COURT OF APPEALS
DECISION
DATED AND FILED

March 8, 2018

Sheila T. Reiff
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. 2017AP1054-AC **Cir. Ct. No. 2016CV59**

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

GENE RANSOM, JUDY RANSOM, CARLA MILLS, MARILYN ACKERSON, WALLEN CAPPER AND SARAH G. LISTER,

PLAINTIFFS-RESPONDENTS,

V.

JANICE M. BASSWOOD AND CHRISTOPHER J. SARGENT,

DEFENDANTS-APPELLANTS,

THE HO-CHUNK NATION, THE PACESETTER CORPORATION, THE SINGLE-FAMILY DWELLING AND JOHN DOE,

DEFENDANTS.

APPEAL from an order of the circuit court for Jackson County: GLORIA L. DOYLE, Judge. *Affirmed in part; reversed in part; and cause remanded for further proceedings.*

Before Lundsten, P.J., Blanchard and Fitzpatrick, JJ.

¶1 PER CURIAM. Six residents of Black River Falls, Wisconsin, (who we will call "the Plaintiffs") brought suit in the Jackson County Circuit Court against Janice Basswood and her husband, Christopher Sargent. Plaintiffs' complaint alleged that a house in which Basswood resided was a public nuisance under the Drug House Abatement Law[1] and a private nuisance. The circuit court granted a default judgment against Basswood and Sargent on both the public nuisance and private nuisance claims, and ordered abatement of the nuisance. Basswood and Sargent filed a motion to vacate the default judgment. That motion was denied by the circuit court.

¶2 Basswood and Sargent appeal and argue that the default judgment should be vacated because the house was not a public nuisance and service of the summons and complaint was insufficient. We conclude that, pursuant to the Drug House Abatement Law, only municipalities may bring an action to have a house declared a public nuisance and have the public nuisance abated. The Plaintiffs are private citizens and, therefore, could not bring a valid public nuisance claim under the Drug House Abatement Law. As a result, we reverse the circuit court's denial of the motion to vacate the default judgment on the public nuisance claim and remand to the circuit court for dismissal of the public nuisance claim. We also

[1] WISCONSIN STAT. §§ 823.113-.115 (2015-16) are known as the "Drug House Abatement Law." *See* ***City of Milwaukee v. Arrieh***, 211 Wis. 2d 764, 766-767, 565 N.W.2d 291 (Ct. App. 1997).

All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

conclude that there was sufficient service of the summons and complaint on Basswood and, accordingly, affirm the denial of the motion to vacate the default judgment granted against Basswood on the private nuisance claim.[2]

BACKGROUND

¶3 The complaint alleges the following. The Plaintiffs are Gene and Judy Ransom, Carla Mills, Marilyn Ackerson, Wallen Capper, and Sarah Lister, and each lives in Black River Falls. Basswood resides in a house at N6641 Riverview Road in Black River Falls.[3] We pause to mention that the complaint never alleges that anyone owns the Riverview Property. However, because Plaintiffs do not dispute Basswood's contention that she owns the Riverview Property, we take it as a given.[4]

[2] Plaintiffs brought suit against Defendants in addition to Basswood and Sargent, but they are not parties to this appeal and will not be mentioned further.

[3] For clarity, we will refer to the property as the "Riverview Property." References to the address as both "Riverview Road" and "Riverview Drive" are made in the record. Plaintiffs request that, for purposes of this appeal, we take judicial notice of maps published by a governmental authority. *See* ***Davis v. State***, 134 Wis. 632, 624-43, 115 N.W. 151 (1908). Basswood failed to file a reply brief and forfeited any opportunity to dispute this request by Plaintiffs. *See* ***State v. Bullock***, 2014 WI App 29, ¶20 n.3, 353 Wis. 2d 202, 844 N.W.2d 429. Therefore, we will assume that any reference to Riverview Road or Drive is referencing the property at N6641 Riverview in Black River Falls. JACKSON COUNTY, WISCONSIN, MAPPING AND PROPERTY INFORMATION, http://jacksoncowi.wgxtreme.com/ (last visited Feb. 8, 2018).

