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DISTRICT IV

July 30, 2026

To:

Hon. Todd J. Hepler
Circuit Court Judge
Electronic Notice

Caleb Christian-Dale Katz
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

Brenda L. Yaskal
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2025AP2177	Columbia County v. Thomas A. Nemila (L.C. # 2024TR6052)
2025AP2181	Columbia County v. Thomas A. Nemila (L.C. # 2024TR6053)
2025AP2183	Columbia County v. Thomas A. Nemila (L.C. # 2024TR6054)

Before Kloppenburg, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Thomas Nemila appeals a circuit court order denying his motion to reopen default judgments entered against him in three traffic cases. He argues that the circuit court erroneously exercised its discretion in denying the motion to reopen, and points to evidence in the record that his and his attorney's failure to appear at the final plea hearing resulted from miscommunication with the assistant district attorney assigned to the case. Columbia County agrees with Nemila

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

and joins him in requesting reversal of the order denying reopening. Because the record does not demonstrate a proper exercise of discretion, I reverse the order denying reopening and remand for further proceedings.

The three cases arise from a single incident. Nemila was charged with operating while intoxicated (OWI) as a first offense (with an associated prohibited alcohol concentration charge), possessing open intoxicants as the driver of a motor vehicle, and driving at 20-24 miles per hour over the speed limit.²

Nemila's counsel and the assistant district attorney (ADA) representing the County agreed to a stipulated resolution providing that Nemila would plead guilty or no contest to the OWI charge, and the remaining charges would be dismissed. The stipulation also set out agreements as to the forfeiture and costs, license revocation, and demerit points to be imposed. Further, although Nemila's blood alcohol concentration (BAC) was tested at 0.158, the stipulation stated that given the sequence of events leading to Nemila's arrest and testing, his BAC was likely under 0.150 at the time that he operated the vehicle (a finding that Nemila was driving with a BAC of 0.150 or higher would require the circuit court to order Nemila to use an ignition interlock under WIS. STAT. § 343.301(1g)(a)2.a.).

Nemila's counsel signed the stipulation at Nemila's direction and emailed it to the ADA about three weeks before the scheduled final plea hearing. Twice in the week before the hearing, Nemila's counsel emailed the ADA to follow up, but he did not receive a reply to either email.

² Each of the cases on appeal has a separate record of the documents filed in the circuit court. The records are not identical. Nemila cites only to the record in Appeal No. 2025AP2177. We remind counsel of the obligation to cite the record in each appeal under WIS. STAT. RULE 809.19(1)(d).

At the beginning of the final plea hearing, the circuit court noted that neither Nemila nor his counsel was present. The ADA said that his notes reflected that he had not received any contact from the defense since the ADA sent an offer to settle the case. At the ADA's request, the court found Nemila in default and entered judgment against him on the OWI, open intoxicants, and speeding charges. The court noted that the County had alleged that Nemila's BAC was greater than 0.150, and accordingly imposed an ignition interlock requirement.

Later that same day, the ADA and Nemila's counsel conferred, and the ADA learned of the emails from Nemila's counsel. Nemila's counsel told the ADA that he had expected that the ADA would file the stipulation and that the final pretrial hearing would thus be removed from the circuit court's calendar. The following day, the ADA filed a motion explaining what had happened and requesting that the court void the default judgment and consider the parties' stipulation. The court declined a proposed order voiding the judgment and adopting the stipulation; a note on the declined order read "Stipulation was not timely filed."

Nemila then filed a motion to reopen the default judgment pursuant to WIS. STAT. §§ 345.36(2)(b) and 345.51, and the ADA filed a response stating that the County joined in Nemila's request. The circuit court denied that motion without a hearing, with a note saying:

A jury trial was demanded and neither counsel nor the defendant appeared at mandatory final plea hearing so default judgment was granted because this stipulation was not approved by the court prior to the hearing, his BAC was above .15 and the defendant was not excused from attendance.

Nemila appeals.

As stated, Nemila asks that this court reverse the circuit court's order denying his motion to reopen the default judgment against him, and the County joins in that request. In addition, the

County concedes that Nemila's counsel timely provided the County with the signed stipulation resolving this case and that the failure to file the stipulation before the final plea hearing was due to the County's error.

As both Nemila and the County note, WIS. STAT. § 345.51 permits a motion to reopen a default judgment in a traffic case within six months of the entry of the judgment and requires a movant to show "good cause." The parties also observe that WIS. STAT. § 345.36(2)(b) instructs a circuit court to reopen a default judgment in a traffic case when the defendant fails to appear for trial if the court finds that the failure to appear "was due to mistake, inadvertence, surprise, or excusable neglect," and they suggest that these same reasons should constitute "good cause" under § 345.51. Moreover, the parties cite cases for the proposition that "default judgment is the ultimate sanction" and that the "law prefers, whenever reasonably possible, to afford litigants a day in court and a trial on the issues." ***Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.***, 2002 WI 66, ¶64, 253 Wis. 2d 238, 646 N.W.2d 19. The parties contend that the circuit court's terse rejection of their requests to reopen the matter neither addressed the facts the parties presented to explain Nemila's and his attorney's absence from the final plea hearing nor explained how these facts failed to demonstrate good cause to reopen the matter, and thus did not demonstrate a proper exercise of the court's discretion.

A court properly exercises its discretion when it "examines the relevant facts, applies a proper standard of law, and reaches a reasonable conclusion using a demonstrated rational process." ***Magyar v. Wisconsin Health Care Liab. Ins. Plan***, 211 Wis. 2d 296, 302, 564 N.W.2d 766 (1997). I conclude that the parties are correct that the circuit court's notes do not demonstrate a valid exercise of discretion. The court did not demonstrate that it had considered

the parties' representations about what led to the missed final plea hearing, or that it had applied the law pertaining to the reopening of default judgments. Particularly given that Nemila's absence appears to have been the result of his counsel's direction, the court should also have considered whether any missteps on counsel's part ought to be imputed to his client. See **Wagner v. Springaire Corp.**, 50 Wis. 2d 212, 221, 184 N.W.2d 88 (1971) (discussing circumstances in which a client's reliance on counsel's advice is reasonable).

The parties request that this court order the circuit court to reopen the matter, but when this court concludes that a circuit court has failed to properly exercise its direction, the proper course is to remand so that the circuit court may exercise its discretion in accordance with law. **King v. King**, 224 Wis. 2d 235, 253-54, 590 N.W.2d 480 (1999).

IT IS ORDERED that the order is summarily reversed under WIS. STAT. RULE 809.21(1), and the cause is remanded for further proceedings not inconsistent with this order.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals