

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 15, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-0526-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

OWEN R. WILLIAMS,

PLAINTIFF-RESPONDENT,

V.

GERALD VAN CAMP,

**DEFENDANT-THIRD-
PARTY PLAINTIFF-APPELLANT,**

V.

**WILLIAMS & KORF AND WISCONSIN MUTUAL
INSURANCE COMPANY,**

**THIRD-PARTY DEFENDANTS-
RESPONDENTS.**

APPEAL from an order of the circuit court for Polk County:
PAUL J. LENZ, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Gerald Van Camp appeals an order denying his motion to vacate a summary judgment that dismissed his legal malpractice counterclaim against Owen Williams.¹ Williams moved for summary judgment on the ground that Van Camp did not have an expert witness to support his malpractice claim. Van Camp defaulted on the motion because his attorney, Paul Horvath, did not open his mail for several months. The trial court concluded that Horvath's inexcusable neglect should be imputed to Van Camp because Van Camp was not reasonably diligent. The court also found that Van Camp failed to show a reasonable likelihood of success on the merits of his counterclaim. We conclude that the trial court properly exercised its discretion when it denied the motion to reopen.

A motion to vacate a judgment is addressed to the trial court's discretion and this court will not disturb the trial court's determination absent an erroneous exercise of that discretion. *See Miro Tool & Mfg., Inc. v. Midland Machinery, Inc.*, 205 Wis.2d 650, 654-55, 556 N.W.2d 437, 439 (Ct. App. 1996). A discretionary order will be affirmed if there is any reasonable basis for it. *See Littman v. Littman*, 57 Wis.2d 238, 250, 203 N.W.2d 901, 907 (1973).

The trial court reasonably imputed Horvath's inexcusable neglect to Van Camp. An attorney's neglect is ordinarily imputed to his client. An exception is recognized when the client has acted as a reasonable and prudent person engaging a lawyer of good reputation, has relied on the lawyer to protect his rights, and has made reasonable inquiry concerning the proceedings. *See Charolais Breeding Ranches, Ltd. v. Wiegel*, 92 Wis.2d 498, 514, 285 N.W.2d

¹ This is an expedited appeal under RULE 809.17, STATS.

720, 727-28 (1979). Van Camp's affidavit does not establish that he made reasonable inquiry concerning the proceedings. While the affidavit is difficult to understand and lacking in detail, it appears that Van Camp repeatedly attempted to contact Horvath at his office with no success. From this, the trial court reasonably determined that Van Camp should have realized that Horvath was no longer appropriately functioning as his attorney.

In addition to establishing excusable neglect or a reason for not imputing inexcusable neglect to him, Van Camp was required to establish a meritorious defense to the summary judgment motion. *See J.L. Phillips & Assos., Inc. v. E. & H. Plastic Corp.*, 217 Wis.2d 348, 355, 577 N.W.2d 13, 16 (1998). Summary judgment was granted because Van Camp was required to present expert testimony to support his counterclaim for legal malpractice because his claim against Williams involved matters outside the realm of ordinary persons. *See Pierce v. Coldwell*, 209 Wis.2d 355, 362, 563 N.W.2d 166, 169 (Ct. App. 1997). In order to support his motion to reopen the default summary judgment, Van Camp was required to respond to the summary judgment motion by presenting expert testimony in support of his counterclaim. The trial court properly exercised its discretion when it refused to reopen the malpractice counterclaim because the claim would fail for lack of evidence.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

