COURT OF APPEALS
DECISION
DATED AND FILED

May 14, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2018AP1354 **Cir. Ct. No. 2018SC4791**

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

PAUL RYAN, D/B/A PAUL & CHRISTINE REAL ESTATE SERVICES LLC,

PLAINTIFF-RESPONDENT,

V.

TODD FRIDAY, D/B/A FRIDAY'S CONTRACTING,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: LAURA GRAMLING PEREZ, Judge. *Affirmed*.

¶1 DUGAN, J.[1] Todd Friday d/b/a Friday's Contracting appeals the circuit court's order denying his motion to reopen a default judgment entered

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

against him in the small claims action brought against him by Paul Ryan d/b/a Paul and Christine Real Estate Services LLC. We affirm.

BACKGROUND[2]

¶2 On February 8, 2018, Ryan filed a *pro se* small claims action, alleging that Friday incorrectly installed roof flashing when he replaced a roof on a property located in West Allis and that the flashing had to be repaired by another roofing contractor. Ryan sought damages of $1000 from Friday.

¶3 Both parties appeared *pro se* before a court commissioner on February 26, 2018. Friday told the court commissioner that "he [was] not Friday's Contracting;" instead, his brother had done the work; and Ryan was suing the wrong person. The court commissioner set an evidentiary hearing for April 24, 2018.

¶4 On April 24, 2018, Ryan was in court *pro se*. Friday did not appear. The court commissioner granted Ryan default judgment against Friday for $900, plus court costs of $163.

¶5 The Clerk of Court entered judgment on May 9, 2018. That same day, Friday filed a motion to reopen, indicating that he had missed the hearing on April 24, 2018, because he was working at a job and lost track of time. He argued that his failure to attend was the result of mistake and inadvertence. He also stated

[2] Some of the background facts we cite were obtained from Wisconsin's Consolidated Court Automation Programs, an online website that contains information entered by court staff of which this court may take judicial notice. *See* ***Kirk v. Credit Acceptance Corp.***, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522.

if the case was reopened, he would prevail because Ryan was suing the wrong person. The matter was set for a June 1, 2018 hearing before the trial court.

¶6 At the June 1, 2018, hearing, Friday appeared *pro se* and Ryan, also *pro se*, appeared by telephone. The trial court heard the parties' arguments regarding the motion to reopen the default and issued an oral decision. The trial court found that the April 24, 2018 hearing date had been set for two months, the court commissioner had set "a significant block of time" aside to hear the matter, and it was an important hearing. The trial court also found that Friday had not come to court because he had not paid attention to the time and that Friday had admitted that he did not have a good reason for missing the April 24, 2018 hearing. The trial court held that Friday had not established excusable neglect, and denied the motion to reopen. In support of its conclusion, the trial court cited the following reasons: (1) that it is important that the court system not be misused; (2) that it is important that the court is able to manage its calendar by handling cases on their scheduled dates; (3) that parties are required to keep track of court dates and come to court; and (4) that it is important for other parties to have some certainty and finality in their cases.

¶7 This *pro se* appeal followed. Ryan also appears *pro se.*

DISCUSSION

¶8 Friday argues that he missed the April 24, 2018 court date in error, his motion to reopen was denied, and he "would like the opportunity to reopen the case and be able to defend [himself] to prove that [Ryan] has the wrong person[.]" Friday states that he does not own or operate Friday's Contracting and that Ryan used the internet to locate the contractor and assumed that the original contractor was his company, which is false.

I. Standard of review and applicable law

¶9 A decision to grant or deny a motion to reopen is one within the trial court's discretion, which we will affirm unless the court erroneously exercised its discretion. *See* ***Kovalic v. DEC Int'l***, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994). A court properly exercises its discretion so long as it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion a reasonable judge could reach. *See* ***Franke v. Franke***, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832.

¶10 "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." WIS. STAT. § 805.17(2).

