COURT OF APPEALS
DECISION
DATED AND FILED

October 29, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1300 **Cir. Ct. No. 02SC000524**

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

LISA CERVANTES,

PLAINTIFF-RESPONDENT,

V.

ANDREW P. FOX,

DEFENDANT,

AMERICAN RED CROSS,

GARNISHEE-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Racine County: GERALD P. PTACEK, Judge. *Affirmed.*

¶1 ANDERSON, P.J.[1] The American Red Cross (ARC) seeks to be relieved from a garnishment judgment that makes it liable for the entire amount of a judgment debt Andrew P. Fox owes to Lisa Cervantes because ARC failed to respond to an earnings garnishment form and to appear at a default judgment hearing. We reject ARC's argument that a court-generated "Notice of Hearing" must include the full name and capacity of all parties involved in an earnings garnishment. The notice provided by the court to ARC was sufficient to protect its substantial rights and we affirm.

BACKGROUND

¶2 Cervantes obtained a judgment of $4,032.16 against Fox on July 25, 2002. When Fox failed to promptly satisfy the judgment, Cervantes started an earnings garnishment action under WIS. STAT. subch. II, §§ 812.30 through 812.44, naming Fox's employer, American Red Cross–Southeastern Wisconsin, as the garnishee. Fox served ARC by certified mail on August 30, 2002, and an agent of ARC acknowledged receipt of the documents on September 3, 2002. When ARC failed to respond to the garnishment summons and complaint, a hearing for a default judgment was scheduled for December 9, 2002, and rescheduled to December 23, 2002, when ARC failed to appear. ARC again failed to appear and Cervantes was given a judgment against ARC as garnishee defendant for the full amount of her judgment against Fox.[2]

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

[2] WISCONSIN STAT. § 812.41(1) provides, in part:

(continued)

¶3 ARC filed a motion to vacate the judgment under WIS. STAT. §§ 806.07(1)(a), (c) and (h).[3] ARC sought to have the default judgment vacated because it was not given proper notice of the default hearings; it argued to the circuit court that the caption of the notices for the two December hearings did not indicate that it was a party to the action, although it was listed in the distribution list on the notices. The circuit court denied the motion, finding there was no "inadvertent excuse and neglect, negligence or anything of that nature that would allow relief." The court reasoned that a computer program, and not Cervantes, generated each notice, including in the caption Cervantes as the plaintiff and Fox as the defendant, and including them and ARC in the distribution list. The court described the issue as whether ARC

> knew or should have knowledge they were parties to this action, whether they knew there was a garnishment action

---

> If the garnishee fails to pay over funds to which the creditor is entitled under this subchapter within the time required under s. 812.39, the creditor may, upon notice to all of the parties, move the court for judgment against the garnishee in the amount of the unsatisfied judgment plus interest and costs.

[3] The pertinent provisions of WIS. STAT. § 806.07 provide:

> **(1)** On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> ….
>
> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
>
> ….
>
> (h) Any other reasons justifying relief from the operation of the judgment.

> going on, whether they were properly noticed by the Court process, that's consistent, quite frankly, throughout the state with respect to how captions are printed on notices and calendars and how notices are given.[4]

The court concluded that although ARC was not named in the caption of the notices, it previously had notice that Cervantes had commenced an earnings garnishment naming it as garnishee and that it did have notice of the default judgment hearings scheduled for December 9, 2002, and when a representative for ARC did not appear, December 23, 2002.

¶4 ARC responded with a motion for reconsideration; it asserted that the notices for the December hearings were insufficient because they failed to comply with the requirement of WIS. STAT. § 812.31(4), which requires that "[e]ach pleading or other document in an earnings garnishment proceeding shall designate each party as creditor, debtor or garnishee." ARC pointed out that it was

---

[4] As a member of the Consolidated Court Automation Programs (CCAP) Steering Committee, Judge Gerald P. Ptacek speaks with knowledge and authority on how notices are prepared in the clerk of courts office with the assistance of CCAP case management software. CCAP Steering Committee, *http://intranet.courts.state.wi.us/ccap/Steering/Steering%20Committee%20Members.pdf* (last visited October 8, 2003).

CCAP "brings state-of-the-art computer technology and software to Wisconsin's circuit courts by developing hardware and software and providing training and technical support." Consolidated Court Automation Programs, *http://www.wicourts.gov/circuit/ccap.htm* (last visited October 8, 2003). Included in CCAP provided software is case management software, which

> integrates case file and court calendar information to help the courts function smoothly. Case records and *court calendars* are easily accessed and *can be printed* in a variety of formats such *as court notices*, summonses, judges' calendars, minutes sheets, judgments of conviction, suspension letters, orders for financial disclosure and warrant lists—all critical documents in legal proceedings.

Id. (emphasis added).

not identified as the garnishee in either of the notices. The circuit court reaffirmed its earlier decision:

> So, I understand the argument that you are making and what the statute says. I believe the intent of the statute is to give parties notice. I am satisfied that the American Red Cross had ample notice to respond and the earlier decision of the Court stands at this point.

