

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 27, 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 Nos. 2025AP2035
2025AP2036**

STATE OF WISCONSIN

**Cir. Ct. Nos. 2022TR33532
2022TR33534**

**IN COURT OF APPEALS
DISTRICT I**

VILLAGE OF WHITEFISH BAY,

PLAINTIFF-RESPONDENT,

V.

ROSS BOLINGBROKE,

DEFENDANT-APPELLANT.

APPEALS from an order of the circuit court for Milwaukee County:
KRISTELA L. CERVERA, Judge. *Affirmed.*

¶1 GEENEN, J.¹ Ross H. Bolingbroke, pro se, appeals the circuit court's denial of his motion to reopen the default judgments entered against him

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b)-(c) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

on municipal traffic citations, following his failure to appear in court for the continued bench trial on those charges. Bolingbroke alleges that the denial of his motion deprived him of due process because he was unable to appear in court due to injury. We disagree and affirm the circuit court.

BACKGROUND

¶2 This appeal arises out of traffic citations issued to Bolingbroke in 2017 for OWI-first and PAC-first in the Village of Whitefish Bay. After being found guilty in municipal court, Bolingbroke requested trial on the charges in the Milwaukee County Circuit Court. The trial date was adjourned six times: three at Bolingbroke's request; one at the Village's request; and twice by the circuit court due to its own unavailability, delaying the start of the trial by fifteen months. Trial began on November 6, 2024 and was scheduled to continue on January 21, 2025, at 2:00 p.m.

¶3 Bolingbroke requested an adjournment on January 7, 2025 to contact the public defender's office, and again on January 9, 2025, citing his scheduled appearance in another case at 3:30 p.m. on January 21, 2025.² The trial was not adjourned and remained scheduled for January 21, 2025 at 2:00 p.m.

¶4 Bolingbroke did not appear on the January 21st trial date. Nothing in the record indicates that Bolingbroke notified the court that he would not be

² Bolingbroke was scheduled to appear before Judge Lena Taylor for a hearing on Bolingbroke's motion to reopen Milwaukee County Case Nos. 2024FO1174, 2024TR20011, 2024TR20012, 2024TR20013, and 2024TR20015. Bolingbroke has also appealed the denial of that motion to reopen, which this court affirmed. *Village of Whitefish Bay v. Bolingbroke*, Nos. 2025AP2547, 2025AP2548, 2025AP2549, 2025AP2550, 2025AP2551, and 2025AP2552, unpublished slip op. (WI App Oct. 15, 2026) (*Bolingbroke I*).

present.³ After waiting for almost thirty minutes beyond the scheduled 2:00 p.m. start time, and upon the Village’s motion, the court entered default judgment against Bolingbroke in both cases.

¶5 Two and a half months later, on April 7, 2025, Bolingbroke sent an unsigned fax to the court claiming that he had sent a prior fax to the court on January 22, 2025 explaining why he had been unable to attend trial the day before. Bolingbroke attached a copy of the purported January 22nd fax, which stated that he had a “sudden and severe medical emergency” and was “admitted to the hospital with several broken ribs ... along with a chest strain, and fluid in [his] lungs[.]” However, the circuit court docket does not contain any communication from Bolingbroke on January 22nd. Also attached to the April 7th fax was a copy of a letter from Security Health Plan dated February 10, 2025, requesting more information about the medical services Bolingbroke received on January 20, 2025, described as “[f]racture of one rib, right side, initial encounter for closed fracture.” The Milwaukee County Clerk of Circuit Court responded to Bolingbroke explaining that local rules prohibit unsigned motions and filings via fax, and that to reopen his case, Bolingbroke must file a signed motion by mail or in-person.

¶6 On May 7, 2025, Bolingbroke filed a motion to reopen on due process grounds. He claimed that he was unable to attend the January 21st trial due to “unforeseeable events that led up to hospitalization,” and that he had informed the court on January 20th, prior to the hearing, and on a later date.

³ We do take judicial notice that the record in *Bolingbroke I* contains a fax from Bolingbroke to Judge Taylor on the morning of January 21, 2025, claiming that he was in the hospital “with several broken ribs, among other medical issues,” and therefore was unable to attend the 3:30 p.m. hearing in that proceeding. *Id.*, ¶4.

Attached to the motion was the Security Health Plan letter, the letter from the Clerk of Circuit Court, and page one of an eight-page “After Visit Summary” from Columbia St. Mary Milwaukee Emergency Department dated January 20, 2025, indicating that Bolingbroke was diagnosed with a “[r]ib injury,” was provided with information about “chest wall strain,” and was prescribed acetaminophen, cyclobenzaprine,⁴ ibuprofen, and lidocaine.⁵

¶7 After taking his motion up on July 14, 2025, the court allowed Bolingbroke several additional weeks to file supplemental documents supporting his claimed medical emergency, and scheduled a status conference for August 20, 2025. Bolingbroke did not file any supplemental materials.

