COURT OF APPEALS
DECISION
DATED AND FILED

April 29, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3485

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

SEAN SIMPSON,

PLAINTIFF-APPELLANT,

v.

CAMELOT MUSIC,

DEFENDANT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: J. MAC DAVIS, Judge. *Affirmed.*

NETTESHEIM, J. Sean Simpson appeals pro se from a small claims judgment in favor of Camelot Music and an order denying his motion to reopen the judgment. Simpson raises a variety of issues which we will later identify and address. However, we first note a threshold defect in Simpson's appeal. Simpson appeals both the default judgment and the order denying his motion to reopen the judgment. However, § 799.29(1), STATS., bars an appeal

from a default judgment. Instead, the only permitted appeal is from the order denying a motion to reopen a default judgment. *See* ***id***. Certain of Simpson's appellate issues challenge the judgment, not the order. In the interests of completeness, we will discuss all of Simpson's issues, recognizing that those discussions may well constitute dicta. Regardless, we reject all of Simpson's arguments. Therefore, we affirm the order denying the motion to reopen the judgment.

On July 24, 1997, Simpson filed a small claims summons and complaint against Camelot. The pleadings scheduled the return date for August 11, 1997. Prior to the return date, Camelot filed a written answer denying Simpson's allegations and requesting dismissal of the complaint. According to the parties, the circuit court, by letter, scheduled a pretrial conference on September 24, 1997. By further letter, the court rescheduled the pretrial conference for November 5, 1997. On November 4, 1997, Simpson filed a letter with the court indicating that he was previously aware of the November 5 rescheduled conference but that he would not appear because he had not received notice of the rescheduling either by mail or personal service.[1] When Simpson failed to appear at the pretrial conference, the court granted Camelot's request for default judgment, dismissing Simpson's complaint with prejudice and costs.

On November 6, 1997, Simpson filed a motion to reopen the judgment claiming that he had not received notice, either by service or mail, of the rescheduled hearing. The circuit court denied Simpson's motion without a

[1] Simpson also stated in the letter that his religious beliefs prevented him from attending the pretrial conference on the rescheduled date.

hearing, finding that "[Simpson's] own letter in the file shows he knew of [the] date and intentionally chose not to come." Simpson appeals.

Simpson first contends that the circuit court did not have the authority to preside over a small claims proceeding in place of the court commissioner. Simpson is mistaken. Section 757.69(6), STATS., provides that "[e]very judge of a court of record has the powers and duties of a court commissioner." As a judge of a court of record, the circuit court had the authority to preside over the pretrial conference on November 5, 1997, and to subsequently dismiss Simpson's complaint.

Simpson next contends that the circuit court's entry of the default judgment was not timely. In support, Simpson notes that the court dismissed his complaint on November 5 but did not enter judgment until November 13. In support, Simpson relies upon § 799.24(1), STATS., which governs judgments entered in small claims actions. The statute provides: "When a judgment or an order is rendered, the judge, court commissioner or clerk of circuit court shall immediately enter it in the court record and note the date thereof which shall be the date of entry of judgment or order…." ***Id***. Simpson argues that because eight days lapsed between the circuit court's dismissal and the entry of judgment, the judgment should be vacated. We are unpersuaded.

The minutes from the November 5 hearing indicate that the circuit court dismissed the action based on Simpson's failure to appear and that costs were granted to Camelot. The minutes are signed by the circuit court and bear a file date of November 5. This action constituted an entry of judgment pursuant to § 799.24(1), STATS. While the later more detailed written judgment was

unnecessary under small claims procedures, it does not invalidate the earlier minute entry made by the circuit court.[2]

Simpson next contends that Camelot was not entitled to default judgment because it failed to appear at the August 11, 1997, return date. We reject Simpson's argument. On its face, the small claims summons and complaint instructed Camelot as follows: "You are being sued …. If you wish to dispute this matter: 1. You must appear at the time and place stated on this form. *(and/or)* 2. *You may file a written answer* on or before the date and time stated on this form….. If you do not appear or answer, a judgment may be granted to the plaintiff." Section 799.05(6), STATS., sets out a suggested form for a small claims summons. It requires that the form actually used shall be "substantially" as that set out in the statute. The form used in this case substantially tracks the statutory form.

