COURT OF APPEALS
DECISION
DATED AND FILED

June 27, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP2524 **Cir. Ct. No. 2016CX2**

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

VILLAGE OF RICHFIELD,

PLAINTIFF-RESPONDENT,

V.

CARLA M. WHITCOMB,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Washington County: ANDREW T. GONRING, Judge. *Affirmed*.

¶1 GUNDRUM, J.[1] Carla M. Whitcomb appeals the circuit court's denial of her "Motion to Vacate and Void Default Judgment." For the following reasons, we affirm.

Background

¶2 The parties to this complex forfeiture action have a history; this is neither the first action filed by the Village of Richfield against Whitcomb nor is it the first action as to the 3090 Polk Street property.[2] In 2010, the Village filed its first civil forfeiture action related to the property. According to the complaint in this case, that action was against C&P Rentals, LLC (a limited liability company controlled by Whitcomb, Whitcomb's son, Patrick Whitcomb, and his wife), Patrick, and his wife, and alleged Patrick and his wife were residing at the property in violation of its zoning. According to the complaint in this case, the parties ultimately entered into a settlement agreement and a subsequent breach of that agreement by C&P Rentals and the Whitcombs resulted in a civil judgment

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] We note that both the Village and Whitcomb inappropriately include documents in their appendices that are not part of the record, and in doing so attempt to present us with new substantive facts presumably not presented to the circuit court prior to its decision in this case. An appellate court's review is confined to those parts of the record made available to it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992); *see also* ***Reznichek v. Grall***, 150 Wis. 2d 752, 754 n.1, 442 N.W.2d 545 (Ct. App. 1989) ("The appendix may not be used to supplement the record.").

Additionally, the record does not appear to contain all of the relevant decisions or any transcripts from the previous cases involving Whitcomb and/or the subject property. It is the appellant's burden to ensure that the record is sufficient to address the issues raised on appeal. *See* ***State v. Sahs***, 2013 WI 51, ¶50, 347 Wis. 2d 641, 832 N.W.2d 80. Where the record is incomplete, we must assume that the omitted material supports the circuit court's decision. *See* ***State Bank of Hartland v. Arndt***, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986).

and a judgment of eviction. The Village filed subsequent actions against Whitcomb and Patrick.

¶3 The complaint indicates Patrick eventually vacated the property and Whitcomb rented it out to another tenant, which tenancy forms the basis for the Village's complaint in this case. On July 28, 2016, the Village filed this complaint against Whitcomb seeking an injunction "prohibiting [her] from allowing or permitting residential use of 3090 Polk Street" in addition to monetary relief. The summons and complaint were served on Whitcomb on August 3, 2016. Whitcomb did not file an answer or other responsive pleading, and the Village moved for default judgment against her. Whitcomb did not file a response to the motion, but she and her counsel attended the October 14, 2016 hearing on the motion, arguing in opposition to it. After the hearing, the court granted the Village's default judgment motion as related to the requested injunction but adjourned the issue of monetary relief.

¶4 On January 4, 2017, Whitcomb, by new counsel, filed a motion to vacate and void the default judgment. The circuit court denied the motion, and Whitcomb appeals.

Discussion

¶5 Whitcomb argues that the circuit court erroneously exercised its discretion in denying her motion to vacate the default judgment pursuant to WIS. STAT. § 806.07(1)(a), (d) & (h).[3] Section 806.07 provides in relevant part: "[T]he

[3] We note that it would be inappropriate for us to order most of the relief Whitcomb requests. She asks us to reverse and remand the order of the circuit court with the following directions:

(continued)

court ... may relieve a party ... from a judgment ... for the following reasons: (a) Mistake, inadvertence, surprise, or excusable neglect; ... (d) The judgment is void; ... or (h) Any other reasons justifying relief from the operation of the judgment."

