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September 9, 2026

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

2024AP2432

Lorna M. Van de Water v. Linda M. Van de Water
(L.C. #2023PR44)

Before Lazar, P.J., Gundrum, and Grogan, JJ.

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).

David Van de Water appeals the circuit court’s order granting default judgment to Lorna Van de Water.¹ Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).² For the following reasons, we affirm.

BACKGROUND

This case originated in May 2023 when Lorna filed a “Petition for Judicial Intervention in the Administration of the Douglas K. Van de Water and Lorna M. Van de Water 1995 Declaration of Trust.” In October 2023, Lorna filed an amended petition for the same. In January 2024, David filed an objection to the amended petition and later filed an amended objection, which in response to both, Lorna filed respective motions to strike. Linda Van de Water, as an interested person, also filed a motion to strike the amended objection. The circuit court found that both Lorna’s and Linda’s respective motions to strike the amended objection were unopposed and granted both motions.

In April 2024, David filed a “Notice of Motion and Motion for Relief from Order” in which he requested that the court vacate the order striking his amended objection and enlarge the time for him to file his objection to the motion to strike.³ As to the substance of the motion, it further stated, “This motion is based on the record herein, the record in the companion civil case,

¹ We respectfully refer to the parties by their first names because they share the same surname.

² All references to the Wisconsin Statutes are to the 2023-24 version.

³ The Record does not evidence that the circuit court ruled on this motion, although it mentioned the motion in its October 2024 order, which is the subject of this appeal.

Sheboygan County [Circuit Court] Case No. 24CV99,⁴ and the affidavit of [David's counsel] filed herewith.”

Meanwhile, in March 2024, Lorna filed a motion for an award of frivolous costs and fees, and David filed a brief in opposition. During the May 2024 hearing on the motion, in which sanctions were ultimately awarded, the circuit court found that David filed an objection to the amended petition that was “unresponsive to the claims and allegations” made in the amended petition. It also found that the amended objection to the amended petition “contained unnecessary and, quite frankly, demeaning information that served no legitimate purpose. It seems only to have been filed to harass the other parties in the litigation. It was again also unresponsive to the particular allegations and claims set forth in the amended petition.” The court noted that when Lorna filed a motion to strike the amended objection, David did not file a response. David argued that an answer that was filed in a separate Sheboygan County Case No. 2024CV99 addressed “many of the issues that were raised in the petition[.]”

Thereafter, Lorna filed a motion for default judgment. In its October 2024 order granting default judgment, the circuit court noted that the April 2024 motion for relief from order did not make any mention of a motion or order for default judgment. The court stated, “To date, the [c]ourt has received no position on the motion other than one sentence from” a letter from David's counsel to the court, in which it said, “Please consider this to be our response to the

⁴ In order to obtain recovery not available in the probate court, Lorna filed a civil complaint in Sheboygan County Circuit Court Case No. 2024CV99, in which the allegations did not mirror the allegations in the amended petition here. While Lorna had filed a motion to consolidate the two cases, the circuit court denied the motion.

request for default. We respectfully suggest to the court that there should be no default on the grounds of excusable neglect.”

The circuit court stated in its order:

The respondent’s request to find excusable neglect is unsupported by any reasonable evidence or testimony. ... [D]espite being invited by the [c]ourt to file additional arguments concerning the motion for default, the respondent failed to do so. In light of the pattern of neglect in this case, the [c]ourt cannot find excusable neglect.

The circuit court further found that David’s argument that an answer in a separate case fulfilled his obligation to file a responsive answer failed. Thus, finding that no issue of law or fact had been joined, and citing WIS. STAT. § 806.02, the court granted the motion for default judgment.⁵

David appeals.

DISCUSSION

A circuit court’s decision to grant a motion for default judgment is discretionary. ***Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.***, 2002 WI 66, ¶63, 253 Wis. 2d 238, 646 N.W.2d 19. A circuit court properly exercises its discretion when the decision was demonstrably made and based upon the facts in the Record and in reliance on the appropriate and applicable law. ***Split Rock***, 253 Wis. 2d 238, ¶65. Although the law views default judgments with disfavor, we affirm the decision to grant default judgment, even if the evidence favoring it is

⁵ In November 2024, David filed a motion for relief from default judgment. The circuit court denied the motion in a January 2025 order. David filed his notice of appeal before the circuit court entered its order denying the motion for relief from default judgment. Thus, that order is not before us.

light, unless it was impossible for the circuit court to grant the judgment in the exercise of its discretion. ***Martin v. Griffin***, 117 Wis. 2d 438, 442, 334 N.W.2d 206 (Ct. App. 1984).

We conclude the circuit court did not erroneously exercise its discretion. First, the court's order identified the appropriate law to evaluate the motion for default judgment. WISCONSIN STAT. § 806.02(1) advises that default judgment may be granted when no issue of law or fact has been joined and the time for joining has expired, both of which the court found applied to the facts on Record. Next, the court identified a pattern by which David was nonresponsive to the amended petition's allegations and to other filings. David's objection and amended objection both failed to respond to the allegations in the amended petition. While the court advised David of the deadline for a response to Lorna's and Linda's respective motions to strike the amended objection, the court noted that he did not file a response. After the court struck the amended objection, David moved the court to vacate that order, and the court noted that that motion did not make any mention of a motion or order for default judgment. The court stated that it had received no substantive response to the motion for default judgment. The court noted that it provided David another opportunity to respond, and "despite being invited by the [c]ourt to file additional arguments concerning the motion for default" in its July 2024 order, David failed to do so. Thus, the court reasonably concluded that given this pattern, it could not find excusable neglect.

Finally, the circuit court properly rejected David's argument that his answer to the complaint in the civil case could join issue with the amended petition in this probate case: the cases were not consolidated, and David's answer in the civil case was not filed in the probate case. Noting that "[c]ourts have no duty to scour the record to review arguments unaccompanied by adequate citations," the circuit court stated, "nor should a [c]ourt have to review filings in a

separate case with separate filings with different parties and seeking different types of relief.” Thus, the court properly found that no issue of law or fact had been joined and granted the motion for default judgment. We conclude this was not an erroneous exercise of the circuit court’s discretion.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals