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**DISTRICT II**

February 14, 2024

To:

Hon. David M. Reddy  
Circuit Court Judge  
Electronic Notice

Russell W. Devitt  
Electronic Notice

Michele Jacobs  
Clerk of Circuit Court  
Walworth County Courthouse  
Electronic Notice

James B. Duquette  
Electronic Notice

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

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2023AP1752-FT

Jeffrey P. Delange v. David E. Travis (L.C. #2021CV634)

Before Gundrum, P.J., Grogan and Lazar, 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).**

David E. Travis appeals from an order of the circuit court denying his motion for relief from default judgment entered in favor of Jeffrey P. Delange. 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 (2021-22).<sup>1</sup> Travis argues that the judgment against him should be vacated despite his failure to timely file an answer to Delange's complaint and that the circuit court's award of interest, exceeding the amount allowed by law, was based on a misrepresentation. The circuit court appropriately exercised its discretion in awarding default

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

judgment for Delange, so we affirm in part. On the issue of interest, however, we conclude that the circuit court erroneously exercised its discretion by basing its decision on a clearly erroneous finding of fact. We reverse and remand for a determination of the proper interest rate and the correct time period for which interest should be awarded.

According to Delange’s complaint, Delange was a salesman for Jung Seed Genetics, a company that sells seeds for crops and other agricultural products. In 2017, Delange sold and delivered (between February and May 2017) corn crop to Travis for \$17,520. Delange paid Jung Seed Genetics for this order on Travis’s behalf, but Travis did not pay him back as the parties had agreed. Delange filed suit on December 13, 2021, to recover the money, which he asserted he paid to Jung Seed Genetics “at the time of ordering”—although evidence submitted later suggests that Delange paid Jung Seed Genetics for Travis’s seed order several months later than “the time of ordering,” between October 2017 and January 2018.

As Travis admits, he did not file an answer to Delange’s complaint within the statutory timeframe for doing so. Delange filed a motion for default judgment on April 19, 2022, seeking \$17,520 in damages along with interest in the amount of \$20,744. Acting pro se, Travis filed a response to this motion in which he asserted that he “never entered into an agreement with [Delange] personally” and he never saw “evidence that [Delange] actually paid Jung Seed Genetics for the seed order.” The circuit court conducted a nine-minute hearing on this motion during which Travis asserts he requested but did not receive two things: proof of Delange’s payment to the seed company for his order and an explanation for Delange’s demand of over \$20,000 in interest. The court entered judgment for Delange on June 27, 2022, awarding him \$17,520 (the alleged amount due for the seeds) along with the entirety of the requested \$20,744 in interest as well as costs and fees of \$863.35.

In May 2023, Travis retained counsel and filed a motion for relief from default judgment under WIS. STAT. § 806.07. He argued at a hearing<sup>2</sup> that his motion was timely filed pursuant to the statute because it was filed “within a reasonable time” and not more than one year after entry of judgment. *See* § 806.07(2) (providing that a motion based on § 806.07(1)(a) or (c) must be “made within a reasonable time, and ... not more than one year after the judgment was entered”). He explained that after the entry of judgment, he had been working with counsel to obtain information showing “he owed the money to the plaintiff for the debt to Jung Seeds” and said that, assuming evidence of Delange paying Travis’s debt to the seed company existed, he would not object to paying that claim. He would, however, object to paying over \$20,000 in interest. He further argued that the judgment should be vacated under § 806.07(1)(c) because it rested on two misrepresentations: first, that Delange actually paid Travis’s debt, and second, that Delange was entitled to interest of eighteen percent from 2017 or 2018 to the date of judgment when the legal rate of interest is five percent in the absence of a written agreement. *See* WIS. STAT. § 138.04.