¶6 We will affirm a circuit court's denial of a motion to vacate a judgment under WIS. STAT. § 806.07 unless the court erroneously exercised its discretion. *See* ***Sukala v. Heritage Mut. Ins. Co.***, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. The party seeking relief bears the burden of demonstrating the circuit court erroneously exercised its discretion in denying a § 806.07 motion. ***Richards v. First Union Sec. Inc.***, 2006 WI 55, ¶27, 290 Wis. 2d 620, 714 N.W.2d 913. So long as a court examines the relevant facts, applies a proper

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> Vacate and void the default judgment under [WIS. STAT. § 806.07].
>
> Declare the application of M-3 (General Industrial District) to … Whitcomb's 3090 Polk Street property to be illegal and improper given its well-documented history of use as a B-3(General Business District) with a legal non-conforming residential use.
>
> Grant injunctive relief preventing state, county and local governments from interfering with Whitcomb's private property rights and stop the collection of any further monies associated with all of these related cases previously specified.
>
> Grant compensatory damages for costs and reasonable attorney fees incurred by … Whitcomb as well as punitive damages in any amount the court deems proper.
>
> Vacate the injunction which prevents Ms. Whitcomb from having residential tenants in the house on her 3090 Polk Street property.
>
> Grant any other relief that the court deems proper.

Whitcomb appeals from an order of the court denying her motion to vacate the default judgment under § 806.07. The issue is whether the court erroneously exercised its discretion in denying her motion. If we were to determine that the court did so err, we would vacate the default judgment and remand with directions to allow Whitcomb another opportunity to file an answer, which is relief she does not request.

standard of law, and, using a demonstrated rational process, reaches a conclusion a reasonable judge could reach, it does not erroneously exercise its discretion. ***Franke v. Franke***, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832. "[B]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary determinations." ***Sukala***, 282 Wis. 2d 46, ¶8 (alteration in original; citation omitted).

Excusable Neglect

¶7 Whitcomb claims her failure to file an answer to the Village's complaint was the result of "excusable neglect" under WIS. STAT. § 806.07(1)(a). Specifically, she asserts that "Attorney Mazza's ineffective legal assistance and refusal to communicate with [her] prior to being discharged on October 14, 2016 constitutes 'excusable neglect.'"

¶8 Excusable neglect is the neglect that "might have been the act of a reasonably prudent person under the same circumstances." ***Hedtcke v. Sentry Ins. Co.***, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982) (citation omitted). "It is 'not synonymous with neglect, carelessness or inattentiveness,'" ***id.***, and "it is not sufficient that the failure to answer in a timely manner be unintentional and in that sense a mistake or inadvertent, 'since nearly any pattern of conduct resulting in default could alternatively be cast as due to mistake or inadvertence or neglect,'" ***Mohns, Inc. v. TCF Nat'l Bank***, 2006 WI App 65, ¶9, 292 Wis. 2d 243, 714 N.W.2d 245 (citation omitted). The burden of establishing excusable neglect is on the party seeking relief from a default judgment. ***Carmain v. Affiliated Capital Corp.***, 2002 WI App 271, ¶23, 258 Wis. 2d 378, 654 N.W.2d 265. Whitcomb has not met her burden.

¶9 On October 14, 2016, the circuit court held a hearing on the Village's default judgment motion related to this case. Whitcomb appeared in person while her counsel appeared via telephone. When the court inquired: "[T]here's been no answer filed, correct?" counsel responded, "That is correct, Your Honor." Whitcomb then began addressing the court regarding establishing a payment plan related to a prior case before another Washington County judge, stating, "I want a payment plan through the judge with an order for it. That's what I came here for." Later in the hearing, Whitcomb again addressed that prior case and expressed that

> Mr. Mazza has never given me a piece of paper.… I have no idea of anything that's ever went on. I never even been in a courtroom…. Mr. Mazza didn't show up. I lost because Mr. Mazza didn't show up.… [T]his got all messed up, and I don't know how, because I was misrepresented by an attorney who never shows up, doesn't give me paperwork.

