COURT OF APPEALS
DECISION
DATED AND FILED

September 26, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0081

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

SECURA INSURANCE,

PLAINTIFF-RESPONDENT,

v.

MARGARET A. SCHUIRMANN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Florence County: ROBERT A. KENNEDY, Judge. *Affirmed.*

¶1 HOOVER, P.J.[1] Margaret Schuirmann appeals an order that denied her motion to set aside a small claims judgment under WIS. STAT. § 806.07. She argues that new evidence was discovered that justifies a new trial. She further

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

argues that the trial court failed to apply the proper test to determine the choice of law issue. Because this court concludes that the trial court applied the statute appropriately and for other reasons discussed below, the trial court's order is affirmed.

BACKGROUND

¶2 Schuirmann, while driving a school bus in Michigan, collided with Maria Dishaw's automobile. Secura Insurance Company paid its insured, Dishaw, for the damage to her vehicle. Secura filed an action in Wisconsin against Schuirmann to recover the amount it paid Dishaw. Schuirmann appeared without her insurer, Auto-Owners Insurance Company.[2] The trial court entered judgment against Schuirmann.

¶3 After the judgment was entered, Schuirmann brought the matter to Auto-Owners' attention. Auto-Owners provided counsel to Schuirmann and filed a motion to set aside the judgment. In this motion, she claimed that Secura failed to inform the court that another action was already pending in Michigan before judgment was entered in Wisconsin, in violation of WIS. STAT. § 802.06(2)(a)10.[3] She maintained that because the court was improperly informed, it did not decide

[2] It is her employer, Lar-El Corporation, that holds the policy, but Auto-Owners concedes that Schuirmann is an insured under the policy and the policy covers the vehicle she was driving at the time of the accident.

[3] WISCONSIN STAT. § 802.06(2)(a)10 provides:

> Every defense, in law or fact … to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or 3rd-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following may at the option of the pleader be made by motion:
>
> ….
>
> 10. Another action pending between the same parties for the same cause.

the choice of law issue. If it had, Schuirmann argued, the court would have found that Michigan law applies to this case. She contended that the court should have set aside the judgment because this case satisfies WIS. STAT. § 806.07(1)(a), (b), (c), or (h). The court denied Schuirmann's motion and this appeal ensued.

STANDARD OF REVIEW

¶4 The trial court has discretion to determine motions made under WIS. STAT. § 806.07. *See* ***Nelson v. Taff***, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (Ct. App. 1993). An appellate court will sustain a discretionary act if the trial court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Loy v. Bunderson***, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982). Pro se litigants, other than prisoners, are "bound by the same rules that apply to attorneys on appeal." ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

DISCUSSION

¶5 Schuirmann moved the trial court for relief under the following subsections of WIS. STAT. § 806.07(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:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15(3);
>
> (c) Fraud, misrepresentation or other misconduct of an adverse party;
>
> ….
>
> (h) Any other reasons justifying relief from the operation of the judgment.

However, she only provided reviewable argument for subpara. (b).

a. Newly-Discovered Evidence

¶6 Whether evidence is newly discovered and merits a new trial is governed by WIS. STAT. § 805.15(3), which provides:

> A new trial shall be ordered on the grounds of newly-discovered evidence if the court finds that:
>
> (a) The evidence has come to the moving party's notice after trial; and
>
> (b) The moving party's failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it; and
>
> (c) The evidence is material and not cumulative; and
>
> (d) The new evidence would probably change the result.

¶7 Schuirmann submits that she was unaware of the proceedings in Michigan between Secura and Auto-Owners. She admits that she did not report the lawsuit to her insurer, Auto-Owners. She argues that she knew Auto-Owners had refused to pay the subrogation claim, and she assumed it would not defend the Wisconsin suit. She appeared pro se. She claims that she was also not aware that Secura had signed a certification to abide by the Michigan insurance code.

