

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 20, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2680-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**MUTUAL SERVICE CASUALTY INSURANCE COMPANY,
MUTUAL SERVICE LIFE INSURANCE COMPANY, MODERN
SERVICE INSURANCE COMPANY, AND MSI INSURANCE
COMPANY,**

PLAINTIFFS-RESPONDENTS,

v.

WILLIAM P. TRAINOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. William Trainor appeals from a judgment in favor of four insurance companies. The companies formerly employed Trainor and filed this action to enforce a noncompetition covenant in his employment contract. The

trial court granted default judgment because Trainor filed his answer to the complaint one day late, without excusable neglect. Trainor contends that the court erroneously exercised its discretion by so ruling. We disagree and therefore affirm.¹

¶2 Trainor contends that he would have prevailed on the merits of the action, and that the trial court erred because it failed to consider his meritorious defense when it granted judgment.² However, he does not contest the trial court's ruling that he filed the answer late because of inexcusable neglect. That ends the matter. "Without demonstrating excusable neglect, it does not matter whether [the defendant] would have had a meritorious defense The existence of a meritorious defense has no bearing on whether the neglect was excusable and is insufficient by itself to entitle a defaulting party to relief from judgment." *Martin v. Griffin*, 117 Wis. 2d 438, 444, 344 N.W.2d 206 (Ct. App. 1984) (citations omitted).

¶3 The decision whether to grant a default judgment is left to the trial court's discretion. *See id.* at 442. Here the trial court properly exercised that discretion when it focused solely on Trainor's neglect.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (1997-98).

² Trainor believes he could have proved that the noncompetition covenant violated Wisconsin law because it was unreasonably restrictive. *See* WIS. STAT. § 103.465 (1997-98).

By the Court.—Judgment affirmed.

This opinion will not be published.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

