COURT OF APPEALS
DECISION
DATED AND FILED

July 19, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP453 **Cir. Ct. No. 2006CV2707**

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

WISCONSIN & SOUTHERN RAILROAD COMPANY,

PLAINTIFF-RESPONDENT,

V.

CITY OF WAUKESHA,

DEFENDANT-CO-APPELLANT,

WAUKESHA ELECTRIC SYSTEMS, INC.,

INTERVENOR-APPELLANT.

APPEAL from orders of the circuit court for Waukesha County: RALPH M. RAMIREZ and PAUL F. REILLY, Judges. *Affirmed*.

Before Vergeront, Higginbotham and Sherman, JJ.

¶1 SHERMAN, J. The City of Waukesha and Waukesha Electric Systems (WES), an intervening party in this action, appeal an order of the circuit

court entering a default judgment against Waukesha pertaining to a railroad track easement, and two separate orders determining Waukesha's and WES's obligations to Wisconsin & Southern Railroad Company (WSRC) with respect to that easement. We affirm.

BACKGROUND

¶2 The procedural history of this case is complicated, but undisputed. In 2006, WSRC brought suit against Waukesha for breach of contract. WSRC alleged that it held an easement with the right to utilize railroad trackage (hereinafter, 'easement trackage') located in the River Park Industrial Subdivision in Waukesha, an easement which had been in existence since approximately 1988. WSRC alleged that in 2001, Waukesha conveyed to WES a non-exclusive easement with respect to the easement trackage and allowed WES to reconfigure the easement trackage in such a way that it interfered with WSRC's usage of its easement. WSRC sought "damages" resulting from Waukesha's alleged breach of contract relating to the railroad easement "and for such other or further … relief as the circumstances may warrant."

¶3 On November 13, 2006, at approximately 4:25 p.m., a deputy sheriff with the Waukesha County Sheriff's Department attempted to serve WSRC's summons and complaint upon the Waukesha mayor at his office. The only individual present at the time was James Payne, the Waukesha city administrator. Payne averred that he approached the deputy sheriff and asked if he could help him. Payne averred that the Sheriff indicated that he had something to serve on the mayor, and Payne indicated to the sheriff that he was not sure he could accept the pleadings the Sheriff sought to serve. Payne averred that the sheriff asked who he was and, after being informed, "stated words to the effect of, 'I'm sure it's fine

…' and 'I'll just leave this with you …'" before handing the pleadings to Payne and leaving.

¶4 Payne averred that after receiving the summons and complaint, he immediately delivered those documents to Assistant City Attorney Miles Eastman. The next day Gina Kozlik, the legal assistant for the city attorney's office, received the summons and complaint. Kozlik averred that because the pleadings were not file-stamped by the clerk's office and did not contain a notation on the front of them by the process server, she believed the pleadings to be courtesy copies and therefore delivered them to the clerk's office. Nancy Lovejoy, the clerical assistant to the Waukesha clerk, averred that she received the summons and complaint at issue here on November 15. Lovejoy averred that she file-stamped the pleadings and forwarded them on to the office of corporation counsel and the finance department for review.

¶5 On November 28, 2006, Attorney Michele Ford received a copy of the summons and complaint. Ford averred that because the summons did not contain a notation on its front by the process server indicating the date and time those documents were served (though there was a notation on the back of the complaint), she was unable to determine that service had been improperly made on Payne on November 13, 2006. Ultimately, Waukesha's answer was not timely filed.

¶6 WSRC moved the circuit court to strike Waukesha's answer as untimely, and for default judgment. Waukesha, in turn, moved the court for dismissal of the complaint for lack of personal jurisdiction due to defective service of process, and alternatively, to enlarge the time for it to file its answer. In February 2007, the court granted WSRC's motions, dismissing Waukesha's

answer and entering default judgment against Waukesha. The court concluded that Payne was the equivalent of a city manager and that service on him was therefore proper. The court further determined that there was no excusable neglect for Waukesha's failure to timely file its answer.

