**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

May 19, 1998

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 98-0370**

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

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**ANN LORRAINE VANCAUTEREN,**

**PLAINTIFF-APPELLANT,**

**V.**

**HERITAGE MUTUAL INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed.*

HOOVER, J. Ann Lorraine Van Cauteren appeals a judgment dismissing her small claims action against Heritage Mutual Insurance Company for withholding $33.73 from her paycheck. Van Cauteren contends that she was denied her Fifth Amendment due process rights when Heritage failed to file its answer within the time limits and when the trial court failed to address her motions to strike Heritage's pleadings and for sanctions. She further argues that by

denying her a default judgment, the court was deprived of jurisdiction and that it erred by finding her claim frivolous and assessing costs. We reject these arguments and affirm.

Van Cauteren is a Heritage employee. She completed an employee's Wisconsin withholding exemption certificate, alleging she was fully exempt from Wisconsin income tax withholdings. The Wisconsin Department of Revenue asked Van Cauteren to verify that she was exempt. Van Cauteren responded with a letter stating that tax withholdings have no application absent a court order, and that filing a W-4 form is purely voluntary.

The DOR subsequently voided her total exemption claim. It directed Heritage to withhold Wisconsin income tax from her future wages based on one exemption claim. Heritage withheld $33.73 for state income taxes from Van Cauteren's next paycheck.

Van Cauteren brought a small claims action claiming Heritage withheld income without her consent. At a motion hearing, Van Cauteren requested the court to enter a default judgment against Heritage because it filed its answer at 9:49 a.m. rather than at or before 8:15 a.m on the return date.[1] She also moved to strike Heritage's answer and motions for failure to state a claim upon which relief could be granted and for sanctions, claiming Heritage's motion to dismiss was frivolous. The court denied her motions. It granted Heritage's motion to dismiss after finding that the amounts Van Cauteren sought to recover were withheld for income tax purposes. Van Cauteren appeals.

[1] Section 799.22(2), STATS., provides: "WHEN DEFENDANT FAILS TO APPEAR. If the defendant fails to appear on the return date or on the date set for trial, the court may enter a judgment upon due proof of facts which show the plaintiff entitled thereto."

Van Cauteren first contends that the time limits to respond to a small claims complaint are absolute, and she was denied her constitutional due process rights because Heritage filed its answer one and one-half hours late. Van Cauteren cites ***Coffin v. Ogden***, 85 U.S. 120 (1873), to support her argument that time limits are absolute. This court is unpersuaded. ***Coffin*** does not address the instant issue. Wisconsin law has long recognized that trial courts have discretionary authority to grant a motion for default judgment, a judgment not favored by law. ***WPS Corp. v. Krist***, 104 Wis.2d 381, 395, 311 N.W.2d 624, 631 (1981). The trial court denied Van Cauteren's default motion, finding that she was not prejudiced by the one-and-one-half-hour delay in filing.

In reviewing discretionary decisions, the appellate court determines only if the trial court examined the facts of record, applied the proper legal standard, and reached a reasonable conclusion. ***Loy v. Bunderson***, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982). The record supports the court's conclusion and that it properly exercised discretion. Not surprisingly, Van Cauteren supplies this court with no authority for the legal non sequitur that failure to abide by procedural time limits is a violation of due process, nor for the unstated but procedurally more logical, if equally unsound, argument that the trial court's denial of the motion for default judgment denied her right to due process. In light of precedent demonstrating that motions for default judgment are within the court's discretion, Van Cauteren cannot prevail in her argument.

Van Cauteren also contends that the failure to timely file a response creates a jurisdiction defect. She cites several federal cases and a Montana case to support her assertion. Each case she cites addresses due process or the effects of lack of jurisdiction generally; none stands for the proposition that failure to file an

answer timely creates a jurisdictional defect. She provides no Wisconsin authority supporting her contention and this court finds none.

Further, Van Cauteren argues that she was denied her Fifth Amendment due process rights when the trial court failed to address her motion to strike Heritage's pleadings for failure to state a claim upon which relief could be granted, and when it failed to address her motion for sanctions based on her argument that Heritage's motion to dismiss was frivolous. Van Cauteren makes conclusory contentions as opposed to legal arguments sufficient to permit this court to meaningfully consider her assertions. Her arguments are without applicable relevant authority. Moreover, Heritage's pleadings provided Van Cauteren with notice of the basis of Heritage's claim and counterclaim. In addition, given the employer's duty to withhold income taxes, Heritage's motion to dismiss was not frivolous. Therefore, Van Cauteren can show no prejudice by the trial court's failure to consider her patently unmeritorious motions.

Finally, Van Cauteren asserts that the trial court erred by concluding that her suit against Heritage was frivolous and imposing sanctions. This court disagrees. When the taxing authority determines that an employee is not exempt from income tax withholding and so notifies the employer, the employer is required by law to withhold taxes. The employer is immune from suit when it does so. Van Cauteren offered vague constitutional, but no arguably meritorious reasons, why the immunity should not have prevented this suit in the first instance. Once a finding of frivolousness is made, the imposition of sanctions is discretionary. Section 814.025, STATS. The employer needlessly incurred attorney fees to defend against a frivolous suit devoid of any arguable merit. It was therefore a proper exercise of the trial court's discretion to award the employer its costs of defense.

*By the Court.*—Judgment affirmed.

This opinion will not be published. RULE 805.23(1)(b)4, STATS.