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DISTRICT III

October 6, 2026

To:

Hon. Beverly Wickstrom
Circuit Court Judge
Electronic Notice

Lisa L. Kritske
Electronic Notice

Cherie Norberg
Clerk of Circuit Court
Eau Claire County Courthouse
Electronic Notice

Tani Flynn
P.O. Box 764
Eau Claire, WI 54702

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

2025AP994

Progressive Universal Insurance Company v. Tani Flynn
(L. C. No. 2024CV162)

Before Stark, P.J., Hruz, and Gill, 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).

Tani Flynn, pro se, appeals from an order denying her motion to reopen a default judgment that required her to pay Progressive Universal Insurance Company \$37,921.95 for its subrogated interest in an automobile insurance claim. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Flynn argues that the circuit court should have granted her relief from the default judgment based upon: (1) improper substitute service of the summons and complaint upon her autistic nephew; (2) actual lack of knowledge of the lawsuit; and (3) newly discovered evidence that the complaint contained factual inaccuracies.² We construe the motion as seeking relief from judgment under WIS. STAT. § 806.07(1)(a), (b), (d), or (h), which, respectively, allow a judgment to be set aside based upon excusable neglect, newly discovered evidence, being void (which could include for lack of jurisdiction), or “other reasons.” We review a circuit court’s discretionary decision to deny a motion to reopen a judgment under § 806.07 with great deference, and we will uphold it so long as it was supported by a reasonable basis. ***Sukala v. Heritage Mut. Ins.***, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. We conclude there is a reasonable basis in the record to support the circuit court’s decision here.

First, the Wisconsin statutes allow personal jurisdiction over a defendant to be established by substitute service, after reasonably diligent attempts at personal service have failed, by leaving the summons and complaint “[i]n the presence of a competent adult, currently residing in the abode of the defendant.” WIS. STAT. § 801.11(1)(b)1m. Flynn acknowledged in her motion to reopen that her adult, autistic nephew had been staying at her residence taking care of her property while she had been staying with her ill father for over a year. That fact explained

² Flynn further claims that a resulting suspension of her driver’s license should be vacated. However, that was an administrative decision by the Department of Motor Vehicles (the DMV) that is not before us in this appeal. We also do not consider additional arguments that Flynn raises for the first time in her reply brief, including that she should have relief from the judgment because she had been recently hospitalized under sedation and was cognitively impaired at the time of the hearing on her motion to reopen. See ***State ex rel. Kurtzweil v. Sawyer Cnty. Zoning Bd. of Appeals***, 2023 WI App 43, ¶22, 995 Wis. 2d 286, 409 N.W.2d 77.

why two prior diligent attempts to personally serve Flynn had failed and satisfied the requirement that the summons and complaint were left with an adult residing in Flynn's abode.

Flynn now contends that her nephew was not "competent" to receive substitute service on her behalf. She has not, however, presented any authority setting forth what level of competence is required to receive substitute service, much less establishing that an autistic person must be deemed incompetent. We note that autism encompasses a wide spectrum. Here, the circuit court could reasonably conclude that, if Flynn's nephew was sufficiently competent to be left in charge of caring for her residence, he was sufficiently competent to be served with a summons and complaint. Therefore, the court properly determined that the summons and complaint had been validly served and that the judgment was not void for lack of personal jurisdiction under WIS. STAT. § 806.07(1)(d).

Second, Flynn contends that her nephew never forwarded the summons and complaint to her and that she did not learn of the judgment against her until the DMV suspended her driver's license for failing to pay it. To the extent that these allegations could be construed as a claim of excusable neglect or some other reason for relief, Flynn would need to make a companion showing that she had a meritorious defense to the lawsuit in order to obtain relief under WIS. STAT. § 806.07(1)(a) or (h). See *J.L. Phillips & Assocs., Inc. v. E & H Plastic Corp.*, 217 Wis. 2d 348, 358, 577 N.W.2d 13 (1998) (discussing criteria for excusable neglect); *Miller v. Hanover Ins.*, 2010 WI 75, ¶36, 326 Wis. 2d 640, 785 N.W.2d 493 (discussing criteria for catchall provision). She has made no such showing, either in the circuit court or this court. To the contrary, Flynn essentially acknowledged at the hearing on the motion to reopen that she had rear-ended the car owned by Progressive's insured. Furthermore, the amount of subrogated damages had already been determined by the amount that Progressive paid to its insured.

Therefore, the circuit court could reasonably decide that Flynn was not entitled to relief based upon excusable neglect or other reasons under § 806.07(1)(a) or (h).

Third, Flynn’s contention that the complaint contains newly discovered inaccuracies is premised upon misunderstandings about the allegations made in the complaint. Flynn mistakenly asserts that the complaint erroneously identifies the driver of the vehicle she hit as male, when the complaint actually makes no assertion whatsoever about who was driving the other vehicle. The complaint states only that the vehicle Flynn hit was *owned* by its insured, Alexander Berger. Similarly, Flynn mistakenly asserts that the complaint erroneously alleges that there was a “third party” present in the vehicle, when the complaint makes no such allegation. Rather, the complaint alleges that Progressive’s “insured and/or other third parties” sustained personal injury in the accident. That generalized allegation is entirely consistent with the vehicle Flynn hit having been driven by a female driver (who would have been a third party to Progressive’s insurance policy), rather than by the male owner of the vehicle who was Progressive’s insured. It follows that Flynn has failed to establish any newly discovered evidence warranting relief from the default judgment under WIS. STAT. § 806.07(1)(b).

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. 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