[4] Plaintiffs alleged in the complaint that Sargent may be living at the Riverview Property. But, Basswood and Sargent assert that Sargent has not lived at the house for over seven years, and Plaintiffs do not now dispute that contention. Plaintiffs do not contend that Sargent has an ownership interest in the Riverview Property or its contents. Sargent has asserted no such interests, and Basswood contends that she is the owner of the Riverview Property. As a result, Sargent appears to have no interest in the Riverview Property relevant to this lawsuit. We conclude that Sargent has no interest in this appeal and he will not be mentioned further.

¶4 Plaintiffs' first cause of action alleges that, in July 2014, Basswood was convicted of maintaining a Drug Trafficking Place in violation of WIS. STAT. § 961.42(1) (2013-14).[5] The first cause of action also asserts that, because of the conviction, the Riverview Property constitutes a public nuisance pursuant to the Drug House Abatement Law. The public nuisance abatement remedies requested by Plaintiffs regarding the first cause of action are taken virtually word-for-word from the abatement provisions of the Drug House Abatement Law. *See* WIS. STAT. § 823.114.

¶5 Plaintiffs' second cause of action is based on the common law and alleges that the Riverview Property is in "disrepair" because of Basswood's negligence and, consequently, the Riverview Property interferes with Plaintiffs' use and enjoyment of their properties and is a private nuisance. The only remedy requested in the complaint as to the private nuisance cause of action is that Basswood "cease and abate the nuisance."

¶6 There is no dispute as to the following facts. A process server twice attempted service of the summons and complaint on Basswood at the Riverview Property but was unable to serve her personally. The process server substituted service by, instead, serving Basswood's adult daughter who was residing at the Riverview Property at the time.

¶7 Basswood did not file a timely answer to the complaint. Plaintiffs moved for default judgment on both causes of action. The circuit court granted the motion, observing that the complaint stated a claim that Basswood created "a

[5] Basswood does not dispute that she was convicted of that crime in the time frame alleged.

public nuisance per se" by owning a "drug house as defined in WIS. STAT. § 823.113" (the Drug House Abatement Law). The circuit court granted an order for abatement of the Riverview Property which stated: (1) all personal property "used in the nuisance" was to be removed from the Riverview Property; (2) there was to be "closure of the building" "for any purpose;" and (3) the Riverview Property was to be sold or razed. The language of the circuit court order tracks the public nuisance abatement remedies required by the Drug House Abatement Law. *See* WIS. STAT. § 823.114.

¶8 Basswood filed a motion to vacate the default judgment. The circuit court upheld the default judgment after finding that service on Basswood was sufficient. Basswood now appeals.

¶9 We will mention other material facts relevant to particular arguments in the Discussion that follows.

DISCUSSION

I. The Default Judgment On the Public Nuisance Claim.

¶10 We first consider whether the circuit court erroneously exercised its discretion in failing to vacate the default judgment against Basswood on the public nuisance claim. As mentioned, Plaintiffs' first cause of action relied solely on the provisions of the Drug House Abatement Law to support the claim that the Riverview Property is a public nuisance and that the public nuisance must be abated. Basswood does not argue on appeal that the cause of action fails to state a valid claim for relief. However, we raise the issue sua sponte and conclude that the plain language of the Drug House Abatement Law does not grant a valid cause

of action to private citizens such as the Plaintiffs. Instead, only a city, town or village where the property is located may request relief under that law.

¶11 The grant of a default judgment is within the circuit court's discretion. ***Oostburg State Bank v. United Sav. & Loan Ass'n***, 130 Wis. 2d 4, 11, 386 N.W.2d 53 (1986). Likewise, the approval or denial of a motion to vacate a default judgment is within the circuit court's discretion, and this court will not disturb the circuit court's determination absent an erroneous exercise of discretion. ***Baird Contracting, Inc. v. Mid Wis. Bank of Medford***, 189 Wis. 2d 321, 324, 525 N.W.2d 276 (Ct. App. 1994). A circuit court properly exercises its discretion when it examines the relevant facts, applies the proper standard of law, and reaches a reasonable conclusion by using a demonstrated rational process. ***Id.***

¶12 A circuit court's authority to vacate a default judgment is derived from WIS. STAT. § 806.07, which lists conditions under which a circuit court may exercise its discretion to vacate a default judgment. *See* § 806.07(1); ***Larry v. Harris***, 2008 WI 81, ¶17, 311 Wis. 2d 326, 752 N.W.2d 279. The relevant portions of § 806.07(1) provide:

> (1) On motion and upon such terms as are just, the court … may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> ….
>
> (h) Any other reasons justifying relief from the operation of the judgment.