¶10 At a December 2, 2016 hearing on the matter of whether monetary judgment would be imposed, Whitcomb expressed that at the October 14, 2016 hearing, she "had no idea that an answer needed to be put in." She added that "[w]hen Mr. [Mazza] was on the phone, he was fired, because he's never communicated anything with me. He told me everything was fine. He's the one that didn't put the answer in." The court informed Whitcomb that she could file a motion to "reopen the previous order of this [c]ourt under [WIS. STAT. §] 806.07," along with "an affidavit by you as to why in the world I should reopen that" default judgment. Whitcomb stated: "I had a lawyer. I didn't know anything," to which the court responded, "Put that in your affidavit, and I'll consider that." The court again explained to Whitcomb: "What you need to do is file a motion to reopen, if that's what you want to do, supported by an affidavit giving appropriate notice to the Village." Later in the hearing, the court once again told Whitcomb:

"So you get your paperwork in an appropriate fashion, supported by an affidavit by you, sworn under oath as to what the facts are."

¶11 Whitcomb subsequently filed her motion to vacate the default judgment through new counsel. At a February 15, 2017 hearing on the motion, the court indicated its concern that Mazza "dropped the ball," but also expressed its doubt, due to issue and claim preclusion, that Whitcomb would have a meritorious defense even if the case was reopened. The court ordered the parties to file additional submissions related to the motion to vacate.

¶12 Following the submissions, the circuit court denied Whitcomb's motion to vacate the default judgment. It stated in part:

> [T]his court finds that it has never been presented with sufficient information as to why Attorney Mazza failed to file a timely answer if he was in fact retained to do so prior to August 24, 2016, the date the answer on behalf of the defendant was due. In fact, Attorney Mazza officially appeared on behalf of the defendant on October 14, 2016, the date he filed his notice of appearance and participated by phone in the default hearing—more than a month and a half after the answer was due. During that hearing, Attorney Mazza offered no reason as to why a timely answer was not filed. Likewise, Ms. Whitcomb offered no reason as to why a timely answer was not filed, instead focusing on her relationship with the Washington County Clerk of Court's office concerning the judgment previously entered against her LLC.

The court added that "Ms. Whitcomb is not an inexperienced defendant as it relates to the property in question. The issue concerning her Polk Street property has been the subject of Washington County case numbers 10CX2, 15CV176 and 15CV217." The court further observed that

> a CCAP search shows Ms. Whitcomb has been a party to a number of different lawsuits in both Washington and Waukesha counties as both a plaintiff and a defendant. Additionally, as seen from a review of the cases cited

> above, Ms. Whitcomb is perfectly capable of filing *pro se* pleadings as she has done repeatedly throughout the pendency of these cases.

The court then concluded Whitcomb had "failed to establish mistake, inadvertence or excusable neglect in the first instance."

¶13 Whitcomb fails to convince us the circuit court erroneously concluded she failed to establish excusable neglect. Whitcomb failed to submit any evidence establishing excusable neglect. The record shows that the summons and complaint, indisputably served upon Whitcomb on August 3, 2016, informed her that

> [i]f you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint.

During the October 14, 2016 hearing, neither Whitcomb nor Mazza provided any details explaining why an answer was not filed. After securing new counsel and filing the motion to vacate the default judgment, Whitcomb still failed to provide any evidence indicating why an answer was not filed. Although she filed an affidavit in relation to her motion to vacate, it provided no explanation as to why an answer to the complaint was never filed, such as when she retained Mazza to represent her in this matter or on what date prior to the August 24, 2016 answer deadline she provided Mazza with the complaint, if she in fact did so. Related to this point, we note that the record includes a "Notice of Retainer" signed by Mazza, which states Mazza "has been retained by the Defendant, Carla Whitcomb, in the above entitled action and demands that copies of all papers subsequent be served upon my office at the address set forth below." The date on this "Notice of Retainer" is October 13, 2016—almost two months after Whitcomb's answer was

due—and it was filed with the court during the October 14, 2016 motion hearing. Moreover, Whitcomb does not explain why she still did not file an answer after the Village filed the motion for default judgment. The record identifies nothing that prevented Whitcomb from filing an answer pro se or upon securing new counsel. She has never provided evidence demonstrating the error in failing to file an answer was in fact Mazza's and not her own. She has not met her burden to convince us the circuit court erred in denying her motion to vacate on the basis of excusable neglect.

Void

¶14 Whitcomb also claims the circuit court erred in not vacating the default judgment on the basis that the judgment is void. Again, she has failed to convince us the court erred.

