

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 1, 2026

Samuel A. Christensen
Clerk of Court of Appeals

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.

Appeal No. 2024AP1490

Cir. Ct. No. 2023CV7867

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

FRANTRINA HARRIS,

PLAINTIFF-APPELLANT,

V.

**AURORA HEALTH CARE METRO, INC. AND CNA WARRANTY SERVICES,
INC.,**

DEFENDANTS-RESPONDENTS,

ABC MAINTENANCE COMPANY AND DEF INSURANCE COMPANY,

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County:
BRITTANY C. GRAYSON, Judge. *Affirmed.*

Before Donald, C.J., Colón, P.J., and Geenen, J.

Per curiam opinions 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).

¶1 PER CURIAM. Frantrina Harris appeals from an order of the circuit court granting summary judgment in favor of Aurora Health Care Metro, Inc. and CNA Warranty Services, Inc. (collectively, “Aurora”). Harris argues that the circuit court erred when it did not consider and grant her untimely motion to withdraw her admissions which resulted in the dismissal of her case with prejudice. We conclude that the circuit court did not err. Accordingly, we affirm.

BACKGROUND

¶2 Harris commenced this case, alleging that Aurora was liable for injuries she sustained when the revolving door at the entrance of Aurora St. Luke’s Medical Center hit her elbow.¹

¶3 On December 29, 2023, Aurora served Harris with a set of 44 requests for admission which included a warning that Harris must respond within 30 days otherwise Aurora’s requests would be deemed admitted by operation of WIS. STAT. § 804.11 (2023-24).² Harris failed to respond by the expiration of the statutory deadline on January 29, 2024. On February 2, and again on February 8, Aurora emailed Harris inquiring about the status of her responses.

¹ Harris and Aurora were represented by counsel throughout this case. For ease of reading, we refer to the parties’ counsel by reference to the party unless context demands otherwise.

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

¶4 On February 9, 2024, Aurora moved for summary judgment, arguing that the case should be dismissed with prejudice because Harris’s admissions established that Aurora is not liable for any of the allegations in Harris’s complaint. Later that same day, Harris emailed Aurora a late set of responses. The hearing on Aurora’s summary judgment motion was scheduled for May 22, 2024. Harris did not timely file a response to Aurora’s summary judgment motion, move for an extension to do so, or move to withdraw her admissions.

¶5 Three months later, on the day before the summary judgment hearing, Harris filed a motion to withdraw her admissions. With her motion, she included a cover letter and affidavits from herself and her counsel. Harris’s cover letter stated that the motion was filed in response to Aurora’s motion for summary judgment, explained that it was filed late due to “confusion between myself and my co-counsel ... I did not realize that a response was not filed,” and requested an adjournment of the summary judgment hearing. To support her motion to withdraw her admissions, Harris’s counsel asserted via affidavit that Harris’s illness from January 10 to January 23, 2024, impeded counsel’s ability to respond to the discovery requests within the 30-day statutory period.

¶6 Later that same day Aurora filed a response with accompanying affidavits. Aurora argued that Harris’s motion should be rejected as untimely and that Harris failed to respond to its motion for summary judgment so its motion should be granted. Aurora also argued that Harris’s excuses were insufficient to excuse her repeated untimeliness and persistent lack of communication with Aurora and the circuit court.

¶7 At the summary judgment hearing the next day, the circuit court allowed the parties to present their arguments on both motions before deciding

whether it would consider Harris’s motion to withdraw because the motions are “intertwined in a way.” Harris acknowledged that she failed to both timely respond to Aurora’s requests for admission and move to withdraw her admissions. Nevertheless, she argued that the court should grant her motion and deny Aurora’s motion because Aurora would not be prejudiced by the delay.

¶8 The circuit court explained that Harris’s motion to withdraw her admissions was late and was a “separate motion,” that is, not a response to Aurora’s motion for summary judgment. Regardless, the court determined that even if it construed Harris’s motion and accompanying affidavits as a response to Aurora’s summary judgment motion, Harris still failed to timely oppose the motion under the deadlines pursuant to both WIS. STAT. § 802.08 and Milwaukee County Circuit Court Local Rule 3.15.

¶9 The circuit court then stressed that it could consider her late filings if there was good cause to do so. However, the court did not find good cause to allow such a late response solely based on counsel’s alleged “confusion” given the “significant amount of time” between the filing of Aurora’s motion and the hearing date combined with Harris’s multiple procedural missteps in handling the case. Consequently, the court did not consider Harris’s untimely filings and granted Aurora’s motion for summary judgment in light of Harris’s admissions under WIS. STAT. § 804.11 and because the motion was unopposed.

¶10 Harris appeals.³

DISCUSSION

¶11 On appeal, Harris argues the circuit court erred by: (1) refusing to consider her motion to withdraw prior to hearing Aurora’s summary judgment motion; (2) granting summary judgment on the basis that Aurora’s motion was unopposed; and (3) imposing an unjust sanction contrary to WIS. STAT. § 805.03. We disagree.

