COURT OF APPEALS
DECISION
DATED AND FILED

August 6, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-0775 **Cir. Ct. No. 02SC000325**

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

BALBAYIS ASSET CONSULTANTS,

PLAINTIFF-RESPONDENT,

V.

JEFF CLARK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Ozaukee County: PAUL V. MALLOY, Judge. *Affirmed*.

¶1 SNYDER, J.[1] Jeff Clark appeals the circuit court's order denying his second motion to reopen his case on the grounds that the denial of his motion was "subjective and biased." Clark's appeal, however, fails to provide a fact

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

section, is based wholly on speculative arguments and assertions and is not supported by legal authority.[2] Furthermore, even were we to ignore such legal flaws, Clark offers no support for the proposition that the circuit court abused its discretion in denying the motion to reopen the case.[3] As a result, we affirm.

FACTS

¶2 On April 16, 2002, Balbayis Asset Consultants (Balbayis) filed a small claims summons and complaint against Clark demanding judgment in the amount of $2507. The summons stated Clark needed to appear or file an answer and that if he did neither, a judgment might be granted to the plaintiff. The pleadings were served on Clark on April 26, 2002. Clark sent the clerk of courts a note via facsimile, which the clerk received before the scheduled hearing, stating that Clark was unable to attend and would like to schedule a trial. The clerk granted Clark an extension to file his answer until May 29, 2002. Clark filed a timely letter that might qualify as an answer in which he mentioned that he would be filing a counterclaim against Balbayis, listed various factual problems and

[2] In his conclusion, Clark does cite to Amendments VI and VII of the Constitution of the United States; however, Clark fails to demonstrate how either is applicable to the matter before the court.

[3] On June 24, 2003, we received a motion from Clark indicating that he had not received a copy of Balbayis's response brief; Clark asked to review a copy of that brief and for an opportunity to file a reply brief. We granted this motion and ordered Balbayis to serve a copy of its brief upon Clark no later than July 2, 2003, and gave Clark until July 23, 2003, to file his reply brief.

Clark filed his reply brief in a timely manner; however, his brief was unsigned. Nonetheless, we reviewed the brief. Clark's reply brief suffers from the same inadequacies as his original brief in that it is based entirely on speculative opinions, makes only amorphous and insufficiently developed arguments and cites to no legal authority.

listed various documents he had requested from Balbayis in order to defend himself and bring a counterclaim.

¶3 Clark and Balbayis were both ordered to appear at a pretrial conference scheduled for July 17, 2002. In the order, the respective parties were told that if they failed to appear for the conference, the circuit court might "dismiss the action or enter a default judgment against" them. The order also stated that an adjournment would not be granted unless good cause existed.

¶4 On June 19, 2002, Balbayis wrote a letter to the court commissioner, stating that the preconference date was inconvenient and suggesting alternate dates. The court commissioner scheduled a new pretrial conference for August 7, 2002. Clark failed to appear for that pretrial conference and a judgment in the amount of $2686 was entered in favor of Balbayis. Clark filed a motion to reopen on August 20, 2002, stating that "he was called out of town at the last minute for business and client emergency" and that he had "a strong case and supporting evidence." Judge Paul V. Malloy granted a hearing on the motion to reopen, which was scheduled for September 23, 2002. Clark failed to appear at that hearing because he flew to Toronto (allegedly for business purposes) on that date.

¶5 Meanwhile, on November 6, 2002, Balbayis filed a motion and order for a hearing on contempt of court for Clark's failure to remit the judgment of $2686. This was scheduled for December 13, 2002. On November 13, 2002, Clark again filed a motion to reopen, citing virtually the same reasons as his previous motion. A hearing on the motion was also scheduled for December 13, 2002.

¶6 Clark sent a note to the clerk of court later that afternoon (November 13, 2002), stating that he would not be able to attend the contempt

hearing and asking that the December 13, 2002 hearing be postponed until after the motion to reopen had been heard. Nearly one month later, on December 12, 2002, the judge denied any motion to adjourn the proceedings.

¶7 On December 13, 2002, Clark appeared before the circuit court and moved to reopen the claim against him, on which he had defaulted by failing to appear on August 7, 2002. When asked why he had failed to report for the scheduled trials, Clark stated that he was busy with his business clients. The circuit court rejected this explanation and denied the second motion to reopen.

DISCUSSION

¶8 WISCONSIN STAT. § 799.29(1)(a) allows a good deal of discretion in small claims proceedings. The statute provides: "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." ***Id.*** Furthermore, "[t]he determination of whether to vacate a default judgment is within the sound discretion of the trial court, and the trial court's decision will not be disturbed unless there has been a clear abuse of discretion." ***Dugenske v. Dugenske***, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977).

¶9 A circuit court's exercise of discretion will be sustained if it has applied the proper law to the established facts and if there is any reasonable basis for the circuit court's ruling. *See* ***State v. Alsteen***, 108 Wis. 2d 723, 727, 324 N.W.2d 426 (1982). An appellate court will generally look for reasons to sustain a discretionary determination. ***Steinbach v. Gustafson***, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993). This court may independently search the record to determine whether additional reasons exist to support the circuit court's

exercise of discretion. *See* ***Stan's Lumber, Inc. v. Fleming***, 196 Wis. 2d 554, 573, 538 N.W.2d 849 (Ct. App. 1995).

¶10 However, in the exercise of its discretion, the circuit court should recognize that (1) the statute relating to vacating default judgments is remedial and should be liberally construed; (2) "the law prefers, whenever reasonably possible, to afford litigants a day in court and a trial on the issues"; and (3) "as a corollary to this preference, default judgments are regarded with particular disfavor." *See* ***Dugenske***, 80 Wis. 2d at 68. Therefore, the central issue is whether Clark has proved that the circuit court misused its discretion in denying his motion to reopen, bearing in mind the substantial hurdle Clark must overcome which is mitigated only by the two caveats in ***Dugenske***. We conclude that Clark's excuses are insufficient to overcome this hurdle.

¶11 First, WIS. STAT. § 809.19(1)(d) requires the parties to provide in their briefs a separate section for their "statement of facts relevant to the issues presented for review." Clark has not provided us with any recitation of the facts, let alone factual citations to the record to corroborate those facts. Such failure is a violation of § 809.19(1)(d) of the rules of civil procedure, which requires parties to set out facts "relevant to the issues presented for review, with appropriate references to the record." An appellate court is improperly burdened where briefs fail to cite to the record. ***Meyer v. Fronimades***, 2 Wis. 2d 89, 93-94, 86 N.W.2d 25 (1957). We may impose an appropriate penalty upon a party or counsel for a rule violation. WIS. STAT. § 809.83(2).

¶12 Second, we are not required to address "amorphous and insufficiently developed" arguments. ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995). We shall not address arguments that are

supported by only general statements, are unsupported by citations to legal authority or are otherwise inadequately briefed. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Clark's brief is filled with general statements and is without any legal authority except for a vague constitutional reference.

¶13 Third, we find that we must ignore Clark's request for a counterclaim because, while referencing this claim in his initial response, he never followed up in filing a true counterclaim in any pretrial conference.

¶14 Furthermore, even if we were to pretend that Clark had adequately briefed these issues and followed legal protocol, his litany of assertions fails to rise to the level of an argument; instead, they result in an incoherent text.[4] In examining the record and Clark's brief, we find that Clark has failed to show "good cause," which is necessary to overcome a default judgment. In fact, Clark has failed to show any real cause: he did not offer any reason other than "business travel" for not appearing at the August 7, 2002 pretrial conference which resulted in the entry of the default judgment. Further, he failed to request an adjournment, which is clearly referenced in the July 9, 2002 Notice of Hearing: "This matter will not be adjourned by the court except upon formal motion for good cause shown or with the specific approval of the court upon stipulation by all parties." Likewise, at the December 13, 2002 hearing on the motion to reopen, Clark

[4] Here are some of the bizarre statements that constitute Clark's brief: "Judge and counsel get paid to appear in court, I don't"; "judgment was made with no understanding of Clark's circumstances"; "[t]here is very little comparison between the monopolistic public sector financed by raising taxes and the competitive private sector financed by superior performance and intelligent decisions"; and "Clark is not an attorney, Clark does not make a living by being in court as an attorney and judge does [sic], and Clark's schedule demands are much different then [sic] the judge's or counsel [sic]."

offered no evidence whatsoever for failing to appear or to support his allegation in his motion to reopen dated August 20, 2002.

¶15 Clark presented proof in the form of an airplane and car rental itinerary that seems to demonstrate that he was on business in Toronto on the scheduled September 23, 2002 motion to reopen. This proof is not enough, however, to overcome the court's discretion in determining "good cause," nor have we found any case law to support the proposition that such evidence of business travel would constitute a favorable excuse for missing a scheduled court appointment. Therefore, the circuit court properly exercised its discretion regarding Clark's excuses for missing the multiple court appointments.

¶16 Furthermore, regarding Clark's absence at the August 7, 2002 pretrial conference, we must agree with Balbayis that Clark, in the "wireless business," could have easily called the circuit court in advance about the so-called "emergency" and requested a telephone pretrial or an adjournment. Given such a blatant disregard of court authority, we believe that the circuit court was sufficiently deferential to Clark when it reopened the matter initially. Clark had several opportunities to present his case to the court but he abandoned each one.[5]

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[5] The circuit court stated:

> Okay. Well, Mr. Clark, I would grant one of these once. I won't grant it twice. It's virtually the same motion. You know, I understand you have pressing needs, but the Court also has needs to effectively administer its calendar, that the resources of this court are just as tight as any business resources. Therefore, I'll deny the motion. I don't find cause on the second time.
>
> ....

(continued)

¶17 We will not sanction Clark pursuant to WIS. STAT. § 809.83(2) for violating WIS. STAT. § 809.19(1)(d) and (3). However, neither shall we rule against a circuit court's exercise of discretion absent any real argument, case law or citation to the record that demonstrates such an exercise was erroneous. We hold that the circuit court's order denying Clark's second motion to reopen was not an erroneous exercise of the court's discretion.

CONCLUSION

¶18 WISCONSIN STAT. § 799.29(1)(a) places the power to overturn default judgments squarely on the shoulders of the circuit courts. We may overturn such a decision only where the erroneous exercise discretion standard has been met. Clark provided us with amorphous and insufficiently developed arguments that do not meet the above standard. 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)4.

> You can appeal the finding that I just ruled that there was no cause for your failure to appear on the second time, that basically everybody has busy schedules. Attorneys have busy schedules, they're expected to appear. And when they don't on a second time around, then I become concerned about it.