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DISTRICT II

July 21, 2026

To:

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

2025AP1381

Ashley Krueger-Rook v. Great Day Improvements, LLC
d/b/a Apex Energy Solutions (L.C. #2023CV1050)

Before Gundrum, Grogan, and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Ashley Krueger-Rook and Melisa Krueger-Rook (the Krueger-Rooks) appeal from a judgment of the trial court in favor of Great Day Improvements, LLC (Great Day), dismissing their complaint with prejudice. Specifically, they argue against the circuit court's decision to grant Great Day's motion for an extension of time to file an answer and the consequential denial of the Krueger-Rooks's motion for default judgment.¹ Based upon our review of the briefs and

¹ The Honorable Michael J. Aprahamian issued the underlying decisions that the Krueger-Rooks argue were erroneous; we refer to Judge Aprahamian as the circuit court. The Honorable Paul Bugenhagen, Jr. presided over the jury trial. We refer to Judge Bugenhagen as the trial court.

Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).² Because the circuit court did not erroneously exercise its discretion by granting the extension, we affirm.

BACKGROUND

In March 2021, the Krueger-Rooks contracted with Great Day for the furnishing and installation of four windows and one patio door at their residential property. In June 2022, the same parties entered into a second contract for the furnishing and installation of an entry door, and a third contract for the furnishing and installation of six windows at the same property. As to the March 2021 contract, the Krueger-Rooks believed that Great Day did not sufficiently insulate the windows and door, did not properly nail and fasten materials, and did not connect the window balances. As to the June 2022 contract for six windows, after the Krueger-Rooks paid in advance nearly \$8,000 to Great Day, they believed that Great Day did not timely provide the materials and services for the project.

In April 2023, the Krueger-Rooks sent a letter, through their counsel, to Great Day, demanding cancellation of the June 2022 contract for six windows, return of the portion of their payment that was unused, delivery to the Krueger-Rooks of all materials not yet used or delivered to the site, and a written account of how all payments were used. The demand letter indicated that a civil action would be commenced if Great Day did not respond to the letter within 30 days.

² All references to the Wisconsin Statutes are to the 2023-24 version.

After receiving the demand letter, Great Day's attorney corresponded with the Krueger-Rooks's attorney to seek an amicable resolution. Great Day's attorney attested that he never received a response from opposing counsel.

In June 2023, the Krueger-Rooks filed and served a complaint against Great Day for breach of contract and violation of the Home Improvement Practices Act, WIS. ADMIN. CODE § ATCP ch. 110 (Nov. 2024).³ The Krueger-Rooks alleged Great Day "faile[d] to complete its work in a workmanlike manner" for both the March 2021 contract and the June 2022 contract for an entry door, and failed to provide the materials and services in a timely manner for the June 2022 contract for windows. In August 2023, the Krueger-Rooks filed a motion for default judgment, as they had not received an answer to their complaint.

Great Day's Chief Financial Officer (CFO) averred that, because the Krueger-Rooks's attorney had drafted the demand letter and had been in contact with Great Day's attorney, the CFO mistakenly believed that Great Day's attorney had received a copy of the summons and complaint. So, the CFO did not forward the summons and complaint to Great Day's attorney. In September 2023, after Great Day received the Krueger-Rooks's motion for default judgment, Great Day's attorney realized that he never received a copy of the summons and complaint. The attorney for Great Day also attested to the misunderstanding that resulted in Great Day's failure to timely file an answer.

³ All references to WIS. ADMIN. CODE § ATCP are to the November 2024 Register.

After receiving the motion for default judgment, Great Day's counsel retained local counsel to represent Great Day in this proceeding.⁴ On September 5, 2023, Great Day's new attorney filed an appearance and objected to the motion for default judgment, causing the circuit court to schedule a motion hearing. That attorney testified at the September 2023 motion hearing that he tried to gather information about why there had been a default to see if there was a factual basis for a motion to extend the time to file an answer. The court gave Great Day's new attorney until October 6, 2023 to file a motion to extend the time to file an answer. The motion was filed by that date, and the court heard the pending motions in November 2023.

At the November 2023 hearing, the Krueger-Rooks's attorney contended it was reasonable for him to process serve the summons and complaint upon Great Day's registered agent rather than Great Day's attorney, and that it was unreasonable for the CFO to not follow up with Great Day's attorney after receiving the summons and complaint, even before receiving the motion for default judgment. Great Day's new attorney argued that it was excusable neglect for the CFO to assume the company's attorney knew about the lawsuit. He stated that the company immediately took action.

While the circuit court agreed with Great Day's new attorney that the CFO "should have done more in that situation[,]” it found that there was excusable neglect. The court held:

I believe under the circumstances as outlined by the affidavits from [the CFO], [Great Day's attorney] as well as [Great Day's new attorney] that given the relationship and discussions that were already ongoing it was excusable under these circumstances for [the CFO] not to do more and file the answer timely.

⁴ The attorney retained by Great Day's attorney will be referred to as Great Day's new attorney.

The circuit court concluded that even if it found that Great Day's neglect was inexcusable, Great Day would have the remedy to reopen the case under the *Miller v. Hanover Insurance Co.* factors, 2010 WI 75, 326 Wis. 2d 640, 785 N.W.2d 493. The court elaborated that "it's important to try this on the merits" and noted that there were "meritorious defenses[.]" After granting the extension to file an answer and denying the motion for default judgment, the court subsequently held a trial on the merits of the case at which a jury found Great Day not liable on all causes of action.

