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DISTRICT III

September 29, 2026

To:

Hon. Galen Bayne-Allison
Circuit Court Judge
Electronic Notice

Kristopher R. Ellis
Electronic Notice

Thomas S. Barker
Clerk of Circuit Court
Lincoln County Courthouse
Electronic Notice

Benjamin Joseph Dale Reppert
1746 Bass Bay Ln.
Eagle River, WI 54521

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

2024AP851

Lincoln County v. Benjamin Joseph Dale Reppert
(L. C. No. 2023TR1246)

Before Hruz, 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).

Benjamin Joseph Dale Reppert, pro se, appeals an order denying his motion to reopen a traffic forfeiture for speeding and, it appears, the underlying default judgment entered upon his nonappearance at a final pretrial conference.² As relevant to the issues we address, Reppert

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

² It is unclear given the nature of Reppert's appellate briefing, especially in juxtaposition to the text of his notice of appeal, whether Reppert is, in fact, also appealing from the default judgment itself. For purposes of this opinion, we will assume that he also appeals the judgment as well as the subsequent order denying his motion to reopen that judgment.

essentially argues that the circuit court erroneously exercised its discretion by failing to grant his motion to reopen the default judgment because he was self-represented in the circuit court and his failure to appear in person at his final pretrial conference was due to mistake, inadvertence, surprise, or excusable neglect. He further contends that the circuit court erroneously exercised its discretion by entering a default judgment against him. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

On September 9, 2023, Lincoln County Sheriff's Department Deputy Conner Monk observed a vehicle traveling at 95-miles-per-hour (mph) in a 65-mph zone on U.S. Highway 51. Monk subsequently issued the driver, identified as Reppert, a citation for speeding in violation of Lincoln County Ordinance 7.03, which adopted WIS. STAT. § 346.57(4)(gm)1. Reppert filed a not-guilty plea and a jury demand on October 13, 2023. The case was set for a final pretrial conference on April 9, 2024, and a jury trial on May 15, 2024. Reppert was never represented by counsel in this case.

On December 28, 2023, a notice of hearing was mailed to the address Reppert had on file with the circuit court. The notice stated the above dates for the final pretrial conference and jury trial, the former of which was followed by a statement reading, "Defendant to be in person for [final pretrial]." Reppert failed to appear for the final pretrial conference, and based on his failure to appear, the court entered a default judgment against Reppert, which included a 30-day drivers' license suspension and a forfeiture of \$326.50.

Reppert filed a motion to reopen, first asserting that he was not, in fact, served with the notice of the final pretrial conference, but principally arguing that the circuit court's entry of a

default judgment based upon his failure to appear at the final pretrial conference violated his due process rights and was based upon mistake, inadvertence, surprise, or excusable neglect. Reppert asserted that he was advised by an assistant district attorney (ADA) and judicial assistant (JA) that he could appear at the final pretrial conference by phone and that he attempted to attend the hearing via telephone, as he had done for prior telephone scheduling conferences, but he received no answer when he contacted the circuit court on the date of the final pretrial conference.

The circuit court denied the motion after determining that Reppert did not sufficiently show that his failure to appear was due to mistake, inadvertence, surprise, or excusable neglect. Reppert now appeals, challenging the denial of his motion to reopen the judgment and, we assume, the entry of the default judgment in the first instance.

Reppert argues that the circuit court erroneously exercised its discretion by denying his motion to reopen the default judgment against him based upon his mistake. We conclude that his argument in his brief-in-chief is undeveloped. It reads, in full:

The Court's use of default judgment to dismiss was inconsistent with existing case law and state statutes. The relief of judgment sought met stipulated requirements and the Court abused its discretion in refusing to consider whether the defendant had committed an excusable mistake. The Court's ruling [is] devoid of any reason why, and the Court didn't apply [a] correct legal standard to defaulting the Defendant-Appellant. Wisconsin Stats. [§] 806.07 has [a] presumption against defaults. The matter presented issues that could be handled at the local level and because the Court refused acknowledgment of justified relief, the matter was given default judgment. See *Blazel v. Bradley*, 698 F. Supp. 756 (W.D. Wis. 1988). The case involved a lay person, Benjamin Reppert, who mistakenly attempted telephonic presence when no order was demanded otherwise, he acted as a reasonably prudent person unfamiliar with legal procedures might. See *Maier Constr., Inc. v. Ryan*, 81 Wis. 2d 463, 260 N.W.2d 700 (1978).

(Citations modified.)