¶13 In order to obtain a default judgment against a party, a complaint must contain allegations sufficient in law to state a claim for relief against a defendant. ***Davis v. City of Elkhorn***, 132 Wis. 2d 394, 399, 393 N.W.2d 95 (Ct.

App. 1986) ("The fact that a party may be in default cannot confer a right to judgment upon a claim not recognized by law.").

¶14 In our analysis, we interpret the provisions of the Drug House Abatement Law. "[S]tatutory interpretation begins with the language of the statute." ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoting ***Seider v. O'Connell***, 2000 WI 76, ¶43, 236 Wis. 2d 211, 612 N.W.2d 659). "If the meaning of the statute is plain, we ordinarily stop the inquiry." ***Id.*** We interpret a statute "in the context in which it is used; not in isolation but as part of a whole." ***Id.***, ¶46.

¶15 WISCONSIN STAT. § 823.113(1) states that any structure used to facilitate the delivery, distribution, or manufacture of controlled substances "is a public nuisance *and may be proceeded against under this section*" (emphasis added). Section 823.113(2) then sets forth who may request relief. It states:

> If a nuisance exists, *the city, town or village where the property is located may maintain an action in the circuit court to abate the nuisance* and to perpetually enjoin every person guilty of creating or maintaining the nuisance, the owner, lessee or tenant of the building or structure where the nuisance exists and the owner of the land upon which the building or structure is located, from continuing, maintaining or permitting the nuisance.

(Emphasis added.)

¶16 We conclude that the circuit court erroneously exercised its discretion in not vacating the public nuisance default judgment because, regardless of Basswood's failure to file a timely answer, Plaintiffs' public nuisance claim under the Drug House Abatement Law fails based on the allegations of the complaint and the terms of the statute. We raise this issue sua sponte because the law clearly provides no cause of action based on the facts alleged in the complaint:

none of the Plaintiffs is a city, town, or village and only the city, town, or village where the Riverview Property was located had the right to bring the public nuisance claim under the Drug House Abatement Law. Plaintiffs had no legal basis to bring the public nuisance cause of action against Basswood pursuant to the Drug House Abatement Law.

¶17 For those reasons, we reverse the order of the circuit court which denied Basswood's motion to vacate the default judgment on the public nuisance claim of the Plaintiffs, and remand the matter to the circuit court and direct the circuit court to dismiss the public nuisance claim.[6]

II. Service On Basswood Was Sufficient.

¶18 We now discuss whether there was sufficient service of the summons and complaint on Basswood. This is Basswood's only argument to vacate the default judgment on the private nuisance claim. We conclude that service was properly substituted when Basswood's adult daughter was served at the Riverview Property. Accordingly, we affirm the circuit court's denial of Basswood's motion to vacate the default judgment on the private nuisance claim.

¶19 Pursuant to WIS. STAT. § 801.11(1)(b)1, if after performing "reasonable diligence," a defendant cannot be served personally, he or she may be served "by leaving a copy of the summons at the defendant's usual place of

[6] We express no position whether on remand Plaintiffs should, or should not, be granted leave to state a cause of action for public nuisance on any basis apart from the Drug House Abatement Law. Separately, because of our ruling on the public nuisance claim of the Plaintiffs, we need not reach Basswood's arguments regarding claim preclusion or whether the circuit court properly determined the rights of anyone living at the real estate pursuant to the provisions of WIS. STAT. § 823.113(4)(d).

abode" with a competent family member of at least fourteen years of age. Sec. 801.11(1)(b)1. As it concerns sufficiency of service, Basswood argues only that the place where her daughter received substitute service (the Riverview Property) was not Basswood's "usual place of abode." Basswood's argument fails because the evidence presented to the circuit court supports the court's finding that the Riverview Property was her "usual place of abode." Sec. 801.11(1)(b)1.