The Krueger-Rooks appeal from the judgment of the trial court, and the underlying decisions granting Great Day's motion for an extension of time to file an answer and denying the Krueger-Rooks's motion for default judgment.⁵

DISCUSSION

In *Meier ex. rel. Meier v. Champ's Sport Bar & Grill, Inc.*, 2001 WI 20, 241 Wis. 2d 605, 623 N.W.2d 94, our supreme court set out the standard of review for motions to extend time to file an answer:

The power to grant an extension of time is highly discretionary, and this court will not disturb [a trial] court's decision unless it constitutes an erroneous exercise of discretion. We will not find an erroneous exercise of discretion if the [trial] court considered the relevant facts, properly interpreted and applied the law, and reached a reasonable determination.

Id., ¶42 (internal citation omitted). "If the motion [for extension] is made after the expiration of the specified time, it shall not be granted unless the [circuit] court finds that the failure to act was

⁵ On appeal, the Krueger-Rooks seek review only of the court's decision granting the extension order; they do not ask us to review the jury trial.

the result of excusable neglect.” WIS. STAT. § 801.15(2)(a). “[A] circuit court grants relief ... if it finds reasonable grounds for noncompliance with the statutory time period (which the statute and this court refer to as excusable neglect) and if the interests of justice would be served by the enlargement of time[.]” *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982). A court may “relieve a party or legal representative from a judgment” for excusable neglect. WIS. STAT. § 806.07(1)(a). A court can preemptively consider § 806.07(1) and properly deny a motion for default judgment. *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶12, 242 Wis. 2d 153, 624 N.W.2d 375. “The burden of establishing excusable neglect is on the party moving for the extension.” *Estate of Otto v. Physicians Ins. Co. of Wis., Inc.*, 2007 WI App 192, ¶12, 305 Wis. 2d 198, 738 N.W.2d 599, *aff’d*, 2008 WI 78, 311 Wis. 2d 84, 751 N.W.2d 805.

“Excusable neglect” differs from “neglect, carelessness or inattentiveness.” *Connor v. Connor*, 2001 WI 49, ¶16, 243 Wis. 2d 279, 627 N.W.2d 182 (citing *Hedtcke*, 109 Wis. 2d at 468). “Excusable neglect” is “neglect which might have been the act of a reasonably prudent person under the same circumstances.” *Connor*, 243 Wis. 2d 279, ¶16 (quoting *Hedtcke*, 109 Wis. 2d at 468 (citation omitted)).

The Krueger-Rooks first contend that the circuit court erred in granting Great Day’s motion because Great Day did not show excusable neglect. We disagree. Great Day’s CFO and the company attorney both testified that the failure to meet the deadline was the result of a misunderstanding rather than intentional action. The CFO testified that she directed that the demand letter, which threatened legal action, should be sent to their attorney’s law firm. She testified that because the matter had been referred to their attorney’s law firm, she believed their attorney knew of the lawsuit. That being the case, she did not direct that the summons and complaint be sent to Great Day’s attorney’s law firm.

In *Miller*, our supreme court described the following factors a circuit court should consider when deciding whether to grant relief from default judgment entered for failure to timely answer:

whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; whether the claimant received the effective assistance of counsel; whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments; whether there is a meritorious defense to the claim; and whether there are intervening circumstances making it inequitable to grant relief.

326 Wis. 2d 640, ¶36 (citation omitted). Noting that the factors weigh in favor of the party seeking relief, our supreme court reasoned “this is consistent with our stated policy that default judgments are ‘the ultimate sanction’ and that we regard them ‘with particular disfavor.’” *Id.*, ¶46 (citation omitted).

The circuit court considered these factors when it made certain statements, that there were meritorious defenses and that it was important to try the case on the merits. In anticipation of a successful motion to reopen by Great Day, if the court were to deny its motion for extension of time, the court said:

Even if I were to say it was not excusable neglect [and] then [the Krueger-Rooks] would get [their] default, [Great Day] could move to reopen under [WIS. STAT. § 806.07](1)(h) and under *Miller v. Hanover*, I would apply those five factors and I would reopen it for those reasons because it’s important to try this on the merits.

The Krueger-Rooks fail to point to any intervening circumstances that would have made granting relief from default judgment inequitable in this case. See *id.*, ¶57.

The Krueger-Rooks also contend that the circuit court acted preemptively when it considered the *Miller* factors. *Shirk*, a case cited by Great Day, is illustrative⁶ because it reviewed whether a preemptive denial of a motion for default was appropriate “when the party opposing the motion claim[ed] that its untimely answer was due to excusable neglect.” 242 Wis. 2d 153, ¶9. The plaintiff in *Shirk* moved for default judgment after the defendant did not answer. *Id.*, ¶6. The defendant alleged there was excusable neglect in its failure to file an answer because it believed the 20-day period to answer began when it received the summons on March 17, rather than March 6, which is the day the summons and complaint were served on another defendant. *Id.*, ¶12. Our supreme court determined the circuit court properly exercised its discretion when it found this confusion “created by the interplay between the summons and the notice of service established excusable neglect on [the defendant’s] part.” *Id.*, ¶21.

The circuit court found the CFO’s conduct was “excusable under these circumstances” and that Great Day did not “intentionally relinquish” its responsibility. The court considered the relevant facts, correctly interpreted and applied the proper law, and reached a reasonable determination. Therefore, we conclude the court did not erroneously exercise its discretion when it concluded that the neglect was excusable and that an extension served the interests of justice.

For these reasons, we affirm.

Therefore,

⁶ The Krueger-Rooks argue *Shirk* is distinguishable because that case involved confusion over the content of a summons. See *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶7, 242 Wis. 2d 153, 624 N.W.2d 375. However, that factual difference does not distinguish *Shirk*. The legal principle that a court may grant relief from a default judgment when it is considering an extension motion still applies.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals