

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 7, 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. 2011AP537

Cir. Ct. No. 2010CV1374

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

AMERITECH PUBLISHING, INC.,

PLAINTIFF-RESPONDENT,

V.

INTEGRITY CONSTRUCTION GROUP, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: THOMAS J. GRITTON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Integrity Construction Group, Inc. (Integrity) appeals from a default judgment entered after the circuit court struck Integrity's answer, which was filed ten days late. Integrity argues that service of the complaint was not made properly on its registered agent, since the process server

asked for the corporation's "owner," and that the late answer should stand due to excusable neglect or extraordinary circumstances. The circuit court found that there was no excusable neglect, and that the circumstances that Integrity argues were extraordinary did not justify its failure to file a timely answer. We affirm the judgment of the circuit court.

BACKGROUND

¶2 Ameritech Publishing, Inc. (Ameritech) filed a summons and complaint on July 15, 2010, alleging that Integrity breached its contract with Ameritech. On July 20, 2010, Sheriff's Deputy Steven Krueger served Jillene Lewis, also known as Jill Lewis, with an authenticated copy of the summons and complaint. At the time she was served, Lewis was the registered agent for Integrity, as well as the majority shareholder with a fifty-one percent ownership interest in the corporation.

¶3 Krueger alerted Lewis to the fact that a response was required within the time frame stated in the summons, which was twenty days. Lewis placed the summons and complaint in the office mailbox of her brother, who was then the corporation's president and CEO. Lewis knew her brother did not work a full-time schedule and that he was out of the state at the time she placed the summons and complaint in his office mailbox. When she received the summons and complaint, Lewis glanced over it and realized Integrity was being sued, but did not contact Integrity's attorney despite the fact that she knew the attorney's name. According to the summons, Integrity was required to file a responsive pleading on or before August 9, 2010.

¶4 When Integrity's president and CEO returned from his out-of-state trip, he reviewed the summons and complaint, which was still in his office

mailbox, and forwarded it to the corporation's attorney. Integrity's attorney filed an answer on Integrity's behalf on August 19, 2010, ten days after the twenty-day response date required by the summons. Ameritech moved to strike the answer and for entry of a default judgment against Integrity. After a motion hearing, the circuit court entered an order striking the answer and entered a default judgment against Integrity. Integrity now appeals.

STANDARD OF REVIEW

¶5 Whether the circuit court properly applied certain specific and uncontested facts to determine the existence of excusable neglect is a question of law. *Rutan v. Miller*, 213 Wis. 2d 94, 101, 570 N.W.2d 54 (Ct. App. 1997). We review a circuit court's decision to enter a default judgment under the erroneous exercise of discretion standard. *Smith v. Golde*, 224 Wis. 2d 518, 525, 592 N.W.2d 287 (Ct. App. 1999). This court will uphold a circuit court's discretionary decision if the court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (citation omitted).

¶6 Default judgments are disfavored under Wisconsin law, which prefers, whenever reasonably possible, to afford litigants their day in court and a trial on the issues. *Casper v. American Int'l S. Ins. Co.*, 2011 WI 81, ¶38, ___ Wis. 2d ___, 800 N.W.2d 880. On the other hand, courts also must consider the public policy interest of prompt adjudication that can be advanced when a party that has failed to timely respond is held accountable for such delay. *Id.*

DISCUSSION

¶7 Integrity asserts two arguments in support of its position that the circuit court erroneously exercised its discretion in striking Integrity’s answer and entering default judgment against it. First, Integrity argues that service upon its registered agent was “confusing” and, thus, was ineffective. Second, Integrity argues that Integrity’s failure to file a timely answer was due to excusable neglect or extraordinary circumstances, such that the circuit court should have found in its favor. We are not persuaded by either of Integrity’s arguments.

¶8 Integrity argues that service of the summons and complaint upon Integrity was confusing because Krueger asked for the owner of the corporation when he arrived at its offices and did not ask for the registered agent. This fact is immaterial. Lewis was the registered agent of Integrity at the time she was served personally with the summons and complaint. Personal jurisdiction over Integrity was accomplished under WIS. STAT. § 801.11(5)(c) (2009-10)¹ by service of the summons “upon an agent authorized by appointment or by law to accept service of the summons for the defendant.” As the registered agent, Lewis was authorized by law to accept service on behalf of Integrity, pursuant to WIS. STAT. § 180.0504, which states that a corporation’s registered agent is the corporation’s agent for service of process:

(1) A corporation’s registered agent is the corporation’s agent for service of process, notice or demand required or permitted by law to be served on the corporation.

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

Whether or not Lewis knew she was the registered agent does not change the fact that she indeed was the agent, that she was authorized to accept service, and that she did, in fact, accept service on behalf of Integrity. After reviewing the language of the statutes governing service upon a corporation in this state, we reject Integrity's argument that the manner of service in this case was ineffective.

¶9 Integrity also asserts that the circuit court erroneously exercised its discretion when it found that Integrity's failure to file a timely answer was not due to excusable neglect or extraordinary circumstances. Integrity relies upon WIS. STAT. § 806.07, which sets forth the circumstances under which a court may grant a party relief from a judgment or order. These circumstances include, but are not limited to, "[m]istake, inadvertence, surprise, or excusable neglect[.]" Sec. 806.07(1)(a). Section 806.07(1)(h) also states that a court may grant relief from a judgment for "[a]ny other reasons justifying relief from the operation of the judgment."

¶10 Citing *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 552, 363 N.W.2d 419 (1985), Integrity argues that its failure to file a timely answer was due to "extraordinary circumstances" that justify relief under WIS. STAT. § 806.07(1)(h) and that the court failed to consider those circumstances. A review of the record indicates that the circuit court did, in fact, consider the circumstances argued by Integrity, but concluded that the circumstances did not justify Integrity's failure to file a responsive pleading in a timely manner.

¶11 During the hearing on Ameritech's motion, testimony was taken from Krueger, as well as from Lewis and from her brother, who was the president and CEO of Integrity at the time Lewis was served. The circuit court heard testimony on all of the factors that Integrity argues constituted excusable neglect

and/or extraordinary circumstances, including a hail storm in Menasha on July 20, 2010, turnover of responsibility within Integrity's management structure, Lewis' lack of knowledge that she was the registered agent, and the president and CEO's extended absence from the office when the summons was served. The court did not state explicitly on the record that these circumstances were not "extraordinary," but it did not need to do so. The court examined each of the circumstances on the record and reached the reasoned conclusion that none of them constituted excusable neglect or justified Integrity's failure to file a timely answer. The court also considered on the record the conflicting public policy goals of allowing a litigant to have its day in court versus a litigant's right to have its lawsuit progress, and found in Ameritech's favor. Integrity may disagree with the court's conclusion, but it was nonetheless a reasonable conclusion based upon the facts before the court and supported by the laws governing service of process upon a corporation in this state. *See* WIS. STAT. § 180.0504(1). Therefore, we affirm the decision of the circuit court.

By the Court.—Judgment affirmed.

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