¶5 ARC appeals, raising the same arguments it did in the circuit court.

STANDARD OF REVIEW

¶6 We will limit our consideration to whether ARC is entitled to relief under WIS. STAT. § 806.07(1)(h). ARC had the burden to establish that the requisite conditions existed to grant relief under § 806.07(1)(a) ("[m]istake, inadvertence, surprise, or excusable neglect") or 806.07(1)(c) ("[f]raud, misrepresentation, or other misconduct of an adverse party"). *See* ***Carmain v. Affiliated Capital Corp.***, 2002 WI App 271, ¶23, 258 Wis. 2d 378, 654 N.W.2d 265. ARC failed to carry that burden in the circuit court because it did not present any evidence in support of either ground for relief.

¶7 WISCONSIN STAT. § 806.07(1)(h) is a catchall provision written in broad terms to provide grounds for relief from judgments beyond those provided in the preceding subsections. ***Johns v. County of Oneida***, 201 Wis. 2d 600, 607, 549 N.W.2d 269 (Ct. App. 1996). A party seeking relief under § 806.07(1)(h) must demonstrate that there are "extraordinary circumstances" justifying relief. ***State v. Sprosty***, 2001 WI App 231, ¶17, 248 Wis. 2d 480, 636 N.W.2d 213, *review denied*, 2002 WI 2, 249 Wis. 2d 581, 638 N.W.2d 590 (Wis. Nov. 27, 2001) (No. 00-2404). "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 be done in light of all the facts.'" ***Id.*** (citation and emphasis omitted). The extraordinary circumstances test "should not be interpreted so broadly as to erode the concept of finality, or so narrowly that it does not provide relief for truly deserving claimants." ***Johns***, 201 Wis. 2d at 607.

¶8 The circuit court has broad discretionary authority to grant relief under WIS. STAT. § 806.07(1)(h). ***Majorowicz v. Allied Mut. Ins. Co.***, 212 Wis. 2d 513, 535, 569 N.W.2d 472 (Ct. App. 1997). We will uphold the circuit court's discretionary decision if it considered the relevant facts, properly interpreted and applied the law and reached a reasonable determination. ***Ness v. Digital Dial Communications, Inc.***, 227 Wis. 2d 592, 600, 596 N.W.2d 365 (1999). The issue here is whether all documents, including court-generated notices of hearings, must "designate each party as creditor, debtor or garnishee." WIS. STAT. § 812.31(4). This is a question of statutory interpretation which we review de novo. ***Ness***, 227 Wis. 2d at 600.

DISCUSSION

¶9 ARC's argument begins with the proposition that WIS. STAT. § 812.31(4) requires that all documents in an earnings garnishment proceeding designate each party by name and capacity—creditor, debtor and garnishee. ARC then insists that because the court-generated "Notice of Hearing" did not indicate the capacity of any of the parties, it was invalid. Finally, ARC asserts that because the court failed to follow statutorily mandated procedures in noticing the hearing on default judgment, extraordinary circumstances exist providing good reason for vacating the default judgment. We reject ARC's argument for several reasons.

¶10 Before discussing our reasons for rejecting ARC's argument we will first describe the applicable statutory requirements for earnings garnishments. The

specific procedures to be used in earnings garnishments are prescribed in WIS. STAT. subch. II, §§ 812.30 through 812.44, and the Rules of Civil Procedure, WIS. STAT. chs. 801 through 847, and apply only if no specific procedure is provided in the earnings garnishment subchapter. WIS. STAT. § 812.31(1). The subchapter requires the judicial conference to review and revise all of the forms for earnings garnishment and any form it revises cannot alter the rights of the parties. WIS. STAT. § 812.44(1)(a).

¶11 A party in an earnings garnishment must use the forms specified in the subchapter or revised by the judicial conference and is subject to sanctions if the form is altered in any manner that misleads any other party. WIS. STAT. § 812.44(1)(b). Included in the forms required by the subchapter are:

a) Garnishment notice, WIS. STAT. §§ 812.35(1) and 812.44(2);

b) Earnings garnishment forms, §§ 812.35(2) and 812.44(3);

c) Exemption notice, § 812.35(4)(b)1;

d) Answer form, § 812.35(4)(b)2;

e) Schedules and worksheets, § 812.35(4)(b)3;

f) Notice it is unlikely garnishee will become obligated to debtor, § 812.35(5);

g) Notice of amount of garnishment, § 812.35(6);

h) Motion for hearing, WIS. STAT. § 812.38(1);

i) Objection to debtor's answer, § 812.38(1);

j) Debtor's petition for relief, § 812.38(2);

k) Garnishee's notice to debtor, WIS. STAT. § 812.39(3); and

l) Stipulated extension, WIS. STAT. § 812.40.

The obligation to use the statutorily prescribed forms is enforced in § 812.44(1)(c):

> No garnishee is required to act as requested by any form in this subchapter that does not identify the parties as required by s. 812.31(4) or that is illegibly completed or otherwise unintelligible. No garnishee is liable to any person for refusing to so act. The garnishee shall mail that form back to the sending party, if known, within 3 days after receipt. The garnishee shall include with the returned form a statement specifying the defect in the form and that the garnishee is not acting as requested by the form under the authority of this paragraph.