¶8 At the August 20, 2025 hearing, the court denied Bolingbroke’s motion. Citing WIS. STAT. § 806.07(1)(a), it found that he failed to demonstrate excusable neglect. The court considered the record and the documents Bolingbroke submitted. It noted that Bolingbroke did not communicate with the court for several months after the entry of default judgment, did not provide adequate documentation about his claimed injuries that substantiated his inability to attend trial, and failed to provide additional proof of his claimed injuries despite specifically being given the opportunity to do so. The court also noted that it had been accommodating and that it had granted multiple prior adjournment requests

⁴ Cyclobenzaprine is a muscle relaxant used to relieve pain, stiffness, and discomfort caused by muscle strains, sprains, or injuries. See MAYO CLINIC, <https://www.mayoclinic.org/drugs-supplements/cyclobenzaprine-oral-route/description/drg-20063236> (last visited Oct. 23, 2026).

⁵ Lidocaine as a local pain reliever or anesthetic. See MAYO CLINIC, <https://www.mayoclinic.org/drugs-supplements/lidocaine-topical-application-route/description/drg-20072776> (last visited Oct. 23, 2026).

made by Bolingbroke. It also found that, although Bolingbroke maintained that he had faxed information to the court on January 20th and again on January 22nd, those faxes did not appear in the court record, and reminded Bolingbroke that the court discussed these facts with him at the July hearing.

¶9 Bolingbroke appeals. He argues that he notified the court of his injuries and inability to attend the trial, therefore his “constitutional rights of due process” were violated when the circuit court entered default judgment against him, and later denied his motion to reopen.

¶10 We conclude that the circuit court properly denied Bolingbroke’s motion to reopen and affirm.

DISCUSSION

¶11 Bolingbroke asserts that the circuit court erred when it denied his motion to reopen the default judgments entered against him in these traffic cases. Because he appeals pro se, we liberally construe his complaint. See *bin-Rilla v. Israel*, 113 Wis. 2d 514, 520, 335 N.W.2d 384 (1983). In that vein, we note that Bolingbroke was charged with OWI-first, WIS. STAT. § 346.63(1)(a), and operating with PAC-first, § 346.63(1)(b), which are both forfeitures and violations of “traffic regulations.” See WIS. STAT. § 345.20(1)(b). Although the circuit court cited to the standard that applies to reopen civil cases at WIS. STAT. § 806.07, WIS. STAT. ch. 345 contains several statutes that specifically address the procedure on a motion to reopen a default judgment involving traffic regulations.

¶12 WISCONSIN STAT. § 345.51 addresses the reopening of default judgments in traffic cases. It provides that “[e]xcept as provided in [WIS. STAT. §§] 345.36 and 345.37, there shall be no reopening of default judgments unless

allowed by order of the [circuit] court after notice and motion duly made and upon good cause shown,” and generally requires that the motion be filed within six months after the judgment is entered in the court record. Sec. 345.51.

¶13 WISCONSIN STAT. §§ 345.36 and 345.37 permit the court to deem a defendant’s nonappearance at a trial or a hearing as a plea of no contest and to enter judgment accordingly, and provide for the reopening of those judgments. Under § 345.36(2)(b),

[i]f the defendant moves to open the judgment within 20 days after the date set for trial, and shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise, or excusable neglect, the court shall open the judgment, reinstate the not guilty plea, and set a new trial date.

Id. Where a non-trial appearance is missed, § 345.37(1)(b) allows a defendant to move, within six months, “to withdraw the plea of no contest, open the judgment, and enter a plea of not guilty upon a showing to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise, or excusable neglect.”

¶14 Because Bolingbroke failed to appear at trial, WIS. STAT. § 345.37 does not apply. Furthermore, because he did not move to reopen the judgments within 20 days, WIS. STAT. § 345.36(2)(b) does not appear to apply. We note that there is no definitive published case law addressing the interplay of these provisions, or the result of an untimely motion. It appears, however, that an untimely motion under § 345.36(2)(b) may still proceed under WIS. STAT. § 345.51 if the motion was filed within six months of the entry of judgment. Under § 345.51, upon a showing of good cause—though “good cause” is not defined—the court may exercise its discretion and grant a motion to reopen.

¶15 Though the circuit court relied on WIS. STAT. § 806.07 in reaching its conclusion, the “good cause shown” standard in WIS. STAT. § 345.51 has been equated to the requirement under § 806.07, which requires a showing of “mistake, inadvertence, surprise, or excusable neglect” under § 806.07(1)(a). See **Kisten v. Kisten**, 229 Wis. 479, 485, 282 N.W. 629, (1938) (concluding that “good cause” can be demonstrated by showing “[e]xcused failure or neglect”); **Hedtcke v. Sentry Ins. Co.**, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982) (equating “cause” with “excusable neglect” for purposes of exercising discretion); see also **Williams v. Capitol Motel**, No. 2007AP424, unpublished slip op., ¶12 (WI App Nov. 1, 2007) (noting that “[a]lthough the term ‘good cause’ is not defined in the statute, it is generally appropriate to consider the factors set forth in [§] 806.07(1), which includes ‘mistake, inadvertence, and excusable neglect.’”).⁶ We thus apply the same standard of review. Excusable neglect is “that neglect which might have been the act of a reasonably prudent person under the same circumstances” and “is not synonymous with carelessness or inattentiveness.” **Mohns, Inc. v. TCF Nat’l Bank**, 2006 WI App 65, ¶9, 292 Wis. 2d 243, 714 N.W.2d 245 (citation modified).