¶15 Under WIS. STAT. § 806.07(1)(d), a circuit court may relieve a party from a judgment if the judgment is void. In her brief-in-chief on appeal, Whitcomb asserts the judgment is void because the settlement agreement she claims the court relied upon is void, making several arguments as to why she believes the settlement agreement is "void." But the question is whether the default *judgment* is void for purposes of § 806.07, and Whitcomb makes no headway in convincing us that it is.

¶16 "A judgment is 'void' for purposes of [WIS. STAT.] § 806.07 when the court rendering it lacked subject matter or personal jurisdiction." ***Richards v. First Union Sec., Inc.***, 2006 WI 55, ¶15, 290 Wis. 2d 620, 714 N.W.2d 913. In her brief-in-chief, Whitcomb makes no suggestion that the court lacked subject matter or personal jurisdiction. Despite the Village citing to ***Richards*** in its response brief and pointing Whitcomb to the quoted language, in her reply brief

she still makes no argument that there is a jurisdictional problem and completely fails to address this language from ***Richards*** and the Village's argument on this point. She has failed to convince us the default judgment is void for purposes of § 806.07(1)(d), and we conclude the circuit court did not err in declining to grant her relief on this ground.[4]

"Catch-all"

¶17 Whitcomb also argues the circuit court erroneously exercised its discretion in denying her motion to vacate the default judgment under WIS. STAT. § 806.07(h)—the "catch-all" provision of § 806.07—because it failed to apply the "interest of justice" factors set forth in ***Miller v. Hanover Insurance Co.***, 2010 WI 75, 326 Wis. 2d 640, 785 N.W.2d 493.[5] Again, Whitcomb has failed to convince us the circuit court erred.

[4] Our supreme court has also held that "[j]udgments entered contrary to due process are void." ***Neylan v. Vorwald***, 124 Wis. 2d 85, 95, 368 N.W.2d 648 (1985) (citation omitted). In ***Neylan***, which involved the circuit court dismissing an action for failure to prosecute "without [the court] giving actual notice to any party," the supreme court concluded the judgment of dismissal was void because due process was "lacking" "where [there was] no advance actual notice of dismissal which contains a clear standard or definition of what constituted 'the failure to prosecute.'" ***Id.*** at 95-96. Whitcomb makes no suggestion that notice was lacking in the present case, and as we have previously noted, the summons and complaint with which she was indisputedly served on August 3, 2016, stated that

> [i]f you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint.

[5] Whitcomb also asserts the circuit court improperly applied the doctrines of issue and claim preclusion and the Village violated her constitutional rights to due process and equal protection. Whitcomb is before us on appeal of a motion under WIS. STAT. § 806.07 to vacate a default judgment. We address these additional assertions, if at all, only to the extent they affect our determination of whether the court erroneously exercised its discretion in denying her § 806.07 motion.

¶18 WISCONSIN. STAT. § 806.07(1)(h) provides that the circuit court "may relieve a party ... from a judgment" for "[a]ny other reasons justifying relief from the operation of the judgment." "To determine whether a party is entitled to review under [§] 806.07(1)(h), the circuit court should examine the allegations accompanying the motion with the assumption that all assertions contained therein are true." ***Miller***, 326 Wis. 2d 640, ¶34 (quoting ***Sukala***, 282 Wis. 2d 46, ¶10). "If the facts alleged constitute extraordinary circumstances such that relief may be warranted under para. (1)(h), a hearing must be held on the truth of the allegations." ***Miller***, 326 Wis. 2d 640, ¶34. "[E]xtraordinary circumstances are those where 'the sanctity of the final judgment is outweighed by the incessant command of the court's conscience that justice be done in light of all the facts.'" ***Id.***, ¶35 (alteration in original) (quoting ***Sukala***, 282 Wis. 2d 46, ¶12).