¶8 The trial court agreed that Schuirmann was probably unaware of these facts. However, it determined that she should have notified her insurance company, and the evidence did not reasonably explain why she did not. Further, it observed that Auto-Owners had notice of the Wisconsin proceedings. Secura informed Auto-Owners in a letter dated May 19, 1999, that if it did not hear from Auto-Owners by June 4, 1999, it would file suit. The court noted that the judgment was not against Auto-Owners, but against Schuirmann, who appeared, did the best she could, and lost.

¶9 The statute requires all four elements to be met in order to satisfy the statute because it uses the word "and" after each subparagraph in WIS. STAT. § 805.15(3). It was reasonable for the trial court to determine that Schuirmann's failure to discover the evidence arose from a lack of diligence. Therefore, the court properly found that the statute was not satisfied, and Schuirmann was not entitled to a new trial on the basis of newly-discovered evidence.

b. Remaining Arguments Under WIS. STAT. § 806.07

¶10 Schuirmann fails to develop arguments that link facts to the remaining claims presumably made under WIS. STAT. § 806.07. Under WIS. STAT. § 809.19(1)(e), proper appellate argument requires an argument containing the party's contention, the reasons therefor, with citation of authorities, statutes and that part of the record relied on; inadequate argument will not be considered. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 546 n.3, 292 N.W.2d 370 (Ct. App. 1980), also citing WIS. STAT. § 809.83(2) (Noncompliance with rules is grounds for "action as the court considers appropriate."). Schuirmann has substantially failed to cite to the record. She has failed to cite any case law explaining why her inability to notify the insurance company meets the standard required for mistake, inadvertence, surprise or excusable neglect under WIS. STAT. § 806.07(1)(a), if indeed that is the subsection she intended to implicate. By the same token, she has failed to discuss or cite any authority to prove that Secura was required to notify the Wisconsin court that it was aware of another proceeding in Michigan. The court assumes without knowing that she means this is evidence of fraud, misrepresentation, or other misconduct of an adverse party under WIS. STAT. § 806.07(1)(c). She offers no discussion, however, of the standard or why what this court assumes is her premise meets that standard. The court will not abandon

its neutrality to develop her arguments for her. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

¶11 Schuirmann argues that the court should have applied Michigan law instead of Wisconsin law and therefore the judgment should be "summarily reversed." She does not explain, however, on what statutory grounds that it should be reversed. She does not prove that this case involves a true conflict of laws. She provides no support for her argument that the "Michigan Certification Form" should apply to cases brought in states other than Michigan. Further, the certification form may or may not cover claims against individuals as opposed to insurance companies. Failure to provide authority is fatal to her claim. *See* ***Shaffer***, 96 Wis. 2d at 546.

¶12 Dispute over the choice of law does not preclude a suit in Wisconsin. She offers a Michigan judgment entered after the judgment in this case. However, this judgment shows only that Michigan law should apply to Secura's claim against Auto-Owners, not against Schuirmann directly. The Michigan circuit court held, "If a Michigan court is called upon to assist in the enforcement of that judgment against Ms. Schuirmann, it will undoubtedly do so, but … it has no obligation whatsoever to assist Secura in its claim against Auto Owners." Auto-Owners was not a party to the Wisconsin action. The Michigan judgment supports the Wisconsin judgment against Schuirmann.

¶13 Schuirmann finally argues that the court, before entering judgment, should have dismissed the case under WIS. STAT. § 802.06(2)(a)10. However, no motion was brought under that statute to stay the Wisconsin proceeding pending the outcome of the Michigan proceeding. Further, she offers no authority to support her contention that the Michigan action between two insurers are the same

parties as are involved in the Wisconsin action (an insurer and an individual). Also, she fails to show that the actions involved the same cause: subrogation versus tort. The parties do not dispute that the Wisconsin judgment preceded the Michigan judgment. Thus, res judicata does not prevent the Wisconsin action. Schuirmann has not presented arguments that merit reversal of the trial court.

By the Court.—Order affirmed.

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