COURT OF APPEALS
DECISION
DATED AND RELEASED

May 8, 1996

No. 95-1458

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

CITY OF RACINE,

Plaintiff-Respondent,

v.

ROBERT ROBINSON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Racine County: STEPHEN A. SIMANEK, Judge. *Affirmed*.

NETTESHEIM, J. Robert Robinson appeals pro se from a default judgment in a civil forfeiture action. On appeal, Robinson argues that because he did not have notice of the date of the trial proceeding, the trial court erred in entering, and later refusing to vacate, a default judgment against him. We reject Robinson's argument and affirm the default judgment.

BACKGROUND

On February 14, 1995, the municipal court found Robinson guilty of violating a City of Racine trespassing ordinance. Robinson appealed the municipal court judgment to the Racine County Circuit Court, asking for a trial de novo before a jury. Robinson's notice of appeal recited his mailing address as a post office box in Racine.

In response, the circuit court scheduled a pretrial for March 31, 1995, and a jury trial for April 10, 1995, and sent notices of these dates to Robinson at his post office box address. Both Robinson and the City appeared at the March 31 pretrial hearing. Court Commissioner James Drummond presided over the pretrial and, unaware of the previously scheduled trial date, scheduled a jury trial for May 2, 1995. The circuit court immediately discovered the error and that same day mailed Robinson a notice at his post office box advising him to disregard the May 2 trial date and further advising that April 10 remained the correct trial date.

Also on the same day, March 31, 1995, Robinson filed a motion with the trial court asking permission to waive a jury trial and instead seeking a review of the forfeiture judgment based on the record of the municipal court proceedings. On this document, Robinson listed a general delivery address different from the post office box address that he had previously used. Because of Robinson's change in address, the court's March 31 notice confirming the April 10 trial date was returned unopened to the clerk of courts on April 5 bearing a "return to sender" stamp.

Thereafter, on April 4, 1995, and in opposition to Robinson's motion for a review based on the record of the municipal court proceedings, the City moved for a trial de novo. This motion stated that the matter would be heard on April 10, 1995, the same day the matter was already scheduled for trial. This notice was mailed to Robinson at the general delivery address which he had most recently provided.

Robinson did not appear at the April 10, 1995, proceedings. As a result, the circuit court entered a default judgment against Robinson. The next day, Robinson filed a motion asking the court to vacate the default judgment on the grounds that he had not received notice of the proceedings at his "last known address." At a hearing on April 18, the circuit court denied the motion.

DISCUSSION

Robinson contends that he did not receive proper notice of the April 10 trial date. It is true that the circuit court's March 31 notice confirming the April 10 trial date was not mailed to Robinson's new general delivery address. However, Robinson has failed to establish that, *at the time this notice was mailed,* the court utilized the wrong address. As of the pretrial on March 31, Robinson's address was the post office box address. When the court discovered that the court commissioner had erroneously scheduled the trial for May 2, the court immediately mailed the notice confirming the April 10 trial date to this very address.

The confusion results because sometime during the same day, Robinson filed a motion withdrawing his de novo trial request and noted at the

foot of this motion his new general delivery address. The record does not reveal whether this occurred before or after the court sent its notice confirming the April 10 trial date. Thus, Robinson's contention that the circuit court failed to send the notice to the proper address may well be incorrect.

Moreover, we conclude that the circuit court was entitled to rely on the address indicated on the citation and to which all prior notices had been sent *until* Robinson had *formally* advised the court of a change in address. Robinson's March 31 motion was not a formal notification to the circuit court of his change in address. Rather, it was a motion to withdraw Robinson's previous request for a trial de novo and only obliquely noted Robinson's different address in the lower right-hand corner.

Robinson contends that this oblique reference sufficiently notified the circuit court of his change in address. We disagree. A party is required to raise a matter with sufficient prominence such that a court will understand that corresponding judicial action is necessary. *Cf.* ***State v. Salter***, 118 Wis.2d 67, 79, 346 N.W.2d 318, 324 (Ct. App. 1984). Robinson has failed this test. In any judicial proceeding, both the court and the litigants have certain responsibilities to each other. Here, Robinson seeks to undo the trial court proceedings by seizing on confusion or uncertainty which he himself built into the case. We will not allow him to do so.

Moreover, Robinson in any event received notice of the April 10 proceeding via the City's motion for a trial de novo—a document which was sent to Robinson's new general delivery address. While this document did not

expressly say that the matter would go to trial on that day, Robinson's failure to appear demonstrates that he was more concerned with building confusion into the proceedings than defending the charge on the merits.

We also find it intriguing and suspicious that on April 11, without any intervening action by the court, Robinson moved for relief from the default judgment entered the prior day. This strongly suggests that Robinson, in fact, had knowledge of the April 10 trial date.

Finally, we observe that in order to be relieved from a default judgment, the movant must not only demonstrate that the judgment was obtained as a result of excusable mistake, inadvertence, surprise or neglect, but also that there is a meritorious defense to the action. ***Maier Constr. v. Ryan,*** 81 Wis.2d 463, 472, 260 N.W.2d 700, 703 (1978); *see* § 806.07, STATS. Here, Robinson has made no showing of a likely meritorious defense to the charge.

On these various grounds, we conclude that the trial court did not misuse its discretion in granting, and later refusing to vacate, the default judgment.

By the Court.—Judgment affirmed.

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