¶7 Following the entry of default judgment against Waukesha, the case proceeded on the sole issue of WSRC's remedy. In June 2009, following a hearing on the matter, the court entered an order, which required Waukesha to:

> provide access to the Wisconsin & Southern Railroad Company to the track subject to the nonexclusive easement agreement described in the Complaint. In providing such access, the City of Waukesha is required to work in an appropriate and legal manner with any other entity and the city shall remove any gate or any other barrier that may impede access to those tracks upon twelve (12) hours written notice given by [WSRC] to the City of Waukesha.

¶8 Following the entry of the June 2009 order, WES moved to intervene in the proceeding pursuant to WIS. STAT. § 803.09 (2009-10)[1] on the basis that it had an interest in the subject of the action, the June 2009 order affected its property rights to the easement trackage, which had been previously established by a 2005 judgment pertaining to the easement trackage, and it was not adequately represented by the existing parties. The prior judgment referred to by WES stemmed from a 2004 suit filed by WSRC against WES for a declaratory judgment that WSRC has easement rights in the easement trackage at issue here and for the abatement of any interference by WES with those rights. In a 2005 order, the circuit court dismissed WSRC's suit against WES and ordered that

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

judgment be entered in favor of WES on the basis that WSRC's claims were time barred under WIS. STAT. § 893.33(2).[2]

¶9 The circuit court granted WES leave to intervene, finding that WES was a "necessary party for the implementation of the order." The court cautioned "that intervention doesn't mean that we go back and litigate the original issues; it only means that the issue concerning the enforcement of the order is on the table." However, in response to a statement by WES's attorney that she would like the opportunity to brief the issue of whether the 2005 judgment has preclusive effect in this case, the court stated that WES could "brief whatever you want, and I will read it, and then I will make a determination."

¶10 Following its intervention, WES moved the circuit court for relief from the June 2009 order, and for dismissal of WSRC's complaint.[3] WES's

[2] WISCONSIN STAT. § 893.33(2) provides:

> Except as provided in subs. (5) to (9), no action affecting the possession or title of any real estate may be commenced … by any person … which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of the action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of the unrecorded instrument or within 30 years after the date of recording of the recorded instrument, or within 30 years after the date of the transaction or event there is recorded in the office of the register of deeds of the county in which the real estate is located, some instrument expressly referring to the existence of the claim or defense, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which the claim or defense is founded, with its date and the volume and page of its recording, if it is recorded, and a statement of the claims made….

motion was premised in part on its claim there were underlying problems with the entry of the February 2007 default judgment. WES argued that the February 2007 default judgment was mistakenly entered because the statute of limitations had run on WSRC's easement claim, and because WSRC misrepresented its easement rights in the pleadings. WES also argued that because WSRC failed to file a lis pendens as required by WIS. STAT. § 840.01, the June 2009 order should be vacated. WES further argued that, "[a]fter setting aside the June 2009 [order]," the court should dismiss WSRC's complaint because WSRC is precluded from bringing claims with respect to the easement under the doctrines of claim and issue preclusion, and because WSRC's claims are time barred under WIS. STAT. § 893.33.

¶11 The court denied WES's motion in a March 2010 order. In December 2010, the circuit court entered two additional orders. The first was an amended order superseding the court's June 2009 order. That order provided:

> The City of Waukesha shall provide access to [WSRC] to the track subject to the Non-Exclusive Easement Agreement described in the Complaint. In providing such access, the City of Waukesha is required to work in appropriate and legal manner with any other entity and the City shall remove any gate or any other barrier that may impede access to those tracks upon twelve (12) hours written notice given by [WSRC] to the City of Waukesha.

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[3] WES also sought in the "alternative" permission to file an answer to WSRC's complaint and a complaint for declaratory judgment. We observe that there could be no alternative relief in the form of allowing WES to file an answer or complaint for declaratory relief if the court denied WES's motion for relief from the June 2009 order and dismissal of WSRC's complaint because the June 2009 order was a final order and, therefore, if it were upheld, the time for filing responsive pleadings would have passed.

We observe that WES did not directly seek relief from the February 2007 default judgment.

¶12 The second order obligated WES to:

> [P]rovide access to [WSRC] to the railroad tracks that are subject to the Non-Exclusive Easement Agreement in which [WSRC] has non-exclusive rights after two working days written notice. Access will be allowed for a period of one day per week for up to eight hours. [WES] will ensure that the trackage subject to the Non-Exclusive Easement is cleared of obstacles necessary to allow the aforementioned access.

