**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**January 13, 2010**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal No. 2008AP2851** **Cir. Ct. No. 2008TR4409**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT II**

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**COUNTY OF FOND DU LAC,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DEAN T. KEDINGER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Fond du Lac County: STEVEN W. WEINKE, Judge. *Affirmed*.

¶1 SNYDER, J.[1] Dean T. Kedinger appeals from a default judgment entered when he failed to appear for a jury trial. He further appeals from an order

[1] This case is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version.

denying his post-judgment motion for reconsideration and awarding costs to the County of Fond du Lac. Kedinger contends that he was denied pretrial due process and the right to voir dire the jury, that the circuit court failed to address his indigence and desire for counsel, and that the circuit court failed to act in an impartial and unbiased manner. We disagree and affirm the judgment and order.

## BACKGROUND

¶2 Kedinger describes what he believes were slights inflicted upon him by the Fond du Lac county law enforcement and justice systems. He fails to provide a coherent statement of the relevant factual background; however, after substantial review of the record, we summarize the key facts as follows. On April 22, 2008, Kedinger was cited for operating a motor vehicle while suspended, contrary to WIS. STAT. § 343.44(1)(a). The citation informed Kedinger that he could appear at intake court on May 5.

¶3 On May 1, Kedinger filed a motion for discovery and included a provision that he reserved the right to appear with an interpreter at the County's expense. At the same time, he filed a petition for appointment of counsel on grounds that he was indigent and made a jury demand. The court set a date for initial appearances on June 9, and the notice included a statement that a sign language interpreter would be needed.

¶4 On June 5, Kedinger filed a motion to dismiss. The court set a trial date of July 8, but Kedinger requested an adjournment due to a conflict in his schedule. Kedinger also filed a motion for a pretrial to address issues of indigence and appointed counsel, an interpreter, and discovery. He included a demand for a jury trial. The court scheduled a jury trial to take place September 18. By letter dated July 1, Kedinger requested that the circuit court appoint legal counsel to

represent him. The court denied the request because Kedinger's case was a noncriminal matter.

¶5 On September 17, the day before trial, the County filed its proposed jury instructions and verdict. Kedinger filed a "Motion for Judicial Notice," asking that the court take notice that he is not an attorney. He also asserted that he had not received discovery from the County, had not received a determination of indigence, had not been notified of a pretrial hearing, and had no official notice that an interpreter would be provided. He accused law enforcement of harassment and the court of ethics violations. Kedinger filed a separate motion for a special prosecutor, on grounds that the Fond du Lac county sheriff's department was prejudiced against him.[2]

¶6 Court convened for a jury trial on September 18. A panel of potential jurors was called and two interpreters were present. Kedinger did not appear in person or by counsel. The trial was set for 9:00 a.m. At 9:15 a.m., the prosecutor moved for a default judgment, which the court granted.

¶7 On October 7, Kedinger filed three motions. First, he filed a motion for a stay of enforcement, alleging "[m]alfeasance by the DA's office for failure to mitigate [d]amages." He also filed a motion for reconsideration, again alleging malfeasance. Finally, he filed a motion for a new trial. The circuit court denied the motions the next day.

[2] Kedinger filed several companion documents detailing alleged harassment and unprofessional conduct by Fond du Lac county law enforcement, the district attorney, and the circuit court.

## DISCUSSION

¶8 On appeal, Kedinger seeks redress for many perceived wrongs. He requests that we use our discretionary reversal power under WIS. STAT. § 752.35, which authorizes us to reverse where it appears from the record that the real controversy was not fully tried or it is probable that justice has for any reason miscarried.

¶9 As best we can determine, there are three primary complaints. First, Kedinger contends that the default judgment should have been reopened because he was denied the right to voir dire the jury and that the court failed to mitigate damages. Second, he argues that the court should have held a hearing to determine whether Kedinger was indigent and therefore qualified for appointed counsel. Third, he argues that the costs assessed against him were unfair. One underlying contention fuels his primary complaints. He asserts there has been a long history of malfeasance and bias on the part of law enforcement, the district attorney, and the courts.

¶10 We begin with the default judgment. The correct standard of review requires us to review a court's decision to enter a default judgment for the erroneous exercise of discretion. ***Midwest Developers v. Goma Corp.***, 121 Wis. 2d 632, 650, 360 N.W.2d 554 (Ct. App. 1984). When we review a circuit court's exercise of discretion, we examine the record to determine whether the court logically interpreted the facts, applied the proper legal standard and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach. ***Crawford County v. Masel***, 2000 WI App 172, ¶5, 238 Wis. 2d 380, 617 N.W.2d 188.

¶11 Kedinger claims that the default judgment should be reopened because he was denied the opportunity to voir dire the jury. We consider this claim rather odd because Kedinger did not appear for his trial, where voir dire would have taken place. He cannot now complain that he was deprived of the opportunity to choose a jury; the jury pool, the court, and the prosecutor were convened and ready to proceed with voir dire. The only factor preventing Kedinger from participating was his own absence from the courtroom.

¶12 Kedinger also asserts that the court failed to "mitigate damages"[3] by refusing to set up a scheduling order. Although it is unclear from the briefs, we interpret this to mean that Kedinger believes he was deprived of the right to settle this matter prior to a trial and avoid the costs associated with litigation. As the County explains, the pretrial conference occurs on the date of the initial appearance per local rule. *See* Fond du Lac County Circuit Court Rules (Fourth Judicial District), §§ 2.2 and 2.3 (1998).[4] Kedinger has offered no authority for

[3] This is a traffic case involving a civil forfeiture. No damages were claimed or awarded. Therefore, when Kedinger refers to "damages," we understand him to mean costs awarded by the default judgment.

