COURT OF APPEALS
DECISION
DATED AND RELEASED

JUNE 20, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-0820

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

HERBERT STOEGER,
and RUTH M. STOEGER,
d/b/a STOEGER
MANUFACTURING, a/k/a STOEGER'S
ANTIQUES,

Plaintiffs-Appellants,

v.

BURNHAM BROADCASTING COMPANY,
PETER BLAISE DESNOES,
WILLIAM C. FYFFE,
JAY JOHNSON,
JOHN GILLESPIE,
and DANIELLE BINA,

Defendants-Respondents.

APPEAL from an order of the circuit court for Brown County: N. PATRICK CROOKS, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Herbert and Ruth Stoeger appeal a postjudgment order that denied their § 806.07, STATS., motion to vacate a judgment. The trial court granted Burnham Broadcasting Company and the other respondents judgment after neither the Stoegers, nor their lawyer appeared at an October 5, 1992 hearing to compel discovery and a later October 9, 1992 pretrial conference. Aware that Burnham had a summary judgment motion pending, Herbert Stoeger had personally sent the trial court a letter on September 14, 1992 asking for a sixty-day delay of proceedings because of his inability to contact his lawyer, who Stoeger surmised wished to withdraw from the case. The trial court never gave Stoeger personal notice that it intended to rule on Stoeger's letter at the October 5, 1992 discovery compulsion hearing, instead instructing court staff to notify the parties' lawyers. After Stoeger failed to appear and the trial court dismissed his suit, Stoeger waited one year to move to vacate the judgment. He argues that his failure to receive a personal response to his September 14, 1992 letter excused his appearance at the two October 1992 hearings. We reject this argument and therefore affirm the trial court's postjudgment order.

The trial courts have discretion in considering § 806.07, STATS., motions to vacate judgments. *See* ***Mullen v. Coolong***, 153 Wis.2d 401, 406, 451 N.W.2d 412, 414 (1990). We will reverse such decisions only if the trial court erroneously exercised its discretion. ***Brookfield v. Milwaukee Sewerage Dist.***, 171 Wis.2d 400, 423, 491 N.W.2d 484, 493 (1992). Here, Stoeger essentially argues that the judgment resulted from his excusable neglect under § 806.07(1)(a), STATS., in failing to appear at the pretrial conference. Stoeger has failed to demonstrate, however, that his nonappearance was excusable neglect within the meaning of § 806.07(1)(a), STATS.

Stoeger's September 14, 1992 letter did not excuse his attendance at the pretrial conference. Stoeger knew the date for the pretrial conference and the briefing schedule for Burnham's summary judgment motion. He also knew of his lawyer's unavailability. When Stoeger received no notice that the trial court had either addressed his extension request, delayed Burnham's summary judgment motion or rescheduled the pretrial conference, Stoeger had no right to assume that the trial court had granted his extension request and delayed proceedings. Rather, Stoeger had an affirmative obligation to personally

determine the proceedings' current status by contacting his lawyer and then the trial court clerk. *Cf.* ***Charolais Breeding Ranches v. Wiegel***, 92 Wis.2d 498, 514-15, 285 N.W.2d 720, 728 (1979). As a result, Stoeger had no legitimate excuse for missing the October 9, 1992 pretrial conference and therefore provided no sufficient grounds for vacating the judgment.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.