¶12 Harris first argues that the circuit court erred by refusing to consider her motion to withdraw her admissions prior to considering Aurora’s summary judgment motion.

¶13 Under WIS. STAT. § 801.15(4), “[a] written motion ... and notice of the hearing thereof shall be served not later than [five] days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court.” The circuit court has broad discretion to manage its calendar by modifying some statutory deadlines and granting adjournments. Sec. 801.15(2)(a); *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 467, 326 N.W.2d

³ Aurora’s brief does not comply with WIS. STAT. RULE 809.19(8)(bm), which addresses the pagination of appellate briefs. See *id.* (providing that, when paginating briefs, parties should use “Arabic numerals with sequential numbering starting at ‘1’ on the cover”). This rule was amended to its current form in 2021, see S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021), and the reason for the amendment is that briefs are now electronically filed in PDF format, and are electronically stamped with page numbers when they are accepted for eFiling. The pagination requirements ensure that the numbers on each page of a brief “will match ... the page header applied by the eFiling system, avoiding the confusion of having two different page numbers” on every page of a brief. Supreme Court Comment, 2021, WIS. STAT. RULE 809.19.

Additionally, Aurora cites to an unpublished summary disposition order contrary to WIS. STAT. RULE 809.23(3). We remind counsel that we expect compliance with the rules of appellate procedure.

727 (1982); see *Eden Stone Co. v. Oakfield Stone Co.*, 166 Wis. 2d 105, 112, 479 N.W.2d 557 (Ct. App. 1991).

¶14 We will not disturb a circuit court’s discretionary decision if it “undert[ook] a reasonable inquiry and examination of the facts,” applied the appropriate legal standard, and “the record shows that there is a reasonable basis for the [circuit] court’s determination.” *Hedtcke*, 109 Wis. 2d at 471 (citation omitted). “[B]ecause the exercise of discretion is so essential to the [circuit] court’s functioning, we generally look for reasons to sustain discretionary decisions.” *Burkes v. Hales*, 165 Wis. 2d 585, 591, 478 N.W.2d 37 (Ct. App. 1991) (citation omitted).

¶15 Harris moved to withdraw her admissions and requested an adjournment the day before the hearing; therefore, she did not comply with the notice period under WIS. STAT. § 801.15(4) as well as Milwaukee County Circuit Court Local Rule 3.11 which requires the filing of nondispositive motions at least 15 days prior to the hearing date unless the circuit court finds good cause to modify the deadline.

¶16 Specifically, Harris contends that the circuit court should have heard her motion to withdraw prior to Aurora’s motion at the hearing because Aurora opposed adjournment, and we should interpret that opposition as a concession that it had a fair opportunity to consider her motion and be heard. Harris also argues that the court did not consider whether there was good cause to shorten the time to file her motion because the court “was not aware that it could exercise its discretion to shorten the notice period for Harris’s motion.”

¶17 At the hearing, the circuit court explained that the hearing was scheduled for Aurora’s summary judgment motion, Harris never responded to that

motion, and the court had not yet fully reviewed the motion Harris filed the day before. Furthermore, the court recognized that Harris never moved to extend the time to respond to Aurora's motion. However, the court stated that it "may modify [the] deadlines upon the showing of good cause," before recognizing Harris's excuse that the motion was filed last minute because there was "confusion" between co-counsels.

¶18 The circuit court stressed that Aurora's summary judgment motion had been pending for a "significant amount of time"—three months—and explained that despite counsel's alleged confusion, "this [hearing] remained on the calendar which should have been, sort of, a trigger that this was still pending and the [c]ourt was still going to hear this matter."

¶19 From the circuit court's own statements discussing good cause it is clear that it was aware it had the discretion to consider Harris's motion prior to the summary judgment motion, but determined that Harris's excuse did not constitute good cause to do so. Furthermore, regardless of whether Aurora was prepared to respond to Harris's motion at the hearing, the notice rules also exist to benefit the court. The court noted that it had not had time to review all of the last-minute filings. Ruling on Harris's motion at the hearing without reviewing all of the filings would have invited error.

¶20 Therefore, we reject Harris's arguments that the circuit court erred by refusing to consider her motion due to a lack of awareness that it had the

discretion to do so and by a failure to consider whether there would be good cause to consider her motion at the summary judgment hearing.⁴

¶21 Harris next argues that the circuit court erred by not construing the affidavits she filed with her motion to withdraw admissions as a response to the Aurora’s motion for summary judgment.⁵ We disagree.

¶22 We review a grant of summary judgment independently, applying the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). The circuit court must enter summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2); *see also Wright v. Hasley*, 86 Wis. 2d 572, 578-79, 273 N.W.2d 319 (1979).