[4] The relevant local rules state as follows:

> **Court Rule No. 2 - Traffic and Non-traffic Forfeiture Pre-trials**
>
> ….
>
> **2.2** Prosecuting attorneys of forfeiture cases for all the law enforcement agencies in Fond du Lac County are required to attend all return dates for their respective agencies.
>
> **2.3** The prosecuting attorney shall, immediately after the entry of a not guilty plea, confer with the defendant and attempt to resolve the contested case.

deviating from this procedure. Furthermore, it appears that all of Kedinger's pretrial issues requiring court intervention were addressed; specifically, the need for an interpreter, the desire for a jury trial, and rescheduling to accommodate a conflict that Kedinger had with the initial trial date. And although the court did not rule as Kedinger hoped with regard to the appointment of counsel, it did address Kedinger's demand by advising that counsel would not be appointed in a noncriminal matter.

¶13 "A default judgment may be rendered against any defendant who has appeared in the action but who fails to appear at trial." WIS. STAT. § 806.02(5). Thus, the circuit court was specifically authorized by statute to render a default judgment under the circumstances presented here. If Kedinger wished to choose a jury, argue due process deficiencies, or make his voice heard regarding the awarding of costs, he could have done so had he appeared for his trial. The court properly exercised its discretion in granting a default judgment.[5]

¶14 Next, Kedinger argues that he was deprived of his constitutional right to counsel. Every criminal defendant has a constitutional right to counsel. *See* ***State v. Sanchez***, 201 Wis. 2d 219, 225, 548 N.W.2d 69 (1996). This case, however, involves a traffic citation. The only penalty Kedinger faced for the violation of WIS. STAT. § 343.44(1)(a) was a civil forfeiture. *See* WIS. STAT.

[5] In his motion for a new trial, Kedinger explained his absence from court as a mistake. He stated that he thought the trial started at 10:30 a.m. instead of 9:00 a.m. He attached a memorandum from a St. Agnes Hospital physician confirming that Kedinger has "Circadian Rhythm Disorder," which "makes mornings difficult." He attributed the early start time of his trial as "criminal action by the prosecutors" and "retaliation based upon scuttlebutt to punish me." Because Kedinger does not develop his position on excusable neglect, and because the little factual information he does provide is muddled by his meandering accusations against the court and the prosecutors, we decline to address it further.

§ 343.44(2)(a). Because there is no constitutional or statutory right to counsel in a civil traffic case, Kedinger may not obtain a reversal of the judgment on the grounds he was denied a hearing to determine indigence.

¶15 Third, Kedinger asserts that the costs awarded to the County were unfair. He states, "The court should consider the financial resources of the defendant and the burden that payment of a fine would impose, with due regard to his other obligations." He directs us to ***Jacobson v. Avestruz***, 81 Wis. 2d 240, 260 N.W.2d 267 (1977), where the supreme court addressed a circuit court's authority to assess the costs of impaneling a jury against the parties. There, the parties to the lawsuit both appeared, the jury was sworn, and opening arguments were completed. ***Id.*** at 242. During a break in the proceedings, the parties reached a settlement. ***Id.*** The court accepted the settlement and assessed one-half of the jury fee against each party. ***Id.*** On appeal, the supreme court reversed, holding that the parties had acted in good faith and the court's assessment of jury fees was an abuse of discretion. ***Id.*** at 247-48.

¶16 ***Jacobson*** is of no help to Kedinger. The ***Jacobson*** court expressly limited its holding to the "particular facts and circumstances" of that case. S***ee id.*** at 247. The court did reaffirm the inherent power of the circuit court to assess the costs of impaneling a jury against a party or parties. ***Id.*** Here, the circuit court granted Kedinger's request for a jury trial. Kedinger did not appear. A circuit court has the inherent power to take actions that aid the efficient exercise of its jurisdiction and the orderly administration of the judicial business. ***Id.*** at 246-47. We hold that the circuit court properly exercised its inherent authority to order costs associated with the jury trial be assessed against Kedinger.

¶17 As we stated earlier, Kedinger repeatedly returns to allegations of bias and malfeasance on the part of the Fond du Lac criminal justice system. He makes many allegations about prior problems that have not been satisfactorily addressed, and conveys a general sense that the system is against him. On appeal, however, we review only the judgment and order associated with the case on appeal. Here, that is a civil forfeiture for operating a motor vehicle with a revoked license. Kedinger emphasizes that he did not know he was revoked at the time he received this citation. WISCONSIN STAT. § 343.44(1)(a) states that "no person whose operating privilege has been duly suspended … may operate a motor vehicle … during the period of suspension …." Furthermore, "[a] person's knowledge that his or her operating privilege is suspended is not an element of the offense …." ***Id.*** Thus, even if Kedinger was unaware that he was driving without a valid license, it would provide no defense. The record facts do not demonstrate any conspiracy or harassment on the part of the County.

¶18 We appreciate that we have not addressed all of the nuances and subtleties associated with Kedinger's characterization of the issues, particularly those intended to demonstrate a devious motive underlying the County's ongoing interactions with Kedinger. To the extent that we have not addressed an argument raised on appeal, that argument is deemed rejected. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (when arguments do not reflect legal reasoning, we may decline to address them).

## CONCLUSION

¶19 We have identified and addressed the discernable issues presented by Kedinger. Nothing in the record or in Kedinger's arguments persuades us that discretionary reversal under WIS. STAT. § 752.35 is warranted.

¶20 We conclude that the default judgment was properly granted when Kedinger failed to appear for his trial. We also conclude that the circuit court correctly denied Kedinger's request for appointed counsel in a non-criminal matter and that the assessement of costs was an exercise of the inherent power of the court. We ascertain nothing in the record that would have compelled the circuit court to grant Kedinger's motion for a new trial. For these reasons, we affirm the judgment and order.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.