¶13 Waukesha and WES separately appeal. Additional facts will be discussed below as necessary.

DISCUSSION

¶14 Waukesha contends that the circuit court erred in: (1) determining that it had personal jurisdiction over the matter because service of process was proper; and (2) in entering default judgment in favor of WSRC. WES contends that the court erred in: (1) entering default judgment against Waukesha; (2) failing to determine that WSRC's claims against it are barred by the doctrines of claim preclusion and issue preclusion; (3) failing to dismiss WSRC's complaint because WSRC's claims were time barred under WIS. STAT. § 893.33(2); (4) determining that the February 2007 default judgment precluded WES from raising defenses to the allegations in WSRC's complaint; and (5) failing to grant it relief from the June 2009 order because WSRC failed to file a lis pendens. WES also contends that the circuit court deprived it of its right to due process. We address the parties' arguments in turn below.

A. Personal Jurisdiction

¶15 Waukesha asserts that service of process upon it did not satisfy WIS. STAT. § 801.11 and, therefore, the circuit court did not have personal jurisdiction over it.

¶16 The existence of personal jurisdiction is a question of law subject to our independent review**.** ***Rasmussen v. General Motors Corp.***, 2011 WI 52, ¶14, 335 Wis. 2d 1, 803 N.W.2d 623. Although our review is independent, we will not set aside the circuit court's factual findings unless clearly erroneous. WIS. STAT. § 805.17(2). The burden of proving that the defendant was properly served, and therefore subject to the court's jurisdiction, lies with the plaintiff. ***Hagen v. City of Milwaukee Employee's Ret. Sys. Annuity & Pension Bd.***, 2003 WI 56, ¶12, 262 Wis. 2d 113, 663 N.W.2d 268.

¶17 A circuit court obtains personal jurisdiction over a defendant only when the defendant is served with a summons in the manner prescribed by the statute. ***Id***. Service of process upon political entities is governed by WIS. STAT. § 801.11(4). Under subsection (4)(a), service upon a city may be achieved by serving the summons upon the mayor, city manager or clerk thereof. Section 801.11 also allows for substitute service under subsection (4)(b), which provides that "[i]n lieu of delivering the copy of the summons to the person specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office."

¶18 Strict compliance with the statutory rules on service is required in Wisconsin. ***Dietrich v. Elliott***, 190 Wis. 2d 816, 827, 528 N.W.2d 17 (Ct. App. 1995). Thus, the failure to obtain personal jurisdiction over a defendant by statutorily proper service of process is a fundamental defect to the action. ***Hagen***, 262 Wis. 2d 113, ¶13, and warrants dismissal of the plaintiff's complaint. ***Bartels v. Rural Mut. Ins. Co.***, 2004 WI App 166, ¶16, 275 Wis. 2d 730, 687 N.W.2d 84.

¶19 According to the record, the process server served the WSRC's summons and complaint upon Payne, the Waukesha administrator. WSRC argues

that service of process upon Payne was proper either because: (1) Payne was the equivalent of a "city manager" under WIS. STAT. § 801.11(4)(a); (2) the sheriff could have reasonably believed that Payne was "apparently in charge of the office" under § 801.11(4)(b); or (3) Payne, as city administrator, is an officer possessing all the statutory rights of a comptroller. We agree that that service of process was proper in this case because it was reasonable for the sheriff to believe that Payne was "apparently in charge of the office" at the time the summons was served.

¶20 The phrase, "the person who is apparently in charge of the office," has been construed "to allow service on a person whom the process server reasonably believed, under the circumstances, to be in charge of the office." ***Hagen***, 262 Wis. 2d 113, ¶17. "The use of the word 'apparently' can only refer to what is apparent to the person actually serving the summons." ***Horrigan v. State Farm Ins. Co.***, 106 Wis. 2d 675, 682, 317 N.W.2d 474 (1982). That the process server is mistaken in his or her belief that the person served is in charge is immaterial. *See* ***Hagen***, 262 Wis. 2d 113, ¶21. However, "there must be more than the unsupported assumption of the process server. Specifically, the process server's conclusion must be one that was reasonable under the circumstance." ***Horrigan***, 106 Wis. 2d at 683.

¶21 When the sheriff arrived at the mayor's office, Payne approached him and asked if he could help the sheriff. Payne, who was the only individual in the mayor's office at the time, informed the sheriff that he was the city's administrator and Payne presented the sheriff with his business card, which stated his position. Although Payne indicated that he was not sure that he could accept service of process, he did not unequivocally state that he could not, nor did he raise any objection to his ability to receive process. *But see* ***id.*** at 684-85 ("Once

that person objects, or raises doubt over his authority to receive process, it may become incumbent upon the process server to make further inquiries….")

¶22 Under these facts, we conclude that it was reasonable for the process server to believe that Payne was "apparently in charge of the [mayor's] office" at the time process was served. Payne appeared to be an individual, in fact the only individual of authority, in charge of the office at the time process was served, and although Payne questioned his ability to accept service of process, he did nothing to dissuade the process server's belief that he was authorized to accept service of process. Because we conclude that service of process was left with an individual who the process server could reasonably believe was "apparently in charge of the office," we hold that service was effective upon the city by virtue of substituted service upon the mayor under WIS. STAT. § 801.11(4)(b). We therefore affirm, albeit on different grounds, the circuit court's conclusion that service of process in this matter was proper.[4] *See* ***International Flavors & Fragrances, Inc. v. Valley Forge Ins. Co.***, 2007 WI App 187, ¶23, 304 Wis. 2d 732, 738 N.W.2d 159 (we may affirm a judgment for reasons different from those of the circuit court).

B. February 2007 Default Judgment

¶23 Both Waukesha and WES challenge the circuit court's entry of default judgment against Waukesha in February 2007.

[4] Because we conclude that service of process was appropriate under WIS. STAT. § 801.11(4)(b), we do not address whether service of process was appropriate for any of the other reasons articulated by WSRC. *See* ***Walgreen Co. v. City of Madison***, 2008 WI 80, ¶2, 311 Wis. 2d 158, 752 N.W.2d 687 (stating that if resolution of one issue disposes of the appeal, we need not address the other issues raised).

¶24 The decision whether to grant or deny a motion for default judgment lies within the circuit court's discretion and will not be disturbed on appeal unless the court erroneously exercised its discretion. ***Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.***, 2002 WI 66, ¶64, 253 Wis. 2d 238, 646 N.W.2d 19 (entry of default judgment). An appellate court will uphold a discretionary decision of the circuit court if the court considered the relevant facts, properly applied the law, and reached a reasonable determination. ***Long v. Long***, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995).

¶25 When a respondent files an untimely answer, a plaintiff may move to strike the answer and seek default judgment**.** *See* ***Connor v. Connor***, 2001 WI 49, ¶14, 243 Wis. 2d 279, 627 N.W.2d 182. In considering whether to grant relief from default, the circuit court must apply the standards set forth in WIS. STAT. § 806.07(1).[5] ***Hedtcke v. Sentry Ins. Co.***, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982). Here, Waukesha asserted that their noncompliance with the statutory time period was the result of excusable neglect. Excusable neglect in this context is conduct "'which might have been the act of a reasonably prudent person under the same circumstances.' It is 'not synonymous with neglect, carelessness or inattentiveness.'" ***Id.*** (citation omitted).

¶26 Waukesha argues that excusable neglect was present here because its failure to file a timely answer resulted "in large part from the failure of the process

[5] WISCONSIN STAT. § 806.07(1) provides:

> On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect.

server to comply with the provisions of WIS. STAT. § 801.10(2)." Section 801.10(2) provides:

> At the time of service, the person who serves a copy of the summons shall sign the summons and shall indicate thereon the time and date, place and manner of service and upon whom service was made. If the server is a sheriff or deputy sheriff, the server's official title shall be stated. Failure to make the endorsement shall not invalidate a service but the server shall not collect fees for the service.

