COURT OF APPEALS
DECISION
DATED AND FILED

October 4, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 01-0823-FT

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

BRENDA FOX AND KARY FOX,

PLAINTIFFS-RESPONDENTS,

V.

DANIEL LARSON D/B/A TOWN & COUNTRY CONCRETE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Daniel Larson appeals from a default judgment entered against him in favor of Brenda and Kary Fox. Larson claims the trial court erred in concluding that a letter he had written in response to the complaint was insufficient to join issue and erroneously exercised its discretion in subsequently

refusing to reopen the matter on the grounds of excusable neglect. We disagree and affirm.

¶2 The Foxes sued Larson to collect money they alleged they had loaned him for his business venture, Town and County Concrete. They attached to their complaint a handwritten document signed by all three parties which stated:

> Kary and Brenda Fox has $11,500.00 invested in Town and Country Concrete and is subtracting $2,500.00 for an easement to our land that leaves $9,000.00 payable to Kary and Brenda Fox.

¶3 In response to the complaint, Larson submitted a *pro se* letter to opposing counsel, which stated:

> I am writing to you in regards to the complaint I received on 9/22/00. After talking to Beverly Flieshman, I was informed that there is nothing I can do about this complaint because I signed a paper, stating that I owed Kary and Brenda. Kary was supposed to be a partner with me in the business involved in this debt. Kary was a lousy partner and employee and I would have fired him 3 years ago, but felt obligated to him because of the money he did have in the business. He earned at least $30,000.00 more than I did in half the hours. I only signed that piece of paper to get the work truck registered under Town and Country so that Brenda and Kary wouldn't get sued if the employees had any more accidents. I wish to be able to work out some kind of agreement with the Foxes. Kary went back on some agreement that we had, but I didn't have him sign anything, just took his word, which means nothing, I found out. This is my reply and we can take it from here.

Larson also sent a copy of this letter to the court.

¶4 The Foxes subsequently moved for a default judgment on the grounds that no responsive pleading had been filed. Larson was late getting to the hearing due to bad weather, he claimed. In his absence, the trial court concluded that Larson's letter was "not technically an answer," or, alternately, was an

"admission of liability" and granted a default judgment. Larson retained counsel and moved to reopen the matter. The trial court denied the motion on the grounds that the response was never filed[1] and that the response did not deny the obligation alleged.

¶5 WISCONSIN STAT. § 806.02(1) (1999-2000)[2] permits a trial court to grant default judgment if no issue of law or fact has been joined. WIS. STAT. §§ 802.02 and 802.04 set forth the proper format for answering a complaint, including admitting or denying each numbered allegation and specifying any defenses relied upon.

¶6 Larson contends that the letter he sent to opposing counsel constituted an answer sufficient to preclude default judgment by raising a defense of partnership to the allegation of a debt. However, even putting aside the fact that the letter clearly failed to comply with the technical requirements for an answer, we see nothing in the letter denying that the Foxes loaned Larson money that Larson failed to repay upon demand. The fact that the parties may also have had a partnership would not automatically preclude the existence of a loan. We therefore conclude the trial court properly granted default judgment on the grounds that Larson had failed to join issue with his letter.

¶7 Larson next argues that the trial court erroneously exercised its discretion when it refused to set aside the default judgment. WIS. STAT. § 806.07(1)(a) allows the trial court to set aside an order or judgment based upon

[1] This factual finding was based on the apparent misunderstanding of counsel for both parties, but is clearly belied by the record.

[2] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

excusable neglect. The party seeking relief must make an additional showing that he or she has a meritorious defense to the action. ***J.L. Phillips & Assoc., Inc. v. E & H Plastic Corp.***, 217 Wis. 2d 348, 358, 577 N.W.2d 13 (1998). In considering whether relief is warranted, the trial court should consider that default judgments are generally disfavored in deference to the policy of giving litigants their day in court, and that WIS. STAT. § 806.07 is to be liberally construed as a remedial statute. ***Id.*** at 359.

¶8 Here, Larson cites ***Maier Constr., Inc. v. Ryan***, 81 Wis. 2d 463, 474, 260 N.W.2d 700 (1978), *overruled in part by* ***J.L. Phillips & Assoc.***, 217 Wis. 2d at 361, for the proposition that a layperson's mistaken belief that a letter to counsel would be sufficient to answer a complaint constitutes excusable neglect for failing to file a formal answer. While we might agree with that general proposition, we are not entirely persuaded that Larson's letter shows he intended to contest the debt. One possible interpretation of the letter is that Larson was merely trying to negotiate a settlement of a debt, which the first lawyer he consulted had advised him he was obligated to pay. This interpretation would be consistent with the trial court's alternate conclusion that Larson's letter constituted an "admission of liability."

¶9 Even assuming that Larson's statement that the letter was his "reply" to the complaint was sufficient to show that he was attempting to contest the debt in a manner that excuses his failure to file a formal answer, the trial court could reasonably have found that Larson had failed to establish a meritorious defense. "[A] meritorious defense is a defense good at law that requires no more and no less than that which is needed to survive a motion for judgment on the pleadings." ***J.L. Phillips & Assoc.***, 217 Wis. 2d at 363.

¶10 We have already noted that Larson's letter failed to join issue because it did not plainly deny the existence of a debt which had not been repaid. Thus, the letter is, by itself, insufficient to establish a meritorious defense.

¶11 Larson argues that the Foxes' money had been invested in a partnership rather than loaned to him, and that this constitutes a defense to the allegations that he had not repaid the money upon demand. However, unlike the litigants in ***Maier Construction*** and ***J.L. Phillips & Associates***, Larson did not attach a proposed answer to his motion for relief from the judgment plainly setting out this defense. Thus, the trial court had no responsive pleading from which to evaluate whether Larson had set forth a defense "good at law." Given this failure, we cannot conclude that the trial court erroneously exercised its discretion in denying Larson's motion to set aside the judgment, notwithstanding the disfavored status of default judgments.

By the Court.—Judgment affirmed.

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