¶19 After determining the truth of the allegations and considering other factors, the circuit court then exercises its discretion on whether to grant relief from judgment, ***id.***, 328 Wis. 2d 640, ¶34, balancing between the competing values of finality and fairness in the resolution of the dispute, ***Sukala***, 282 Wis. 2d 46, ¶12. "The court should not interpret extraordinary circumstances so broadly as to erode the concept of finality, nor should it interpret extraordinary circumstances so narrowly that subsection (h) does not provide a means for relief for truly deserving claimants." ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 552, 363 N.W.2d 419 (1985). The party seeking relief, here Whitcomb, bears the burden of proving "the requisite conditions exist." ***Sukala***, 282 Wis. 2d 46, ¶12.

¶20 The five factors a court should consider when balancing finality and fairness are: (1) "whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant"; (2) "whether the claimant received the effective assistance of counsel"; (3) "whether relief is sought from a

judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments"; (4) "whether there is a meritorious defense to the claim"; and (5) "whether there are intervening circumstances making it inequitable to grant relief." ***Miller***, 326 Wis. 2d 640, ¶36 (citing ***Sukala***, 282 Wis. 2d 46, ¶11 (affirming factors originally set forth in ***State ex rel. M.L.B.***, 122 Wis. 2d at 552-53)).[6]

¶21 Where, as in the case before us, the court did not address the five interest of justice factors, "we will independently review the record to determine whether the circuit court properly exercised its discretion and whether the facts provide support for the court's decision." ***Miller***, 326 Wis. 2d 640, ¶30. Addressing the interest of justice factors, the Village concedes that the first two ***Miller*** factors weigh in Whitcomb's favor, but concede the second factor only after "[g]iving Ms. Whitcomb the benefit of the doubt and assuming her first attorney was at fault or the cause of not filing a timely answer to the complaint." The Village asserts, however, that these first two factors merit "little weight." Considering factors three and four together, the Village argues that although there has not been any judicial consideration of the merits of the allegations of the complaint, Whitcomb's defenses are barred by the doctrines of issue and claim

[6] Initially, the Village asserts that because Whitcomb did not argue the five-factor "interest of justice" test until her reply brief in the circuit court, the circuit court could, in its discretion, not consider it. The case the Village cites, ***Bilda v. County of Milwaukee***, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661, however, refers to the appellate rule of procedure prohibiting an appellant from raising any new issues in a reply brief. ***Bilda*** does not apply this rule to our review of proceedings in the circuit court, and such application is unnecessary because although "a respondent has no opportunity to respond to arguments so raised in an appellate reply brief, parties appearing before the circuit court may request an additional opportunity for briefing." ***Jones v. Baecker***, 2017 WI App 3, ¶43 n.15, 373 Wis. 2d 235, 891 N.W.2d 823 (2016). Here, the Village did file a letter response to Whitcomb's reply brief.

preclusion and, thus, these two factors weigh against her. The Village further argues that, considering the doctrines of issue and claim preclusion, factor five also weighs against Whitcomb. Whitcomb insists all five factors are in her favor.

¶22 Although the circuit court did not specifically address the five-factor ***Miller*** test, it did make a determination relevant to that test—that Whitcomb did not have a meritorious defense. Based on our independent review of the record, we conclude the court properly exercised its discretion in denying her motion to vacate and we "perceive a reasonable basis for the court's decision." *See* ***id.***, ¶30.

¶23 We agree with the Village and Whitcomb that the first factor weighs in her favor as it does not appear that the default judgment "was the result of the conscientious, deliberate and well-informed choice" of Whitcomb. As the Village notes, however, "[t]ypically, no defendant in a lawsuit would make such a decision." We agree with the Village that while this factor favors Whitcomb, it does not carry substantial weight in determining whether this case presents an "extraordinary circumstance" justifying vacating the judgment.

¶24 As to the second factor, the circuit court initially expressed concerns, at the February 15, 2017 hearing, that Whitcomb's attorney may have been the cause of the default judgment. As previously noted, however, after receiving submissions by the parties and further reflection, in its final written decision, the court determined that Whitcomb failed to make a clear case that Mazza, as opposed to Whitcomb, was the cause of the default judgment. As previously discussed, *see supra* ¶13, the record supports this determination. Furthermore, the circuit court noted that Whitcomb was experienced in civil lawsuits, particularly as they relate to the subject property, and that she was "perfectly capable of filing *pro se* pleadings as she has done repeatedly throughout the pendency of these cases."

