COURT OF APPEALS
DECISION
DATED AND FILED

November 16, 2016

Diane M. Fremgen
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. 2016AP756
2016AP757
2016AP758

Cir. Ct. Nos. 2015SC1213
2015SC1214
2015SC1215

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

MIDLAND FUNDING LLC,

PLAINTIFF-RESPONDENT,

V.

KORRY ARDELL,

DEFENDANT-APPELLANT.

APPEALS from orders of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Affirmed*.

¶1 REILLY, P.J.[1] Korry Ardell appeals from orders denying his motions to reopen a default judgment in favor of Midland Funding LLC (Midland) entered in three small claims actions.[2] Ardell claimed he did not receive the summons and complaint or notice of the pretrial conference in any of the cases. The circuit court denied Ardell's motion, concluding that Ardell failed to demonstrate excusable neglect or set forth a meritorious defense to Midland's claims. We agree and affirm the circuit court's discretionary decision.

BACKGROUND

¶2 On June 2, 2015, Midland filed three separate lawsuits against Ardell, alleging Ardell defaulted on three credit card debts. Midland stated a claim for money judgments totaling $9885.79. The summons and complaint in each case were mailed to Ardell, but all were returned undelivered on June 19, 2015.[3] On June 23, 2015, Midland, through counsel, sent a letter to the circuit court requesting an adjournment "to allow additional time to obtain service on the defendant." On July 17, 2015, Midland again sent a letter to the court requesting an adjournment stating the same reason. On August 13, 2015, Midland filed a process server affidavit indicating six failed attempts to personally serve Ardell between July 31 and August 6 at the address the original summon and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] We ordered these cases consolidated for purposes of briefing and disposition.

[3] Under WIS. STAT. § 799.12(3), "Service of the summons is considered completed when it is mailed, unless the envelope enclosing the summons has been returned unopened to the clerk prior to the return date."

complaint were mailed to. Each time the process server was told that Ardell was not home, that he was working in Sheboygan, or the server received no response.

¶3 On July 20, 2015, Ardell filed an answer with the court after he "noticed the cases listed on the Wisconsin Circuit Court Access [(CCAP)] page when checking on a pending … case he had." Ardell's answer stated that he contested Midland's claims as he had "not received a copy of [the] summons [and] complaint." His answer listed a different mailing address, a post office box, as his proper address. After receiving Ardell's answer, the court scheduled a pretrial conference on October 7, 2015.

¶4 Ardell appeared in person for the October 7 pretrial conference, which was adjourned "for re-mailing" of the summons and complaint. On October 28, 2015, Ardell filed demands for discovery and production of documents in each case. The court scheduled the adjourned pretrial conference for January 13, 2016, and issued a notice of pretrial conference on December 11, 2015. On that same date, a judgment of conviction was entered against Ardell in case No. 2014CF3516, and he was subsequently incarcerated. Ardell failed to appear at the pretrial conference on January 13, 2016, and the circuit court entered money judgments against Ardell in favor of Midland on January 15, 2016.

¶5 On February 9, 2016, Ardell filed motions to reopen in each small claims case, asserting that he did not receive notice of the pretrial conference as he was incarcerated at the time. He claimed that he would succeed if the case was

reopened as the statute of limitations had expired[4] and he never received a copy of the summons and complaint. At the motion hearing, counsel for Midland claimed that the summons and complaint in each case was mailed to Ardell at the post office box address after the first pretrial conference. The circuit court denied Ardell's motions and upheld the default judgments, finding that the pretrial notice was mailed to the address Ardell provided to the court, and Ardell failed to present any meritorious defense to the suits. Ardell appeals.

DISCUSSION

¶6 Ardell argues that the circuit court erroneously exercised its discretion in denying his motions to reopen as the summons and complaint were never served on Ardell and he never received notice of the pretrial conference due to his incarceration.[5] We disagree. Whether to reopen a default judgment is within the sound discretion of the circuit court. *See* ***Kovalic v. DEC Int'l***, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994). We will affirm a circuit

[4] Ardell did not address the statute of limitations during the motion hearing, nor did he develop this argument on appeal. *See* ***Clean Wis., Inc. v. PSC***, 2005 WI 93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768 ("We will not address undeveloped arguments.").

[5] Ardell argues that the default judgment entered by the circuit court is "void for lack of proper service and failure to confer personal jurisdiction over Ardell on all three January 15, 2016 judgments." Ardell's argument suggests that his motions were intended to be motions to vacate a void judgment pursuant to WIS. STAT. § 806.07(1)(d). Whether Ardell was or was not properly served with the summons or complaint is a question of fact to be determined by the circuit court. In this case, the circuit court judge did not make an evidentiary finding that the summons and complaints were properly served on Ardell under WIS. STAT. § 799.12. We conclude, however, that the judgments are not void for failure to confer personal jurisdiction over Ardell. Ardell not only filed an answer in the cases, but he appeared in person at the pretrial conference on October 7, 2015, and subsequently filed demands for discovery and production of documents on Midland. Under the circumstances, we conclude that the judgments are not void as Ardell appeared and submitted to the jurisdiction of the court. *See* WIS. STAT. § 799.14(2).

court's discretionary decision unless exercised erroneously. ***Id.*** The circuit court properly exercises its discretion if it examines the relevant facts, applies a proper standard of law, and reaches a conclusion a reasonable judge could reach using a demonstrated rational process. ***Franke v. Franke***, 2004 WI 8, ¶55 & n.38, 268 Wis. 2d 360, 674 N.W.2d 832. "[B]ecause the exercise of discretion is so essential to the [circuit] court's functioning, we generally look for reasons to sustain discretionary decisions." ***Sukala v. Heritage Mut. Ins. Co.***, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610 (citations omitted).

¶7 WISCONSIN STAT. § 799.29(1)(a) enumerates the exclusive procedure for reopening a default judgment in a small claims action. *See* ***King v. Moore***, 95 Wis. 2d 686, 690, 291 N.W.2d 304 (Ct. App. 1980). Under § 799.29(1)(a), "the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown." The term "good cause" is not defined by statute, but courts generally consider the factors described in WIS. STAT. § 806.07(1), which includes "[m]istake, inadvertence, surprise, or excusable neglect." Sec. 806.07(1)(a).

¶8 We read Ardell's argument to be that his failure to appear at the January 13, 2016 pretrial conference was due to excusable neglect as he was incarcerated at the time and never received notice of the hearing.[6] Relief under the

[6] Ardell also makes an argument that the "Circuit Court did not properly grant relief under [WIS. STAT. §] 806.07(1)(h)." Relief under § 806.07(1)(h) is limited to "only the most egregious circumstances." ***Allstate Ins. Co. v. Brunswick Corp.***, 2007 WI App 221, ¶17, 305 Wis. 2d 400, 740 N.W.2d 888. Ardell failed to develop an argument as to why this case meets that standard; therefore, we refuse to reach this issue. *See* ***Clean Wis., Inc.***, 282 Wis. 2d 250, ¶180 n.40.

WIS. STAT. § 806.07(1)(a) factors requires that the moving party demonstrate two distinct elements: (1) the judgment was the product of mistake, inadvertence, surprise, or excusable neglect and (2) the moving party has put forth a meritorious defense. ***Hollingsworth v. American Fin. Corp.***, 86 Wis. 2d 172, 184, 271 N.W.2d 872 (1978). "Excusable neglect is not synonymous with neglect, carelessness or inattentiveness. [Instead, it] 'is that neglect which might have been the act of a reasonably prudent person under the same circumstances.'" ***Giese v. Giese***, 43 Wis. 2d 456, 461, 168 N.W.2d 832 (1969) (citations omitted).

¶9 In this case, we conclude that Ardell has failed to establish either that the judgment was a result of mistake, inadvertence, surprise, or excusable neglect or that he has a meritorious defense to Midland's claims. Ardell claims that he "assumed" that the "Wisconsin Department of Corrections would let him know about [any court dates], or transport him to any court dates that were scheduled involving the need for his presence." Ardell's incorrect assumption, however, does not render his neglect excusable. Ardell was well aware of the existence of these cases: he submitted an answer; attended the first pretrial conference on October 7, 2015, which was "adjourned for remailing" of the summons and complaint; and he subsequently filed a demand for documents. Thus, it was Ardell's responsibility, despite his incarceration, to ensure that he remained abreast of the case status.

¶10 Ardell further claims that "according to the case history on [the] Wisconsin Circuit Court Access page" the circuit court clerk received the notice of the January 13 pretrial conference "back as undeliverable or unclaimed." We note that the allegedly returned notices are not part of the record, and therefore we cannot ascertain whether the notice was returned undeliverable or the reason for

the return. The appellant, Ardell, bears the burden to ensure that the record is complete and that it includes all documents pertinent to the issues raised on appeal. *See* ***Schaidler v. Mercy Med. Ctr. of Oshkosh, Inc.***, 209 Wis. 2d 457, 469, 563 N.W.2d 554 (Ct. App. 1997). The only record we do have is the circuit court's discussion of the notice at the motion hearing. According to the circuit court:

> There was a note attached to—as I look through the file—on a notice of hearing and that was the notice that provided for the pretrial conference on [January] 13th…. [T]hat note indicates opened in error. Korry Ardell incarcerated. Please … see CCAP for details. Will not be able to attend. And I don't know where that information came from.

¶11 The circuit court found that the notice was sent to Ardell's post office box, as were all previous notices, which Ardell stated was the correct address for correspondence. Ardell indicated that a relative checked the post office box regularly, but he suggested that perhaps the notice got "lost in the mail" or "got mixed up with the mail somewhere." The circuit court made a finding of fact that the notice of pretrial conference was likely "picked up by someone that had been authorized by Mr. Ardell to pick up his mail" who then "notified the clerk's office that he was incarcerated." Under the circumstances, the circuit court concluded that Ardell had not demonstrated excusable neglect. We are understandably leery of a party's "lost in the mail" argument. *See* ***Casper v. American Int'l S. Ins. Co.***, 2011 WI 81, ¶47, 336 Wis. 2d 267, 800 N.W.2d 880 ("[C]ourts should be skeptical of glib claims that attribute fault to the United States Postal Service."). Accordingly, we find that the circuit court properly exercised its discretion based on the facts and reached a conclusion a reasonable judge could reach.

¶12 As we determined that the circuit court correctly found that Ardell had not demonstrated excusable neglect, we need not reach the issue of whether Ardell put forth a meritorious defense to Midland's claims. We do note that Ardell's brief suggests a misunderstanding of the status of the law. Ardell argues that he presented a meritorious defense as he demonstrated that he was not provided a copy of the summons and complaint and he did not received notice of the January 13 pretrial conference. What Ardell needed to demonstrate, however, was some evidence of, as the phrase "meritorious defense" implies, a defense on the *merits* of the case. We agree with the circuit court that Ardell has failed to submit any defense to Midland's claims. Accordingly, the circuit court's conclusions were not in error.

By the Court.—Orders affirmed.

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