¶23 “[A]n adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party’s response ... must set forth specific facts showing that there is a genuine issue for trial”; otherwise, judgment shall be entered against it. WIS. STAT. § 802.08(3); *see Bank of Two Rivers v. Zimmer*, 112 Wis. 2d 624, 632-33, 334 N.W.2d 230 (1983) (summary judgment can be

⁴ Because we conclude that the circuit court did not err in rejecting Harris’s untimely motion to withdraw her admissions, we do not consider the parties’ arguments regarding the merits of her motion. *See Maryland Arms Ltd. P’ship v. Connell*, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15 (“Issues that are not dispositive need not be addressed.”).

⁵ Harris does not dispute that the admitted facts alone warrant summary judgment in Aurora’s favor.

entered based on default admissions). The adverse party must serve opposing affidavits “at least [five] days before the time fixed for the hearing.” § 802.08(2).

¶24 The circuit court cannot grant a motion for an enlargement of time to respond made after the deadline unless the court finds that the failure to respond was the result of excusable neglect. WIS. STAT. § 801.15(2)(a). “A party seeking an enlargement of time must provide ‘specific incidents and a persuasive explanation which justify the attorney’s neglect during the entire period of his or her inattention.’” *David Christensen Trucking & Excavating, Inc. v. Mehdian*, 2006 WI App 254, ¶18, 297 Wis. 2d 765, 726 N.W.2d 689 (citing *Hedtcke*, 109 Wis. 2d at 473).

¶25 Harris filed two affidavits the day before the summary judgment hearing in support of her motion to withdraw admissions. The only excuse Harris provided to the court for the last-minute filing was co-counsel’s “confusion” over filing a response, which the circuit court did not find persuasive and notably does not include specific incidents to justify the significant period of neglect. Harris cannot expect to be able to ignore her case for months, then give the circuit court a vague excuse the day before the summary judgment hearing and be accommodated. We conclude that the circuit court did not err in disregarding her filings, finding that the summary judgment motion was unopposed, and then granting judgment in favor of Aurora. See *David Christensen Trucking*, 297 Wis. 2d 765, ¶¶19-20; *Bank of Two Rivers*, 112 Wis. 2d at 632-33.

¶26 Similarly, we discern no error in the circuit court’s exercise of discretion in denying Harris an adjournment when she failed to provide a sufficient explanation for her conduct. “Continuances and delay are the bane of the judicial system. ... [G]iven the volume of litigation burdening the trial courts,

the bar and litigants must understand that Wisconsin trial judges will monitor their calendars to avoid the damaging effects of unwarranted delay.” *Eden*, 166 Wis. 2d at 114.

¶27 Finally, Harris argues that the dismissal of her case should be construed as an unjust sanction under WIS. STAT. § 805.03 because her conduct was not egregious or in bad faith, and her discovery violations were not extreme, substantial, or persistent enough to warrant such a severe penalty. *See Rivera v. Perez*, 2010 WI App 91, ¶27, 327 Wis. 2d 467, 787 N.W.2d 882. We disagree.

¶28 Harris relies on *Rivera* in which this court concluded that the circuit court erroneously exercised its discretion by denying a motion to withdraw admissions, and we considered the subsequent grant of summary judgment as a sanction. *Id.*, 327 Wis. 2d 467, ¶7. However, *Rivera* does not control here because in *Rivera*, the timeliness of the appellant’s opposition to the motions for summary judgment was not at issue. The circuit court accepted the appellant’s response and denied the motion to withdraw the admissions both on the merits and as a sanction. *Id.*, ¶4. Whereas here, the circuit court never decided Harris’s motion to withdraw her admissions and instead disregarded it as untimely.

¶29 As this court previously explained in *David Christensen Trucking*, the decision whether to disregard untimely filings under WIS. STAT. § 802.08(2) cannot be viewed exclusively as a sanction under WIS. STAT. § 805.03 because the filing of opposing materials at least five days before the summary judgment hearing is mandatory. *Id.*, 297 Wis. 2d 765, ¶¶15-16, 20.

¶30 Harris did not move for additional time to respond to Aurora’s motion and even if her request to adjourn the hearing is construed as such, as we already explained, Harris did not provide the circuit court with a sufficient

explanation to establish excusable neglect. See **Hedtcke**, 109 Wis. 2d at 473; see also **David Christensen Trucking**, 297 Wis. 2d 765, ¶19.

¶31 The circuit court resolved this case by considering the merits of Aurora’s summary judgment motion. In doing so the court made no mention of sanctions.⁶ The court had no timely opposing materials before it to counter Aurora’s *prima facie* case for summary judgment and it ultimately found that Aurora was entitled to summary judgment as a matter of law. Therefore, we decline to construe the circuit court’s decision as a dismissal sanction here. See **David Christensen Trucking**, 297 Wis. 2d 765, ¶¶15-16, 20-21.

CONCLUSION

¶32 For the foregoing reasons, we conclude the circuit court did not err in granting summary judgment in favor of Aurora.

By the Court.—Order affirmed.

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

⁶ Neither Harris nor Aurora discussed the issues in terms of sanctions at the hearing.

