretion. *Oostburg State Bank v. United Sav. & Loan Ass'n*, 130 Wis. 2d 4, 11, 386 N.W.2d 53 (1986). Similarly, the circuit court has wide discretion in determining whether to reopen a default judgment. *Dugenske v. Dugenske*, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). We uphold a discretionary decision if the circuit court properly exercised its discretion. *Hess v. Fernandez*, 2005 WI 19, ¶12, 278 Wis. 2d 283, 692 N.W.2d 655. A circuit court properly exercises its discretion when it has examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion. *Id.*

¶7 At the hearing on Smith's motion to reopen, all parties appeared and a court reporter was present. However, there is no transcript of that hearing in the record. Because we do not have the transcript, we must assume it supports the circuit court's ruling. See *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993) (An appellant has an obligation to include in the record on appeal all items from the record in the circuit court essential to decide the issues raised, and when an appellant fails to do so, we assume the missing portion supports the circuit court's ruling.). Accordingly, Smith has not shown that the circuit court erroneously exercised its discretion. We therefore affirm the order denying Smith's motion to reopen.

*By the Court.*—Order affirmed.

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