¶11 WISCONSIN STAT. § 799.29(1) provides the exclusive procedure to reopen a default judgment in a small claims action. WIS. STAT. § 799.01(1); ***King v. Moore***, 95 Wis. 2d 686, 690, 291 N.W.2d 304 (Ct. App. 1980).[3] The trial court "may" reopen a small claims default judgment for "good cause shown." WIS. STAT. § 799.29(1)(a). Because the trial court "may" reopen the judgment, the decision of whether to reopen a default judgment is discretionary. *See* ***Dugenske v. Dugenske***, 80 Wis. 2d 64, 67-68, 257 N.W.2d 865 (1977). The term "good cause" is not defined in the statutes, but this court has determined that it is

[3] ***King v. Moore***, 95 Wis. 2d 686, 291 N.W.2d 304 (Ct. App. 1980) was decided under the 1977 statutes in which WIS. STAT. § 299.29(1), rather than WIS. STAT. § 799.29(1) governed reopening default judgments in small claims actions. ***King***, 95 Wis. 2d at 687. The ***King*** opinion notes that this statute was renumbered to the current numbering, § 799.29(1), in the 1979 statutes. ***Id.***

generally appropriate to consider the factors set forth in WIS. STAT. § 806.07(1), which includes "mistake, inadvertence, and excusable neglect."

¶12 "Excusable neglect is 'that neglect which might have been the act of a reasonably prudent person under the same circumstances.'" ***Hollingsworth v. American Fin. Corp.***, 86 Wis. 2d 172, 185, 271 N.W.2d 872 (1978) (citation omitted). Excusable neglect "is not synonymous with neglect, carelessness or inattentiveness." ***Martin v. Griffin***, 117 Wis. 2d 438, 443, 344 N.W.2d 206 (Ct. App. 1984). Friday had the burden of showing excusable neglect. *See* ***id.***

II. The trial court properly concluded that Friday did not establish good cause to reopen the default judgment.

¶13 On appeal, Friday does not include any argument about what the trial court did wrong when it denied his motion to reopen.

¶14 By contrast, Ryan argues that Friday did not come to court on April 24, 2018, because he lost track of time, which was not good cause. He also cites ***Hollingsworth***, 86 Wis. 2d at 184, and states that the trial court reminded Friday of the need for finality in court cases when it denied Friday's motion.

¶15 "[I]t is the burden of the appellant to demonstrate that the trial court erred[.]" *See* ***Seltrecht v. Bremer***, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997). Although a party who exercises his or her right to represent himself or herself in an action may be afforded some leniency, the party is responsible for complying with the relevant rules of procedural and substantive law. *See* ***Waushara Cty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

¶16 In this case, Friday's arguments regarding the merits of Ryan's claim against him are not relevant to this appeal because that was not the basis for the

trial court's decision. The trial court relied upon Friday's failure to establish excusable neglect for his failure to appear at the April 24, 2018 hearing. Friday has not made any arguments regarding the trial court's determination that he did not establish good cause to reopen the default judgment. We will not abandon our neutrality to develop arguments for the parties. *See* ***Clear Channel Outdoor Inc. v. City of Milwaukee***, 2017 WI App 15, ¶28, 374 Wis. 2d 348, 893 N.W.2d 24.

¶17 Additionally, Ryan's response presents arguments for affirming the trial court's decision. Friday did not file any reply to those arguments. Friday is, therefore, deemed to have conceded that he did not establish good cause for his failure to appear. *See* ***United Co-op. v. Frontier FS Co-op.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578.

¶18 Moreover, the record establishes that the trial court considered the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *See* ***Franke***, 268 Wis. 2d 360, ¶54.

CONCLUSION

¶19 Based on the foregoing, we conclude that the trial court's order denying Friday's motion to reopen the default judgment reflects a proper exercise of discretion. We, therefore, affirm.

By the Court.—Order affirmed.

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