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DISTRICT I

June 5, 2013

To:

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Leon Larson
1708 S. 70th Street
West Allis, WI 53214

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

2012AP83 Leon Larson v. Great American Assurance Company, et al. (L.C. #2010CV20186)

Before Curley, P.J., Fine and Kessler, JJ.

Leon Larson, *pro se*, appeals an order granting Great American Assurance Company's (Great American) motion for summary/declaratory judgment. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21(1) (2011-12).[1]

Background

Because Larson omitted from his brief any statement of facts, *see* WIS. STAT. RULE

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

809.19(1)(d),[2] we rely largely on Great American's brief, as supported by the record:

> On November 25, 2007, Leon Larson was a passenger in a 1997 Ford Explorer driven by Craig A. Green. Green was traveling at a high rate of speed when he lost control of the vehicle, causing it to roll over. Green was ejected from the vehicle and died at the scene of the accident. Larson suffered various injuries.
>
> At the time of the accident, Larson and Green were driving to Milwaukee from Lake Geneva. Larson told police that Green had consumed 4 beers prior to the trip, and another 2 to 3 beers during the drive. According to the accident report, police determined that neither Larson nor Green owned the vehicle; the vehicle was owned by a Patrick D. Kennedy.

(Record citations omitted.)

When the accident occurred, Larson was an employee of DAE Transportation Services d/b/a DTSI (DTSI). Great American issued DTSI a comprehensive commercial liability policy that included an endorsement for Uninsured Motorist Coverage.

In the underlying action, Larson alleged, among other things, that neither Green nor Kennedy carried liability insurance for the vehicle involved in the accident. Consequently, Larson claimed he was entitled to coverage under Great American's policy because he was a passenger in an uninsured vehicle. He sought damages for medical expenses, lost wages, pain and suffering, future wages and disability. Great American filed an answer and affirmative defenses denying coverage.

On August 12, 2011, Great American filed a motion for declaratory/summary judgment. Larson did not file an opposing brief or appear for the hearing. Consequently, without discussing the merits, the circuit court granted the motion "by default" and dismissed all of

[2] As set forth in WIS. STAT. RULE 809.19(1)(d), the appellant's brief must contain "a statement of (continued)

Larson's claims against Great American. After the order was entered, Larson filed a letter consisting of five sentences asking the circuit court to reopen the case. He claimed he was not notified about the hearing. The circuit court did not address Larson's letter.[3]

Discussion

On appeal, Larson now acknowledges that he received notice of the motion hearing; however, he argues, for the first time, that his failure to appear at the hearing was excusable error. *See* ***O'Neill v. Buchanan***, 186 Wis. 2d 229, 234, 519 N.W.2d 750 (Ct. App. 1994) ("Before the defaulting party may enter the litigation, the party must make a showing under [WIS. STAT.] § 806.07 … sufficient to reopen the case."). Larson writes:

> The only notice of a court date was contained in a letter of August 12, 2011 from the defense, somewhere within a one inch thick stack of paper. I request the court's tolerance of my inability to find the court date in such a mass of paper, for the excusable error of not reading every page the same day it was received.[4]

Larson's argument in this regard is unsupported by either facts in the record or citations to legal authorities. *See* WIS. STAT. RULE 809.19(1)(e); *see also* ***State v. McMorris***, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 ("we may choose not to consider arguments

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facts relevant to the issues presented for review, with appropriate references to the record."

[3] Great American's attorneys represent to this court that they did not receive a copy of Larson's letter. Moreover, no actual motion to reopen was ever filed. We take this opportunity to point out that a party must not only request relief, but must also do so with some prominence and specificity so that the opposing side has fair notice that it is required to address the issue and so that the court is aware that it is being called upon to rule on the issue. *See* ***State v. Salter***, 118 Wis. 2d 67, 78-79, 346 N.W.2d 318 (Ct. App. 1984).

[4] It appears the "mass of paper" Larson references is Great American's August 12, 2011 filing of a notice of motion (specifying the date and time of the motion hearing) and motion for declaratory/summary judgment, an affidavit of mailing, a supporting brief, and an affidavit with supporting exhibits including the policy issued to DTSI by Great American.

unsupported by references to legal authority, arguments that do not reflect any legal reasoning, and arguments that lack proper citations to the record"). Moreover, Larson did not argue excusable neglect in the circuit court. As such, we decline to review this issue now. *See* ***State v. Schulpius***, 2006 WI 1, ¶26, 287 Wis. 2d 44, 707 N.W.2d 495 (appellate court generally does not review an issue raised for the first time on appeal).[5] Because Larson cannot establish excusable neglect for the first time on appeal, he forfeited his opportunity to challenge the circuit court's order granting Great American's motion for summary/declaratory judgment. *Cf.* ***O'Neill***, 186 Wis. 2d at 234-35 (Absent a showing of a ground for relief under WIS. STAT. § 806.07, the party has waived the opportunity to present his argument.). We have previously explained that this result "provides finality as to orders or judgments rendered by the court and promotes judicial economy by requiring arguments to be presented at the time scheduled in the litigation, except in extreme circumstances." ***O'Neill***, 186 Wis. 2d at 235.

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals

[5] Even if we were to consider Larson's excusable error argument, we agree with Great American's assessment that "[c]arelessness in attending to important mail is not equivalent to excusable neglect." *See* ***Hedtcke v. Sentry Ins. Co.***, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982) (explaining that excusable neglect is "'not synonymous with neglect, carelessness or inattentiveness'") (citation omitted).