¶27 Waukesha argues that the sheriff's endorsement was not in compliance with WIS. STAT. § 801.10(2) because it was placed on the back of a page of the complaint and not on the front of the summons. We read Waukesha's brief as arguing that the process server's failure to comply with § 801.10(2) led to misunderstandings as to the nature of the documents, which in turn resulted in the city's failure to timely file its answer. Waukesha asserts that had the endorsement been placed on the front of the summons, the individuals who handled the summons and complaint after it was delivered by Payne to the city attorney would have recognized them for what they were and would not have made the mistake of believing them to be merely courtesy copies.

¶28 The circuit court found that there had been no showing that Waukesha's failure to file a timely answer was the result of excusable neglect. The court found that Payne gave city attorney Miles Eastman the authenticated summons and complaint the same date those documents were served and informed Eastman that those documents had been served upon the city. The court found that a courtesy copy of those documents was forwarded to the assistant city attorney. The court found that at that point, "it was well-known by the City that they were being served; they were going to be served and they were in fact served." We conclude the court properly exercised its discretion. The court

considered the relevant facts, applied the law, and reached a reasonable determination. *See* ***Ness v. Digital Dial Commc'ns, Inc.***, 227 Wis. 2d 592, 600, 596 N.W.2d 365.

¶29 WES argues that the court erroneously exercised its discretion in entering default judgment in favor of WSRC because WSRC failed to comply with WIS. STAT. § 840.07, which provides that "[n]o default judgment may be granted unless evidence supporting the court's findings and conclusions is in the record." WES argues that WSRC failed to "provide the court with any evidence of its alleged easement or of its status as a 'successor' to the rights of" the party whose rights WSRC claims to have succeeded. We disagree.

¶30 Waukesha's answer was struck, so the allegations set forth in WSRC's complaint are taken as true. *See* WIS. STAT. § 802.02(4); ***Estate of Otto v. Physicians Ins. Co. of Wis., Inc.***, 2008 WI 78, ¶42, 311 Wis. 2d 84, 751 N.W.2d 805 ("The ordinary rule is that the allegations in a complaint 'are admitted when not denied' in the answer of a defendant against whom the allegations are made. Furthermore, when a defendant is determined to be in default, the factual allegations against the defendant, except those relating to the amount of damages, ordinarily are deemed true.")

¶31 WSRC alleged in its complaint that in 1988, Chicago & Northwestern Transportation Company conveyed "certain railroad trackage and rights-of-way to the City of Waukesha for subsequent conveyance to the Wisconsin River Rail Transit Commission," which had been the subject of an easement granted by Waukesha to Chicago & Northwestern around 1964. WSRC alleged that Chicago & Northwestern subsequently entered into a written agreement with the Wisconsin River Rail Transit Commission giving Chicago &

Northwestern a non-exclusive right to utilize certain Wisconsin River Rail Transit Commission railroad trackage located in the River Park Industrial Subdivision in Waukesha. WSRC alleged that it operates on former Chicago & Northwestern railroad tracks and that "as [Chicago & Northwestern's] successor, [WSRC] now holds the [Chicago & Northwestern] easement with the right to utilize said trackage within and without the Waukesha Industrial Park." WSRC further alleged that railroad trackage within its easement had been modified by WES and that WES had blocked WSRC's access to its easement.

¶32 These allegations, taken as true, establish that Chicago & Northwestern held an easement in railroad trackage located in the River Park Industrial Subdivision and that WSRC was a successor to those easement rights. Accordingly, we conclude that the WES's assertion that WSRC failed to comply with WIS. STAT. § 840.07 is without merit.

C. Claim and Issue Preclusion

¶33 WES asserts on appeal that the circuit court erred in failing to determine that WSRC's claims against WES are barred by the doctrines of claim preclusion and issue preclusion. However, in the circuit court, WES's preclusion arguments were raised in support of its motion to dismiss WSRC's complaint, "after [the court] set[] aside the June 2009 [order]." WES's arguments below regarding claim and issue preclusion were framed as to WSRC's right to assert its claims against *Waukesha*, not WES. The circuit court was not afforded the opportunity to address WES's preclusion arguments as they relate to WES, rather than Waukesha, and WES has not made a showing to this court that the circuit court erred in not denying WES's motion to vacate the June 2009 order, a prerequisite to dismissal of WSRC's complaint. Accordingly, we need not, and do

not, address WES's preclusion arguments. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980) (appellate courts generally do not review issues raised for the first time on appeal).[6]