Both the entry of the default judgment itself and the denial of Reppert’s motion to reopen the judgment involve the exercise of the circuit court’s discretion. See **Brandon Apparel Grp., Inc. v. Pearson Props., Ltd.**, 2001 WI App 205, ¶10, 247 Wis. 2d 521, 634 N.W.2d 544 (regarding review of a circuit court’s decision to grant a default judgment); **Franke v. Franke**, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832 (regarding review of a decision not to reopen a judgment under WIS. STAT. § 806.07(1)). On appeal, we will not set aside a discretionary decision unless the court erroneously exercised its discretion. **Werner v. Hendree**, 2011 WI 10, ¶59, 331 Wis. 2d 511, 795 N.W.2d 423. A court “erroneously exercises its discretion when it applies the wrong legal standard or if the facts of record fail to support the ... court’s decision.” *Id.*

In determining whether the circuit court properly entered a default judgment or denied Reppert’s motion to reopen the judgment, we are mindful to balance the law’s disfavor of default judgments and its preference, whenever reasonably possible, to afford litigants a day in court. See **Hedtcke v. Sentry Ins.**, 109 Wis. 2d 461, 469, 326 N.W.2d 727 (1982). However, Reppert gives us no basis to reverse the court’s rulings.

Reppert’s appeal fails because he has not provided this court, in his initial appellant’s brief, with any developed explanation for why the circuit court erroneously exercised its discretion by entering a default judgment or refusing to reopen the judgment. An appellant bears the burden to demonstrate that the court erred. **Gaethke v. Pozder**, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. Pro se litigants, such as Reppert, are not immune to this burden,

and they must still reasonably abide by the same rules required of attorneys. See **Waushara County v. Graf**, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

Generally, “[w]e will not address undeveloped arguments,” **Clean Wis., Inc. v. PSC**, 2005 WI 93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768, and we cannot properly serve as both advocate and judge, **State v. Pettit**, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). Thus, it is inappropriate for us to “abandon our neutrality to develop arguments” for Reppert. See **Industrial Risk Insurers v. American Eng’g Testing, Inc.**, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82. Moreover, we decline to consider the arguments Reppert raises for the first time in his reply brief that could have, and should have, been first raised in his initial brief. See **State v. Chu**, 2002 WI App 98, ¶42 n.5, 253 Wis. 2d 666, 643 N.W.2d 878 (noting that we will generally not address issues raised for the first time in a reply brief).

As noted above, Reppert first argues that the circuit court’s entry of default judgment was inconsistent with existing case law and state statutes. Reppert, however, fails to adequately cite to the record or develop an argument as to why he believes this is the case.³ Reppert next contends that “[t]he relief of judgment sought met stipulated requirements and the [circuit c]ourt abused its discretion in refusing to consider whether the defendant had committed an excusable mistake. The [c]ourt’s ruling [is] devoid of any reason why, and the [c]ourt didn’t apply [a] correct legal standard to defaulting the Defendant-Appellant.” While Reppert appears to fault the court for not making factual findings in its order denying his motion to reopen the judgment,

³ We note that Reppert does not challenge the circuit court’s denial of his motion to dismiss filed earlier in the case, and he did not argue in his initial appellate brief that the notice of the final pretrial hearing was improperly served on him or that he otherwise did not receive notice of it. In fact, his argument, both below and on appeal, is that he attempted to attend the hearing, albeit by telephone.

he fails to acknowledge that, in the absence of factual findings from the court, we “may search the record to determine if it supports the court’s discretionary decision.”⁴ ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. Here, the court gave a reason for why it entered a default judgment and denied Reppert’s motion to reopen the judgment—namely, Reppert’s failure to appear at the final pretrial conference despite his being pro se, as the pretrial hearing notice clearly stated that he was required to do so. By failing to address and refute the court’s reasoning, Reppert has not explained why, under governing law, the court erroneously exercised its discretion by entering the judgment and by denying his motion. Reppert additionally fails to explain the significance of his cited authority and connect it to the facts of his case.

Reppert fails to develop any argument in support of his claims that the circuit court erroneously exercised its discretion by entering the default judgment or refusing to reopen the judgment. Because Reppert failed to satisfy his burden in presenting his reasoning in his initial brief, we must reject his argument.

Upon the foregoing,

⁴ In our review of the record to support the circuit court’s exercise of discretion, see ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737, we note some key discrepancies between Reppert’s circuit court filings and his appellate briefs. In a letter attached to his motion to reopen the judgment, Reppert asserts that he was affirmatively informed by the ADA and by the court’s JA that he could attend the final pretrial hearing by telephone. Reppert does not mention in his reply brief being permitted by the ADA or JA to appear at the final pretrial hearing by telephone. Rather, Reppert suggests that he merely relied on past practice when he called into the court the day of the hearing. We note, however, that the notices for the first two pretrial hearings in this matter stated that the case was scheduled for a “[t]elephone scheduling conference” and that the JA would call the parties by phone. Conversely, the notice for the final pretrial hearing—for which Reppert failed to appear—did not mention appearing by telephone, did not state that a JA would call, and specified that Reppert was required to be in person.

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to 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