Moreover, § 799.22(4)(b), STATS., expressly allows the option of a written answer in lieu of an appearance on the return date. The record reflects that Camelot filed a written answer to Simpson's complaint on August 8, three days prior to the return date. We conclude that Camelot's letter constituted an appearance in the action and, as such, Camelot was not required to appear on the return date.

Next, Simpson contends that the circuit court improperly dismissed his complaint because he had a motion for default judgment against Camelot then pending before the court. We reject this argument. The general rules of civil trial

[2] In fact, we commend this procedure since it provides us with a more detailed written accounting of the judgment and the reasons for it.

practice are set forth in ch. 806, STATS., and apply to small claims actions unless supplanted by a provision of ch. 799, STATS., the small claims chapter. *See* § 799.04(1), STATS.; ***King v. Moore***, 95 Wis.2d 686, 690, 291 N.W.2d 304, 306-07 (Ct. App. 1980). Because ch. 799 does not speak to the circuit court's authority to dismiss an action for failure to appear at a pretrial conference, we turn to the general rules of civil trial practice.

Section 805.03, STATS., authorizes a trial court to sanction a party with dismissal for failing to comply with procedural rules and for failing to obey court orders. In addition to its statutory power, our supreme court has stated that "a trial court has inherent power to dismiss an action for the failure of an attorney to obey an order to appear at a pretrial conference." ***Latham v. Casey & King Corp.***, 23 Wis.2d 311, 315-16, 127 N.W.2d 225, 227 (1964). Logically, this sanction extends to a pro se litigant such as Simpson.

Here, Simpson filed a letter with the circuit court the day before the pretrial conference stating his awareness of the conference to be held the following day and his intention not to attend. This court has held that a letter in which a party unilaterally excuses himself or herself from a proceeding is insufficient to excuse a party from appearing. *See* ***Buchanan v. General Cas. Co.***, 191 Wis.2d 1, 10-11, 528 N.W.2d 457, 461 (Ct. App. 1995). We concluded that dismissal under those circumstances was appropriate. *See* ***id***. at 13, 528 N.W.2d at 462. We note that neither § 805.03, STATS., nor ***Latham*** requires that all motions before the court be disposed of prior to dismissal. We conclude that the circuit court did not erroneously exercise its discretion when it dismissed Simpson's claim prior to

disposing of his motion. Had Simpson appeared at the pretrial conference, it is likely that his motion would have been disposed of at that time.[3]

Finally, Simpson argues that the circuit court erroneously denied his motion to reopen without a hearing. Section 799.29(1), STATS., gives a circuit court discretion to grant a motion to reopen a default judgment "upon notice and motion or petition duly made and good cause shown." We will not reverse a default judgment or an order denying a motion to reopen a default judgment unless the circuit court erroneously exercised its discretion. *See* ***Gaertner v. 880 Corp.***, 131 Wis.2d 492, 500, 389 N.W.2d 59, 62 (Ct. App. 1986).

Simpson's motion to reopen was based on his claim that he was absent from the pretrial conference because he was not given notice of the November 5, 1997 hearing. However, the day before the scheduled pretrial, Simpson filed a letter with the court stating that he was aware of the November 5 conference but declined to attend because he had not received notice in the mail. The circuit court denied Simpson's motion because the letter demonstrated that Simpson was aware of the proceedings but chose not to appear. Under these circumstances, a hearing on the motion was not necessary. Even accepting Simpson's statement in support of his motion as true, it failed to demonstrate "good cause" because the only explanation for his failure to appear was belied by the letter in his file.

Simpson's motion did not cite to, nor are we aware of, any authority which expressly recites how notice of a pretrial conference is provided in a small claims action. Regardless, we agree with the circuit court that Simpson's letter

[3] Moreover, as we have already noted, Camelot was not in default.

acknowledged notice of the rescheduled conference. As the ***Buchanan*** case teaches, Simpson was not entitled to unilaterally decide that he would not attend. *See* ***Buchanan,*** 191 Wis.2d at 10-11, 528 N.W.2d at 461. And, if he did so, he acted at his peril. We conclude that the circuit court properly rejected Simpson's motion to reopen the default judgment.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.