¶20 The circuit court found, through facts established in affidavits Basswood presented to the circuit court, that Basswood owned and had total control over the Riverview Property. Basswood admitted to owning, and paying taxes and insurance on, the Riverview Property for more than twenty years. She also admitted to cleaning and repairing the house to try to keep it out of disarray and acknowledged a desire to pass the house down to her children and grandchildren.

¶21 Basswood contends that, at the time of service of the summons and complaint, she was living with her ill, elderly mother. But, a defendant's "usual place of abode" is the defendant's permanent residence or primary place of residence. A temporary residence at the time of service is not a person's "usual place of abode" if a more permanent residence exists. *See* ***Lewis v. Hartel***, 24 Wis. 504, 508 (1869) ("The usual place of abode of the party to be served is the place where the law supposes he will be found."). Here, whether or not Basswood was taking care of her mother at the time of service, the fact that Basswood continued to make payments on the Riverview Property, cleaned and maintained the property, and intended to pass the property to her children leads to the conclusion that the Riverview Property was her permanent residence or usual place of abode.

¶22 Findings of fact from the circuit court will not be set aside by this court unless they are clearly erroneous. WIS. STAT. § 805.17(2). For those reasons, we conclude that the circuit court's findings about Basswood's usual place of abode were not clearly erroneous.

¶23 Our conclusion is bolstered by Wisconsin's Consolidated Court Automation Programs (CCAP) records that list Basswood's address as the Riverview Property. Although CCAP documentation is absent from the record, we may take judicial notice of CCAP records when requested by a party, as the Plaintiffs have requested in their brief. *See* WIS. STAT. § 902.01; ***Kirk v. Credit Acceptance Corp.***, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522; *see also* ***Perry v. Zurich Ins.***, No. 2009AP1192, unpublished slip op., ¶11 (WI App. Feb. 2, 2010).[7] Those records show that Basswood has been a party to sixteen cases in Jackson County or Monroe County in which the Riverview Property was listed as her address. In fact, the most recent such case shown in the CCAP records, Jackson County Case No. 16-FO-248, was pending while the present case was pending in the circuit court, and lists Basswood's address as the Riverview Property. That information contributes to our conclusion that the Riverview Property was Basswood's usual place of abode for purposes of WIS. STAT. § 801.11(1)(b)1.

[7] Basswood failed to file a reply brief and, therefore, forfeited the opportunity to dispute representations made by the Plaintiffs in this court regarding the CCAP entries. *See* ***State v. Bullock***, 2014 WI App 29, ¶20 n.3, 353 Wis. 2d 202, 844 N.W.2d 429.

¶24 Therefore, we conclude that substituted service on Basswood's daughter was sufficient to comply with the provisions of WIS. STAT. § 801.11(b)1.[8]

¶25 As mentioned, on appeal Basswood's only argument to vacate the judgment on the private nuisance claim was sufficiency of service of the summons and complaint. Because we have resolved that issue in favor of the Plaintiffs, we affirm the circuit court's denial of Basswood's motion to vacate the default judgment on the private nuisance claim.

¶26 But, there is a complication. The order of the circuit court regarding abatement grants relief only on the public nuisance claim and not on the private nuisance claim. The parties have not briefed in this court the question of what remedies are available to abate only a private nuisance claim, and we express no opinion in that regard. We remand this matter to the circuit court for a determination of the appropriate abatement remedies for the Plaintiffs on their private nuisance claim against Basswood.

CONCLUSION

¶27 For these reasons, we reverse the circuit court's denial of Janice Basswood's motion to vacate the default judgment on the public nuisance claim; we affirm the circuit court's denial of Basswood's motion to vacate the default judgment on the private nuisance claim; and we remand the matter to the circuit court for proceedings consistent with this opinion, including dismissal of the

[8] Because service was proper, Basswood's related argument that her due process rights were violated because she was not properly served necessarily fails.

public nuisance claim, and a determination of appropriate abatement remedies on only the private nuisance claim.

By the Court.—Order affirmed in part; reversed in part; and cause remanded for further proceedings.

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