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DISTRICT IV

July 13, 2023

To:

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Circuit Court Judge
Electronic Notice

William H. Gergen
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

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

2022AP833

Michael S. Eisenga v. Cari Coyle (L.C. # 2021CV132)

Before Blanchard, P.J., Graham, 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).

Michael Eisenga appeals a judgment dismissing his complaint against Cari Coyle and awarding her damages on her counterclaims. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21.¹ We affirm.

Eisenga's complaint alleges that he leased commercial property to Coyle, and that she breached the lease by prematurely halting her rental payments and vacating the premises.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Coyle's counterclaim seeks reimbursement for air conditioning and lighting repairs that Coyle claims are Eisenga's responsibility under the lease, but that Coyle paid for after he refused to arrange for them. In addition, she alleges a breach by Eisenga of her right to quiet enjoyment, based on his failure to make repairs, and his alleged "uninvited and unscheduled visits" to her salon on the premises several times per week. She alleges that he would stay for up to an hour during these visits while she would be conducting business or serving customers.

Coyle moved for default judgment on her counterclaims on the ground that Eisenga's answer was late. Eisenga responded with a motion to enlarge the time to answer. The court denied the motion to enlarge, and granted Coyle's requests for judgment on her counterclaims and to dismiss Eisenga's complaint. Eisenga appeals.

Eisenga argues that, under case law interpreting the default judgment statute, defendants are not entitled to default judgments on counterclaims. Coyle responds that the statute has since been amended to expressly allow such judgments. *See* WIS. STAT. § 806.02(1). In reply, Eisenga concedes that "the new statute does allow a default to be taken." We do not further discuss this issue.

Eisenga separately argues that the circuit court erred in the analysis that led to its denial of his motion to enlarge the time to answer. He does not dispute the circuit court's conclusion that he failed to show the excusable neglect required by WIS. STAT. § 801.15(2)(a). Instead, he argues that the court erred because it did not also consider the interests of justice. Eisenga argues that this additional consideration is required by case law, but we disagree. Case law unambiguously states that "when the circuit court determines that there is no excusable neglect, the motion must be denied." *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 468, 326 N.W.2d 727

(1982). The interests of justice are a consideration only if excusable neglect is found. *Estate of Otto v. Physicians Ins.*, 2007 WI App 192, ¶¶13-21, 305 Wis. 2d 198, 738 N.W.2d 599.

Eisenga also argues that the circuit court erred by dismissing his complaint as part of the relief granted to Coyle for Eisenga's failure to answer her counterclaims. Eisenga argues that this relief was improper because Coyle's motion for default judgment did not request it. We disagree with that description of the record. Coyle's motion asked for "judgment according to the relief requested in the Defendant's Answer, Affirmative Defenses, and Counterclaim." The answer included a request to dismiss Eisenga's complaint. In addition, the motion said that the grounds for the motion were set forth in an attached affidavit, and the affidavit expressly asked for that relief.

Eisenga asserts in his opening brief that there "was no conceivable reason" for the circuit court to dismiss his complaint, but he does not develop a supporting argument. In his reply brief, Eisenga elaborates somewhat on this bare assertion, by making the general point that dismissal of one claim does not necessarily flow from the granting of judgment on a different claim. He argues that a plaintiff and defendant may both succeed on their claims against each other, and that a plaintiff's failure to answer a defense counterclaim does not necessarily affect the validity of the plaintiff's original claim. This may well be an accurate observation for some cases, but Eisenga fails to develop the argument with a discussion of whether and how that is the case here. Thus, in addition to the problem of failing to develop an argument in his principal brief that would have provided a fair opportunity for a response by Coyle, *see A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998), even by the time of his reply brief Eisenga fails to fully develop the argument, *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Therefore, we do not address the point further.

IT IS ORDERED that the judgment appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals