

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 24, 2005

Cornelia G. Clark
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 No. 04-2169
STATE OF WISCONSIN**

Cir. Ct. No. 04FO001020

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SUSAN L. BAUER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Susan Bauer, appearing pro se, appeals an order entering default judgment against her on a citation for violating WIS.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

ADMIN. CODE UWS § 18.06(14). Bauer argues the order is invalid because a court clerk signed it without the written direction of the assigned judge or any other judge or court commissioner. Bauer did not move to reopen the order. We conclude Bauer has failed to preserve the issue for appellate review because she failed to move the circuit court to reopen the default judgment order. We affirm.

FACTS

¶2 On March 29, 2004, a University of Wisconsin police officer issued Bauer a citation for violating WIS. ADMIN. CODE § UWS 18.06(14) for camping or picnicking on UW land. The citation required Bauer to appear in court on April 23, 2004.

¶3 By correspondence to the circuit court dated April 12, 2004, Bauer pled not guilty. The circuit court scheduled a pretrial conference for May 27, 2004. On May 21, 2004, Bauer wrote the court asking to reschedule the pretrial conference until the end of June 2004. The pretrial conference apparently was not rescheduled; it also does not appear the circuit court responded to Bauer's letter. The pretrial conference was held as scheduled on May 27, 2004. Bauer did not appear and an order for default judgment, signed by deputy court clerk Robin Cavanaugh, was entered against Bauer. The record does not contain a written order by the circuit court granting Cavanaugh the authority to sign the default judgment order on its behalf. Bauer appeals.

DISCUSSION

¶4 Bauer argues the default judgment order is invalid because Cavanaugh signed it in her capacity as deputy court clerk without the written direction of a judge. According to Bauer, WIS. STAT. § 806.06 instructs that the

court renders a judgment only when it is signed by the judge or by the clerk at the judge's written direction. Because a clerk signed the order without the written direction of any judge, Bauer contends, the order violates § 806.06 and the due process clause of the 14th Amendment to the United States Constitution.

¶5 We may be inclined to agree with Bauer had she properly preserved this issue before the circuit court. *See State v. Prihoda*, 2000 WI 123, ¶19, 239 Wis. 2d 244, 618 N.W.2d 857 (a clerk has the authority under WIS. STAT. § 806.06(2) to sign a judgment but only upon the written order of a judge). However, the record reveals no evidence that Bauer moved the circuit court to reopen the default judgment order under WIS. STAT. § 806.07. Her failure to do so is fatal. “A decision to vacate a default judgment is addressed to the discretion of the trial court.” *Olson v. Dunbar*, 149 Wis. 2d 213, 218-19, 440 N.W.2d 792 (Ct. App. 1989). In essence, Bauer is asking us to reopen the default judgment order. However, the circuit court was never given the opportunity to exercise its discretion on this matter. We may not do what is solely vested in the circuit court. *Id.* at 219.

¶6 Accordingly, we conclude the issue presented is waived because Bauer failed to ask the court to reopen the default judgment order under WIS. STAT. § 806.07. Bauer, as the party alleging error, has the burden of establishing by reference to the record that the court was informed of the error and given the opportunity to cure it. *See Terpstra v. Soiltest, Inc.*, 63 Wis. 2d 585, 594, 218 N.W.2d 129 (1974). She has failed to do so. We will not decide a matter not presented to the circuit court. *See Preloznik v. City of Madison*, 113 Wis. 2d 112, 126, 334 N.W.2d 580 (Ct. App. 1983).

By the Court.—Order affirmed.

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