¶16 A circuit court’s denial of a motion to reopen is a discretionary decision which we review under the “erroneous exercise of discretion” standard. See **Bank Mut. v. S.J. Boyer Constr., Inc.**, 2010 WI 74, ¶20, 326 Wis. 2d 521, 785 N.W.2d 462. Under this standard, we will affirm the circuit court’s decision as long as it “examine[d] the relevant facts, applie[d] a proper standard of law, and

⁶ To the extent the meaning of “good cause” is unclear, or is somehow less rigorous than “mistake, inadvertence, surprise, or excusable neglect,” we note that the result in this case would not change. To demonstrate excusable neglect or good cause, Bolingbroke needed to substantiate any reason for his failure to attend the hearing. Because the circuit court found that Bolingbroke failed to substantiate his justifications, and because that finding is not clearly erroneous, Bolingbroke could not establish good cause.

us[ed] a demonstrated rational process [to reach] a conclusion that a reasonable judge could reach.” *Id.*

¶17 The circuit court’s findings of fact will be upheld unless they are “clearly erroneous,” meaning “against the great weight and clear preponderance of the evidence.” *Hennessey v. Wells Fargo Bank, N.A.*, 2022 WI 2, ¶¶37-38, 400 Wis. 2d 50, 968 N.W.2d 684 (citation omitted). We review the court’s application of the law to the facts independently, without deference to the circuit court. *Minuteman, Inc. v. Alexander*, 147 Wis. 2d 842, 853, 434 N.W.2d 773 (1989).

¶18 Bolingbroke fails to establish that his absence from trial was due to “excusable neglect” or any other good cause because he failed to demonstrate any cause for his absence to the court’s satisfaction.⁷ Bolingbroke argues that the circuit court erroneously found that he did not notify the court of his injury and inability to attend the January 21st trial until April, insisting that he faxed a letter to the court on January 20th and again on January 22nd. The circuit court reviewed the court record which reflects no communication from Bolingbroke from January 9th until the April 7th fax.

¶19 Despite Bolingbroke’s insistence that he sent earlier communications in the underlying cases, neither of his submissions proved that they were transmitted to the court as claimed, and he did not provide the circuit court with any fax confirmation or other documentation to bolster his claims. Bolingbroke did provide this court with additional documentation in his appendix, some of

⁷ On appeal, Bolingbroke claims a violation of his “constitutional rights of due process,” but fails to develop this argument or cite to any legal authority, therefore we do not address it. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

which appear dubious. Regardless of their authenticity, those documents were not submitted to the circuit court for its consideration, nor placed in the circuit court record. A party cannot supplement the record through their appendix. See **Reznichuk v. Grall**, 150 Wis. 2d 752, 754 n.1, 442 N.W.2d 545 (Ct. App. 1989). We therefore do not consider the supplemental documents provided by Bolingbroke in his appendix. See **State v. Kuhn**, 178 Wis. 2d 428, 439, 504 N.W.2d 405 (Ct. App. 1993). Accordingly, we conclude that the circuit court’s finding that it did not receive Bolingbroke’s alleged January 20th or January 22nd faxes was not “clearly erroneous.”

¶20 Bolingbroke also argues that the circuit court erred because the documents he submitted with his motion to reopen showed that he was seriously injured and unable to attend the January 21st trial. Based on our review of the documents—the Security Health Plan document and the After Visit Summary—we agree with the circuit court that they do not adequately support his claim. The After Visit Summary diagnoses him with a “rib injury,” but also indicates that Bolingbroke was provided with information about “chest wall strain” and prescribed pain killers and a muscle relaxant, suggesting that his injury was not a broken bone, but rather a muscle strain. The Security Health Plan document seeks more information about a “fracture of one rib” from date of service January 20, 2025, but that is not a diagnosis, nor does the hospital “After Visit Summary” contain any reference to a “fracture.” But regardless of the type of injury, the documents do not show that Bolingbroke was unable to attend court in-person that day, or, at the very least, contact the court and request to appear telephonically or by Zoom, as he had for other hearings. Bolingbroke also had ample opportunity to provide additional proof of his claimed injuries—the court gave him several

additional weeks after its initial hearing on the motion to reopen to provide that documentation—but he did not.

¶21 We conclude that the circuit court did not erroneously exercise its discretion in denying Bolingbroke’s motion to reopen. The court made proper findings of fact, examined the relevant facts, properly applied the “excusable neglect” standard, and demonstrated that it used a rational process to reach its decision. Accordingly, we affirm.

By the Court.—Order affirmed.

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

