

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 4, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 98-2071-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**FRIEBERT, FINERTY & ST. JOHN, S.C.,**

**PLAINTIFF-RESPONDENT,**

**v.**

**SOPHIA DOUCAS,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
PATRICIA D. McMAHON, Judge. *Reversed.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Sophia Doucas appeals from the trial court's order denying her motion to reopen a judgment against her. The issue is whether Friebert, Finerty & St. John, S.C. exercised reasonable diligence under § 801.11, STATS., in serving Doucas in the underlying case. We conclude that the Friebert

firm did not exercise reasonable diligence in serving Doucas. We therefore reverse the trial court's order denying the motion to reopen.

The Friebert firm provided legal services to Doucas for various business and personal matters for over fifteen years. The Friebert firm commenced suit against Doucas alleging that she failed to pay the firm for attorney fees she incurred in two lawsuits involving Doucas Leasing, Inc., Sophia Doucas, and Tyrone Tubbs.<sup>1</sup> When the action to collect the attorney fees was commenced, Doucas was no longer operating Doucas Leasing and the corporation that ran the business had been dissolved.

The Friebert firm attempted to serve Doucas at the place where she formerly operated her automobile dealership, but the sheriff was unable to locate her at her business address and returned the summons and complaint with an affidavit stating that she could not be found. The Friebert firm then published a summons and complaint in the Daily Reporter, a legal publication in Milwaukee County. When Doucas failed to answer the summons and complaint, the Friebert firm moved the court for default judgment against Doucas. The trial court granted the motion for default judgment.

Over two years later, Doucas moved the court to reopen the default judgment pursuant to § 806.07, STATS., arguing that the Friebert firm did not exercise reasonable diligence in attempting to serve her. After an evidentiary hearing, the trial court denied Doucas's motion to reopen.

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<sup>1</sup> One lawsuit was commenced in 1989 and one was commenced in 1992. The fees that the Friebert firm sought to collect were for services it had rendered in both cases.

As a preliminary matter, the parties dispute what standard of review this court should employ in this case. Doucas argues that we should review this matter without deference to the trial court's decision because we are called upon to assess largely undisputed facts to determine whether they constitute reasonable diligence under § 801.11, STATS. *See, e.g., Nottelson v. DILHR*, 94 Wis.2d 106, 116, 287 N.W.2d 763, 768 (1980) (“[W]hether ... facts fulfill a particular legal standard is a question of law.”). The Friebert firm argues that the trial court's decision that reasonable diligence was exercised is a finding of fact and may only be reversed on appeal if it is clearly erroneous. *See Welty v. Heggy*, 124 Wis.2d 318, 324, 369 N.W.2d 763, 767 (Ct. App. 1985) (“The supreme court [treats] ‘reasonable diligence’ as a finding of fact....”); *see also* RULE 805.17(2), STATS. We recently noted that there appears to be some confusion in the case law as to the standard an appellate court uses to review a trial court's determination of reasonable diligence. *See Haselow v. Gauthier*, 212 Wis.2d 580, 588 n.4, 569 N.W.2d 97, 100 n.4 (Ct. App. 1997). The supreme court has not yet clarified this issue and we will thus treat the trial court's determination that reasonable diligence was exercised as a finding of fact. Thus, we will not reverse it unless it is clearly erroneous. *See Welty*, 124 Wis.2d at 324, 369 N.W.2d at 767.

There was undisputed evidence that Doucas's correct home address, an address where Doucas had lived for over twenty-five years, was listed in various files in the Friebert firm's possession. Her home address was listed on two different judgments entered in the lawsuits involving Tyrone Tubbs. The address was also listed on the summons and in the complaint in the lawsuit that was filed by Tubbs in 1992. The Friebert firm admitted in the answer it drafted that the complaint correctly gave Doucas's home address. The address was also

listed in a deposition from the lawsuit commenced in 1989 that the Friebert firm had billed Doucas for reviewing.

The Friebert firm recovered fees by default judgment in connection with its representation of Doucas in the very actions where her home address appeared on several crucial documents (the judgments, the summons and the complaint). The fact that the files may have been in storage was no excuse for the Friebert firm's failure to review them. Although the Friebert firm tried to locate Doucas through the former business address, it did not take the more obvious step of using her home address that was listed on several important documents involved in the legal action for which it was attempting to collect fees. The trial court's finding that the Friebert firm exercised reasonable diligence in serving Doucas is clearly erroneous. *See* RULE 805.17(2), STATS. We reverse the trial court's order denying Doucas's motion to reopen the judgment.<sup>2</sup>

*By the Court.*—Order reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

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<sup>2</sup> The Friebert firm filed a motion to strike portions of Doucas's reply brief that suggest the firm or its shareholder Thomas W. St. John, Esq., intentionally refrained from personally serving Doucas so as to obtain a default judgment against her. Doucas has not responded. We grant the motion. We have not considered those portions of the reply brief in deciding this appeal.



