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DISTRICT IV

June 30, 2022

To:

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Circuit Court Judge
Electronic Notice

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

2021AP1863-FT In re the Marriage of: Ann Marie Jahimiak v.
David Ralph Jahimiak (L.C. # 1997FA501)

Before Blanchard, P.J., Fitzpatrick, and Nashold, 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).

Pursuant to this court's order of November 9, 2021, the parties have submitted memo briefs in an expedited appeal. *See* WIS. STAT. RULE 809.17 (2019-20).¹ Upon review of those memoranda and the record, we affirm the order of the circuit court.

David Jahimiak appeals a circuit court order following a hearing de novo that reviewed a decision by a family court commissioner (FCC). David argues that the circuit court erred by

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

denying his motion to dismiss Ann Jahimiak's motion for a hearing de novo as untimely under the La Crosse County circuit court rules.² We affirm.

On February 24, 2021, the FCC held a hearing on David's motion to reduce his maintenance payments to Ann and determined that maintenance should be reduced. The FCC issued an order reducing maintenance on April 1, 2021, and Ann moved for a hearing de novo on the same date. David moved to dismiss the request for a hearing de novo as untimely because it was not filed within thirty days of the FCC's oral ruling, as required under La Crosse County Circuit Court Rule 914(1). In response, Ann moved the circuit court to disregard the thirty-day limit in the interest of justice. Ann's counsel submitted a supporting affidavit stating that the delay was caused by her mistaken belief that she needed to have the signed order from the FCC before she could seek a hearing de novo and that she had notified David's counsel within the thirty-day period that a hearing de novo had been scheduled.³ The circuit court denied the motion to dismiss and proceeded to a hearing de novo on the merits.

WISCONSIN STAT. § 757.69(8) provides that a party may seek a hearing de novo in the circuit court to obtain review of a decision by a court commissioner. La Crosse County Circuit Court Rule 914(1) provides that a party must move for a hearing de novo within thirty days of the FCC's oral decision if the party was present at the hearing. Rule 914(6) provides that "[n]o de novo hearing will be held if the motion requesting a de novo hearing is not filed with the

² Because the parties share a surname, we refer to them by their first names for clarity.

³ The affidavit also asserted that, if the hearing de novo did not go forward in the circuit court, David intended to appeal the FCC's decision directly to this court. However, this court does not review decisions by court commissioners. See *State v. Trongeau*, 135 Wis. 2d 188, 191-93, 400 N.W.2d 12 (Ct. App. 1986) (this court does not review decisions by court commissioners; circuit courts, not court commissioners, issue appealable orders).

Clerk of Courts within 30 days of the decision of the Family Court Commissioner,” and that, “[i]f the time requirements of this rule are not followed, the request for a de novo hearing will be dismissed.”

The parties agree that the request for a hearing de novo was untimely under La Crosse County Circuit Court Rule 914(1). They disagree over whether the circuit court properly exercised its discretion by allowing the hearing de novo to go forward despite the untimely request. We conclude that the circuit court properly exercised its discretion by enlarging the time to seek the hearing de novo and proceeding to a hearing on the merits.⁴

WISCONSIN STAT. § 801.15(2)(a) grants a circuit court authority to enlarge the time within which an act is required to be done. If a request to enlarge time is made after the expiration of the time limit, the time may not be enlarged except upon a finding that the failure to act was the result of excusable neglect. *Id.*

A circuit court has broad discretion to grant an enlargement of time under WIS. STAT. § 801.15(2)(a). *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 467, 326 N.W.2d 727 (1982). “The circuit court grants relief under [§] 801.15(2)(a) if it finds reasonable grounds for noncompliance with the statutory time period (which the statute and this court refer to as excusable neglect),” and also determines that “the interests of justice would be served by the enlargement of time, *e.g.*, that the party seeking an enlargement of time has acted in good faith and that the opposing party is not prejudiced by the time delay.” *Id.* at 468. “A circuit court’s

⁴ Because our conclusion that the circuit court properly exercised its discretion to enlarge the time to seek a hearing de novo is dispositive, we do not address the parties’ other arguments.

finding of excusable neglect ‘will not be disturbed by an appellate court unless an [erroneous exercise] of discretion is clearly shown.’” *Casper v. American Int’l S. Ins. Co.*, 2011 WI 81, ¶36, 336 Wis. 2d 267, 800 N.W.2d 880 (quoted source omitted). A proper exercise of discretion requires a “reasoned application of the appropriate legal standard to the relevant facts in the case.” *Hedtcke*, 109 Wis. 2d at 471.

David contends that nothing in the circuit court’s decision demonstrates an exercise of discretion to enlarge the time to act under WIS. STAT. § 801.15(2)(a). He contends that the circuit court failed to provide a reasoned discussion of the factors that would have supported a finding of excusable neglect, and that the court erred by relying on its mistaken belief that La Crosse County Circuit Court Rule 914(1) does not apply in postjudgment proceedings.

While we recognize that the circuit court failed to specifically address the excusable neglect standard under WIS. STAT. § 801.15(2)(a), we conclude that its decision enlarging the time to move for a hearing de novo was sufficient under this court’s deferential review. “[B]ecause the exercise of discretion is so essential to the [circuit] court’s functioning, we generally look for reasons to sustain discretionary decisions.” *Burkes v. Hales*, 165 Wis. 2d 585, 591, 478 N.W.2d 37 (Ct. App. 1991) (citation omitted). “When a circuit court fails to set forth its reasoning, appellate courts independently review the record to determine whether it provides a basis for the circuit court’s exercise of discretion.” *State v. Gray*, 225 Wis. 2d 39, ¶18, 590 N.W.2d 918 (1999) (quoted source omitted).

Here, Ann’s counsel filed an affidavit averring that the motion was filed late because counsel mistakenly believed that a written order was necessary to seek the hearing de novo. We conclude that counsel’s explanation sufficiently supported a finding of reasonable grounds for

Ann’s noncompliance with the thirty-day deadline. *See Connor v. Connor*, 2001 WI 49, ¶36, 243 Wis. 2d 279, 627 N.W.2d 182 (explaining that “[m]istakes, ill advice, or other failures” by counsel “may constitute excusable neglect on the part of the client, when the client has acted as a reasonable and prudent person” by retaining and relying on counsel; and, “[i]n deciding whether to impute the negligence of the lawyer to the client, the trial court must exercise its equitable powers to secure substantial justice between the parties” (quoted source omitted)). Additionally, we conclude that the circuit court had a reasonable basis to determine that the enlargement of time was consistent with the interests of justice without prejudicing any party. The reasonable basis included the facts that the motion for a de novo hearing was filed only six days after the thirty-day deadline and that counsel averred that she notified opposing counsel within the thirty-day period that a hearing de novo had been scheduled. The circuit court considered Ann’s interest in having the matter reviewed by the circuit court and denied the motion in the interest of judicial economy. We are not persuaded that the circuit court erroneously exercised its discretion.

Therefore,

IT IS ORDERED that the order of the circuit court is affirmed.

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

Sheila T. Reiff
Clerk of Court of Appeals