We find support in the record for this determination as well. We are unable to conclude that the second factor weighs in Whitcomb's favor.

¶25 Factors three and four appear to favor the Village. Although the default judgment precluded judicial consideration of the merits in this particular case, it appears the issue upon which Whitcomb most heavily relies—whether the property in question is in fact zoned M-3, thereby precluding her from lawfully allowing residents to live on the property—has been decided to her detriment in previous cases involving Whitcomb and this property. Whitcomb asserts that a prior settlement agreement related to her use of the property is invalid, but the circuit court here noted that this issue "was the subject of much litigation" in case No. 2010CX2, a case before Washington County Circuit Court Judge James Muehlbauer. In its decision, the circuit court in this case stated:

> [T]he fact remains that Judge Muehlbauer on more than one occasion has identified the Settlement Agreement as signed by the parties and determined it enforceable. Likewise, he has found those who occupy the premises in question as a residence to be in violation of the zoning code of the Village of Richfield. Those findings remain undisturbed. The Court is satisfied that Judge Muehlbauer's judgment in case number 10CX2 precludes Ms. Whitcomb from litigating her claim concerning the appropriate zoning of the subject property in this case. This Court has no doubt that the traditional elements of claim preclusion as set forth in numerous reported Wisconsin cases are met here. Likewise, the Court believes that the defendant is collaterally estopped by the doctrine of issue preclusion from re-litigating the issue of the zoning of the subject property in light of Judge Muehlbauer's final judgment.

The circuit court determined that Whitcomb was not likely to prevail on the merits even if the default judgment was vacated, observing that "[b]ased on its involvement in case number 15CV176 and the present case, its review of 10CX2, as well as the numerous affidavits and pleadings submitted in those cases, this

Court is satisfied that the subject property, at the end of the day, cannot be used for residential purposes."[7]

¶26 While the record is not as complete as we would like to see to make a fully substantive determination as to the merits of Whitcomb's position, it provides sufficient support to convince us that factors three and four favor the Village. The record contains an order in case No. 2015CV176 by Washington County Circuit Court Judge Andrew Gonring, the same judge that has presided over the case now before us. In that order, dated November 2, 2015, the court enjoined Patrick Whitcomb, "and any and all persons claiming under him," "from residential occupancy" of the subject property and awarding to the Village forfeitures representing nearly two years worth of violations of the village code. The record also includes an affidavit of the village administrator indicating that "[t]he official zoning map of the Village of Richfield shows that" that property at issue "is zoned 'M-3,'" that residential use is not a permitted use for properties zoned M-3, and that "other tenants at that location include a diesel mechanic, a towing business, an auto body/painting business, auto repair, and miscellaneous business storage." As to the fifth ***Miller*** factor, the Village has not demonstrated that there are "intervening circumstances making it inequitable to grant relief."

¶27 Finality is an important consideration. Here, Whitcomb's decision to allow individuals to reside on the property at issue has been the subject of lawsuits in Washington County for nearly a decade now. Various cases

[7] "Generally, a court may take judicial notice of its own records and proceedings for all proper purposes. This is particularly true when the records are part of an interrelated or connected case, especially where the issues, subject matter, or parties are the same or largely the same." ***Johnson v. Mielke***, 49 Wis. 2d 60, 75, 181 N.W.2d 503 (1970).

addressing issues related to individuals residing on the property have been litigated. As to fairness, Whitcomb has had past opportunities to raise the defenses she now asserts.[8] Whether or not she at those times raised all the issues she now presents, she has at least had the opportunity to do so.

¶28 For the foregoing reasons, we conclude that Whitcomb has failed to convince us the circuit court erroneously exercised its discretion in denying her motion to vacate the default judgment.

By the Court.—Order affirmed.

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

[8] Whitcomb also had an opportunity to raise her issues in an appeal in case No. 2014AP284, which appeal we dismissed on August 18, 2014, after Whitcomb failed to file a brief and appendix in accordance with WIS. STAT. § 809.19.