COURT OF APPEALS
DECISION
DATED AND FILED

June 14, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 00-1888

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

JENNIE E. STELTER,

PLAINTIFF-APPELLANT-CROSS-RESPONDENT,

HEALTH CARE FINANCING ADMINISTRATION AND DEAN HEALTH PLAN, INC.,

SUBROGATED PARTIES,

V.

GREEN LANTERN RESTAURANT, INC. AND SECURA INSURANCE, A MUTUAL COMPANY,

DEFENDANTS-RESPONDENTS-CROSS-APPELLANTS.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Dane County: ROBERT A. DeCHAMBEAU, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Jennie Stelter appeals from a judgment which dismissed her personal injury complaint against Green Lantern Restaurant and Secura Insurance with costs, in accordance with a jury verdict. She claims the trial court should have granted default judgment in her favor because Green Lantern's answer to the complaint was delinquent. Green Lantern and Secura cross-appeal the trial court's refusal to grant summary judgment in their favor. We affirm the judgment for the reasons discussed below.

BACKGROUND

¶2 Stelter injured her elbow and hip when she fell on some steps at Green Lantern. She filed suit against Green Lantern and its insurer Secura on July 28, 1999. Green Lantern was served on August 3, and Secura was served on August 10.

¶3 Upon being served, the litigation coordinator at Secura calculated that Secura's answer would be due on September 24, and entered that date into its computer tickler system. Upon receiving notice that Secura's insured, Green Lantern, had been served on August 3, the litigation coordinator made a hand-written note in his file that Green Lantern's answer would be due September 17. The litigation coordinator neglected, however, to enter that date into Secura's computer system.

¶4 Green Lantern failed to file its answer by the September 17 deadline. On September 24, Stelter moved for default judgment, and Green Lantern filed an answer along with a motion to extend the deadline. Stelter moved to strike the

answer. The trial court excused the delinquency on the grounds of excusable neglect.

STANDARD OF REVIEW

¶5 We review the trial court's refusal to grant a default judgment under the erroneous exercise of discretion standard. ***Baird Contracting, Inc. v. Mid Wisconsin Bank***, 189 Wis. 2d 321, 324, 525 N.W.2d 276 (Ct. App. 1994). A court properly exercises discretion when it considers the facts of record under the proper legal standard and reasons its way to a rational conclusion. ***Burkes v. Hales***, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). "Because the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions." ***Id.*** at 591. Thus, even if the trial court has relied upon the wrong rationale, we may affirm a decision if we can determine for ourselves that the facts of record provide a basis for it. *See* ***State v. Gray***, 225 Wis. 2d 39, 51, 590 N.W.2d 918 (1999).

ANALYSIS

¶6 The time for filing an answer may be enlarged after the deadline has already passed if the delinquency was the result of excusable neglect. WIS. STAT. § 801.15(2)(a) (1997-98). Excusable neglect is "that neglect which might have been the act of a reasonably prudent person under the same circumstances. It is not synonymous with neglect, carelessness or inattentiveness." ***Hedtcke v. Sentry Ins. Co.***, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982) (quoting ***Giese v. Giese***, 43 Wis. 2d 456, 461, 168 N.W.2d 832 (1969)).

¶7 Here, the trial court acknowledged the excusable neglect standard set forth in ***Hedtcke***, but expressed some confusion about the meaning of the term.

Although it labeled the litigation coordinator's actions as "pretty sloppy," it decided to enlarge Green Lantern's time for filing the answer because the delay had not adversely affected the substantial rights of any party. While it is not entirely clear from the trial court's discussion whether it was actually applying the correct standard, we are satisfied that the facts of record do provide a proper basis for the trial court's decision.

¶8 The Wisconsin Supreme Court recently addressed a similar factual scenario. In ***Meier v. Champ's Sport Bar & Grill, Inc.***, 2001 WI 20, ¶¶9-10, 241 Wis. 2d 605, 623 N.W.2d 94, an individual defendant and the registered agent of his corporation were served three days apart. Only the later papers were transmitted to counsel, and counsel consequently filed an answer that was late with respect to the individual defendant. ***Id.*** at ¶¶10-11. The trial court reasoned that the neglect was excusable because an assumption of simultaneous service would have been reasonable in light of general practice, and the supreme court refused to interfere with the trial court's determination. ***Id.*** at ¶¶43-44.

¶9 Here, Secura's litigation coordinator stated that he did not enter the second date into his computer because he remembered entering a due date for the answer just the day before, and did not realize that the dates were different. It thus appears that he made the same assumption of simultaneous service made by the litigant in ***Meier***. Therefore, the trial court could properly have made a finding of excusable neglect based on the record before it, and we will not disturb its determination.

¶10 Because our decision affirms the judgment entered in Green Lantern and Secura's favor, it is not necessary for us to address the alternate basis for affirming the judgment raised in the cross-appeal.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).