For his part, Delange argued that he had proven his claim “to the satisfaction of the Court prior to the judgment being entered.” He also argued that “[t]he 18 percent was the amount of interest charged to the plaintiff on the contract with Jung Seed Genetics on the invoice.”<sup>3</sup> He responded affirmatively when the court asked whether he “just passed on the interest that he was charged to Mr. Travis?” The circuit court then denied Travis’s motion, stating

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<sup>2</sup> This hearing was conducted before the Hon. David M. Reddy; the prior hearing had been before the Hon. Lee S. Dreyfus, Jr. acting as a substitute judge.

<sup>3</sup> Delange’s counsel indicated that it was “[his] math that calculated the total amount.” Interest of \$20,744 as of April 2022 on an initial debt of \$17,520 corresponds to eighteen percent interest compounded annually beginning in mid-July 2017.

I think it's reasonable to pass along the interest that [Delange] was charged. I believe [Travis] had his day in court in terms of the albeit nine-minute hearing ....

....

So Mr. Travis had his opportunity to raise these issues in front of the judge. And if he's going to represent himself, he is going to be held to the same standard as an attorney. And that day has come and gone. And this motion is not brought within a reasonable time.

Travis appeals, raising two issues: whether he was entitled to relief from default judgment on Delange's claim and whether the amount of interest awarded is legal.

We review a circuit court's decision on whether to vacate a default judgment for erroneous exercise of discretion. *Rhodes v. Terry*, 91 Wis. 2d 165, 176, 280 N.W.2d 248 (1979). Just as entry of default judgment is not mandatory in the first place, relief from judgment pursuant to WIS. STAT. § 806.07 "may" be granted upon "terms as are just," subject to certain conditions. See *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶15, 242 Wis. 2d 153, 624 N.W.2d 375 (explaining that use of the word "may" in WIS. STAT. § 806.02, governing the granting of a default judgment, indicates that a court is not required to enter default judgment). "[A] discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

We conclude that it was within the circuit court's wide discretion to deny Travis's motion for relief from judgment insofar as it was based on lack of proof of Delange having paid Travis's debt to the seed company. Travis admitted that he failed to answer the complaint filed against him in a timely manner. The circuit court correctly determined that default was warranted based

on that failure and explained its conclusion that Travis “had his opportunity to raise these issues in front of the judge.” The court also appropriately considered the fact that Travis waited approximately eleven months after entry of default against him to seek relief in determining that his motion was not brought within a reasonable time. *See Rhodes*, 91 Wis. 2d at 177 (holding that motion for relief from default was untimely although brought approximately six months after entry of default).

The circuit court’s decision denying relief from judgment based on its conclusion that the interest awarded to Delange represented that which Delange was charged by the seed company, however, does not appear to have been made with sound discretion. The seed company’s invoice for Travis’s \$17,520 corn crop order reflects that it would charge “an annual rate of 18%” in finance charges for any balance paid more than thirty days past the July 25th, 2017 due date—but Delange has asserted that he paid this debt either “at the time of ordering” (in his complaint, which alleged that the time of order was May 2017) or between October 2017 and January 2018 (in support of his objection to Travis’s request for relief from judgment). Thus, it is a clearly erroneous finding that the amount of interest sought by Delange was simply an effort to recoup what he paid to Jung Seed Genetics.

According to WIS. STAT. § 138.04, interest upon a loan such as that extended by Delange to Travis “shall be” five percent annually unless the parties contract for another rate as “clearly expressed in writing.” Here, there is apparently no writing regarding an agreed interest rate for credit extended from Delange to Travis. And given that the \$20,744 in interest sought by Delange was not actually paid by him to Jung Seed Genetics, there is no basis in the complaint, other evidence in the Record, or in the law for awarding this amount, which corresponds to eighteen percent interest on the judgment over a period of longer than four and one-half years.

For the foregoing reasons, we affirm the order with respect to the \$17,500 default judgment against Travis in favor of Delange and reverse and remand with respect to the amount of interest awarded on this judgment.

IT IS ORDERED that the order of the circuit court is summarily affirmed in part and reversed in part and that this case is remanded for a determination of the appropriate interest to be awarded consistent with this summary order. *See* WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*