¶12 WAIVER. ARC does not have a safe harbor in this statute. First, only parties to the earnings garnishment proceeding are required to use the prescribed forms with the prescribed designations; the circuit court is not a party and its "Notice of Hearing" is not a prescribed form. Therefore, the parties' designations are not required. Second, by its actions, ARC has sailed past this safe harbor. The garnishee must return the nonstatutory form within three days of receipt along with a notation specifying the fault in the form and a statement that it will not act as requested; there is no evidence that ARC took advantage of this provision. The purpose of this provision is to protect the creditor and preserve the earnings garnishment by affording the creditor the opportunity to swiftly bring the forms used into compliance. This provision recognizes that technical defects in the forms should not sink the earnings garnishment proceeding.

¶13 TECHNICAL DEFECT. A second reason we reject ARC's argument is that the failure to designate the capacity of the parties in the contents of the "Notice of Hearing" is a technical defect that did not prejudice ARC or any of the other parties. We find support for this conclusion in ***Novak v. Phillips***, 2001 WI App 156, ¶17, 246 Wis. 2d 673, 631 N.W.2d 635, *overruled on other grounds by* ***Schaefer v. Riegelman***, 2002 WI 18, ¶¶32-33, 250 Wis. 2d 494, 639 N.W.2d 715, where we observed that defects or errors in content or form of pleadings are technical. A court-generated "Notice of Hearing" is definitely not a pleading, so it stands to reason that errors in the content or form of a court-generated notice are technical.

¶14 We are instructed by WIS. STAT. § 805.18(1) to ignore a technical defect if it is not prejudicial. ***Gaddis v. LaCrosse Prods., Inc.***, 198 Wis. 2d 396, 407, 542 N.W.2d 454 (1996). We conclude that ARC's rights were not prejudiced. Both notices advised the recipients that the case was scheduled for a "Garnishment Hearing" at a specific time in a specific court and designating ARC as the garnishee would not have added any substance to the notice because ARC had previously been served with the earnings garnishment notice designating ARC as the garnishee.

¶15 EQUITIES. In considering whether or not there are extraordinary circumstances justifying relief from a judgment under WIS. STAT. § 806.07(1)(h), we must balance the equities to determine if "the sanctity of the final judgment is outweighed by the 'incessant command of the court's conscience that justice be done in light of all the facts.'" ***Sprosty***, 248 Wis. 2d 480, ¶17 (citation and emphasis omitted). ARC is well known as an IRS approved charity; it is not a government agency and relies upon donations from the public to provide assistance, free of charge, to those in need of its numerous services. Online

donation form, *https://www.redcross.org/donate/donation-form.asp* (last visited October 9, 2003). It is reasonable to conclude that holding it liable to Cervantes for the entire judgment she has against Fox will have a negative impact on the services that the local chapter can provide.

¶16 On the other hand, Cervantes has a valid judgment and is pursuing the satisfaction of that judgment pro se.[5] In Wisconsin:

> *Pro se* [litigants] must satisfy all procedural requirements, unless those requirements are waived by the court. They are bound by the same rules that apply to attorneys …. The right to self-representation is "[not] a license not to comply with relevant rules of procedural and substantive law." While some leniency may be allowed, neither a trial court nor a reviewing court has a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law.

Waushara County v. Graf, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (citation omitted). However, where the court takes it upon itself to fulfill a procedural requirement, *e.g.*, to generate and distribute a "Notice of Hearing," the pro se litigant cannot be penalized if the court-generated form or document does not strictly fulfill statutory requirements. In this case, the scales of justice remain

---

[5] The difficulties facing a pro se litigant are described in the Wisconsin Supreme Court publication, *Pro Se: meeting the challenge of self-represented litigants in Wisconsin*, *http://www.wicourts.gov/media/reports/Pro_Se_Report_12-00.htm* (last visited October 9, 2003):

> Most self-represented litigants, however, do not know these rules exist, let alone how to apply them. Initially, this lack of understanding results in litigants asking court staff various questions concerning the court process. Subsequently, it can result in a litigant not being prepared for hearings or experiencing difficulty presenting information to the court. In either instance, self-represented litigants can seriously damage his or her ability to be successful in court. More importantly, such a lack of understanding diminishes the court's ability to come to a fair disposition.

even; the equities are even because under the facts and circumstances, both Cervantes and ARC are deserving of justice.

CONCLUSION

¶17 ARC is not entitled to relief from the judgment because it received a valid "Notice of Hearing" from the court and offers no justifiable excuse for not appearing at the default judgment hearing. We conclude that the court-generated "Notice of Hearing" is not a form prescribed by the earnings garnishment subchapter of WIS. STAT. ch. 812, and it is not required to designate all parties involved in an earnings garnishment and the parties' capacity. Even if it were a designated form, the failure to designate the parties' capacities is, at the most, a technical defect that does not affect the substantive rights of ARC or any of the other parties.

By the Court.—Judgment and orders affirmed.

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