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**DISTRICT I**

July 7, 2021

To:

Hon. Christopher R. Foley  
Circuit Court Judge  
Electronic Notice

Kevin P. Sullivan  
Milwaukee City Attorney's Office  
Electronic Notice

John Barrett  
Clerk of Circuit Court  
Electronic Notice

Perrault Jean-Paul  
Electronic Notice

Andrea Jane Fowler  
Milwaukee City Attorney's Office  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2020AP2055

Perrault Jean-Paul v. City of Milwaukee (L.C. # 2020CV6391)

Before Dugan, Donald and White, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Perrault Jean-Paul, *pro se*, appeals from a circuit court order dismissing his complaint against the City of Milwaukee with prejudice in an independent action brought under WIS. STAT. § 806.07(2) (2019-20).<sup>1</sup> Based upon our review of the briefs and record, we conclude at

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<sup>1</sup> WISCONSIN STAT. § 806.07, which provides avenues for a party seeking relief from a judgment or order, provides in subsection (2): “This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court.”

(continued)

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We further conclude that the circuit court denied Jean-Paul procedural due process when it granted the City's motion to dismiss without providing Jean-Paul an opportunity to be heard. Therefore, we summarily reverse the order and remand the case for further proceedings.

In January 2016, the City filed a lawsuit against Jean-Paul in Milwaukee County Circuit Court Case No. 2016CV255 seeking to recover the costs of razing and removing one of Jean-Paul's properties.<sup>2</sup> When Jean-Paul failed to respond, the circuit court granted default judgment to the City. The judgment was entered in March 2016.

In May 2016, Jean-Paul filed a motion to reopen the case, asserting that he was never served with the summons and complaint and as such, the circuit court never had personal jurisdiction over him. At the hearing on Jean-Paul's motion to reopen, the circuit court denied the motion but indicated that Jean-Paul could move for reconsideration.<sup>3</sup> Jean-Paul did not do so.

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All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>2</sup> Some of the background information was obtained from the Wisconsin Consolidated Court Automation Programs (CCAP) record, an online case management system reflecting information entered by court staff, of which this court may take judicial notice. *See Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522. We additionally note that both parties included materials in the appendices to their briefs that are not in the appellate record, contrary to WIS. STAT. RULE 809.19(2)(a) (providing that the appendix contain "portions of the record"). These materials relate to Case No. 2016CV255. Given that Jean-Paul is *pro se* and that neither party takes issue with the other party's submissions, we considered these materials only insofar as they relate to the chronology of events.

<sup>3</sup> The Honorable Glenn H. Yamahiro granted default judgment to the City and later denied Jean-Paul's motion to reopen.

In February 2019, Jean-Paul moved the circuit court to vacate the default judgment and reopen the underlying case pursuant to WIS. STAT. § 806.07(1)(h). The circuit court denied the motion to reopen as untimely.<sup>4</sup>

Next, on October 28, 2020, Jean-Paul filed a complaint against the City asserting that the default judgment against him was void. On November 17, 2020, the City filed a motion to dismiss the complaint based on claim preclusion and failure to state a claim. *See* WIS. STAT. § 802.06(2)(a)6., 8.; *see also Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 549-50, 525 N.W.2d 723 (1995) (adopting the term claim preclusion to replace *res judicata*). A hearing on the motion to dismiss was scheduled to take place on December 16, 2020. However, on November 24, 2020—seven days after the City filed its motion and twenty-two days before the scheduled hearing—the circuit court issued a written decision granting the City’s motion and dismissing Jean-Paul’s complaint with prejudice.<sup>5</sup>

Jean-Paul appeals. He argues that the circuit court’s decision to grant the City’s motion without affording him an opportunity to be heard violated his right to procedural due process. A civil litigant has a procedural due process right of “adequate, effective, and meaningful” access to the courts. *See Penterman v. Wisconsin Elec. Power Co.*, 211 Wis. 2d 458, 474, 565 N.W.2d 521 (1997) (citation omitted). “The fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *American Eagle Ins. Co. v. Wisconsin Ins. Sec. Fund*, 2005 WI App 177, ¶44, 286 Wis. 2d 689, 704

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<sup>4</sup> The Honorable Jeffrey A. Conen ruled on Jean-Paul’s 2019 motion.

<sup>5</sup> Jean-Paul contends that he “quickly drafted a rush opposition [brief] and filed it” the same day the circuit court issued its written decision. It appears to have been filed after the circuit court issued its written decision.

N.W.2d 44 (citation omitted). Whether a litigant's due process rights have been violated is a question of law we review *de novo*. See *State v. Aufderhaar*, 2005 WI 108, ¶10, 283 Wis. 2d 336, 700 N.W.2d 4.

The City contends that Jean-Paul misunderstands the procedure that applies to a motion to dismiss. Pursuant to WIS. STAT. § 802.06(2)(a)6. and 8., the City raised failure to state a claim upon which relief can be granted and claim preclusion as defenses to Jean-Paul's independent action. Subsection (b) of that statute provides:

If on a motion asserting the defense described in par. (a)6. to dismiss for failure of the pleading to state a claim upon which relief can be granted, or on a motion asserting the defense[] described in par. (a)8. ..., matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in s. 802.08, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by s. 802.08.

Sec. 802.06(2)(b).

Because its motion did not present any matters outside of the pleadings, the City contends that the requirement under WIS. STAT. § 802.06(2)(b) that it be treated as one for summary judgment is not triggered. Consequently, the City argues that the circuit court was free to act on the motion without any further pleading, filing, or other response from Jean-Paul.

We disagree. Even if we set aside the issue of whether this was a motion that should have been treated as one for summary judgment and disposed of as provided in WIS. STAT. § 802.08, the fundamental requirement of procedural due process was still applicable. Jean-Paul did not have an opportunity to be heard before the circuit court issued its written decision granting the City's motion to dismiss.

Based on the forgoing, we reverse and remand for further proceedings so as to allow the circuit court to afford Jean-Paul procedural due process in its resolution of the City's motion to dismiss. We note that what constitutes a reasonable opportunity to be heard varies from case to case. See *Capoun Revocable Tr. v. Ansari*, 2000 WI App 83, ¶17, 234 Wis. 2d 335, 610 N.W.2d 129 (“Due process is flexible and requires only such procedural protections as the particular situation demands.” (citations omitted)). In light of this resolution, we need not reach the parties' remaining arguments. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

IT IS ORDERED that the order is reversed and the cause remanded. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*