D. Lis Pendens

¶34 WES contends that it should have been granted relief from the June 2009 order because WSRC failed to file a lis pendens pursuant to WIS. STAT. § 840.10. Statutory lis pendens is intended to provide the means for third parties to obtain notice of judicial proceedings affecting real estate. ***Zweber v. Melar Ltd., Inc.***, 2004 WI App 185, ¶8, 276 Wis. 2d 156, 687 N.W.2d 818. Section 840.10, Wisconsin's lis pendens statute, requires filing notice of litigation with the register of deeds. *See* ***Kensington Dev. Corp. v. Israel***, 142 Wis. 2d 894, 901-02, 419 N.W.2d 241.

¶35 WES, however, has not presented a developed argument as to why WIS. STAT. § 840.10 requires that the June 2009 order be set aside in the factual circumstances of this case. The purposes of statutory lis pendens are to protect the court's and litigants' interests in the finality of the judgment and to "giv[e] prospective purchasers and encumbrancers notice of pending actions so that they may avoid 'buying a lawsuit.'" ***Belleville State Bank v. Steele***, 117 Wis. 2d 563, 574-75, 345 N.W.2d 405 (1984). WES is clearly not a prospective purchaser or encumbrancer. Furthermore, even if we assumed that the notice function was intended to benefit a broader group of persons than prospective purchasers and

[6] Although we do not address WES's preclusion argument as to WSRC's claims against WES, we note that WES does not explain what claims WSRC has filed against WES in this action.

encumbrancers, the record shows that WES knew about this lawsuit far in advance of the June 2009 order.

¶36 The affidavit of James Cauley, an attorney for WES, establishes that WES knew about WSRC's complaint and this lawsuit as early as July 2008, but that WSRC did not intervene until after the June 2009 order because, up until that point, WES believed that WSRC was only seeking damages and that a judgment would therefore not affect its interests. The Cauley affidavit establishes that it was only after entry of the June 2009 order, when WES learned that its interests in the easement trackage might be affected, that WES decided to intervene. WES does not explain why the absence of a lis pendens entitles it to relief from the June 2009 order when it had actual notice of the lawsuit. Accordingly, we do not further address this issue.

E. Remaining Arguments

¶37 WES asserts that the circuit court erred in failing to dismiss WSRC's complaint because it's claims are barred by WIS. STAT. § 893.33. WES also asserts that the entry of the December 2010 order requiring WES to provide WSRC access to the easement trackage one day per week for up to eight hours was a violation of its due process rights because WES was not named as a defendant in WSRC's complaint, was not properly served process, was not afforded the opportunity to file an answer or counter claim, and was not afforded the opportunity to assert any defenses against the claims asserted by WSRC in its complaint. WES's argument as to each of these assertions is conclusory and undeveloped. Accordingly, we do not address these issues further. *See* ***Associates Fin. Servs. Co. of Wis., Inc. v. Brown***, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56.

¶38 WES asserts that the circuit court erred in determining that the February 2007 default judgment precluded WES from raising defenses to WSRC's complaint. The complaint asserted allegations against Waukesha, not WES. WES has not cited to this court any legal authority requiring that a circuit court allow an intervening party an opportunity to assert defenses on behalf of a defendant after default judgment has been entered against that defendant. We need not consider arguments unsupported by citation to legal authority. ***Kruczek v. DWD***, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286. Moreover, to the extent that WES claims that it should not be bound by the default judgment because it was not allowed to participate in the proceeding, WES is mistaken. Following WES's intervention, the court informed WES that it could "brief whatever you want, and I will read it, and then I will make a determination." Thereafter, WES moved the court for relief from the June 2009 order and dismissal of WSRC's complaint. Contrary to WES's assertion, it was afforded an opportunity to present the court with any and all arguments it had.

¶39 Finally, to the extent that WES argues that the June 2009 order should have been vacated because WES was an indispensable party and the order was entered without WES having been joined, that argument is undeveloped and will not be considered. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

CONCLUSION

¶40 For the reasons discussed above, we affirm.

By the Court.—Orders affirmed.

Not recommended for publication in the official reports.