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**DISTRICT IV**

July 24, 2025

To:

Hon. Ellen K. Berz  
Circuit Court Judge  
Electronic Notice

Toni Yvette Johnson  
Electronic Notice

Jeff Okazaki  
Clerk of Circuit Court  
Dane County Courthouse  
Electronic Notice

Petitioner  
Electronic Notice

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

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2023AP1214

Petitioner v. Toni Yvette Johnson (L.C. # 2023CV311)

Before Kloppenburg, P.J., Blanchard, and Graham, 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).**

Toni Johnson, who is self-represented, appeals a circuit court order that denied Johnson's motion for relief from a harassment injunction. We conclude that the circuit court did not erroneously exercise its discretion with respect to the motion for relief. Therefore, we affirm.

This case was initiated in early February 2023, when a person we refer to as "Petitioner" filed a petition in Dane County Circuit Court that sought a harassment injunction against Johnson. *See* WIS. STAT. § 813.125 (2023-24); WIS. STAT. RULE 809.19(1)(g).<sup>1</sup> A court

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

commissioner issued a temporary restraining order and scheduled a hearing for February 10, 2023.

Petitioner was unable to serve the notice of hearing and other documents on Johnson by the original hearing date. Therefore, the circuit court rescheduled the hearing for February 24, 2023. *See* WIS. STAT. § 813.125(3)(c) (requiring a court to hold a hearing for an injunction within 14 days of the issuance of a temporary restraining order, except that the time for holding the hearing can be “extended once for 14 days” if the court makes certain findings with respect to an inability to accomplish service). A subsequent attempt at service was successful, and Johnson was timely served on February 14, 2023.

On the day before the rescheduled hearing, the clerk of the circuit court received and filed a letter from Johnson. Johnson’s letter indicated that the allegations in the petition were false and asked for a change of venue. Johnson represented that she lived in Milwaukee County, and that Dane County was an “inconvenient forum” for her and her witness and that Johnson had no means to travel to Dane County.

The injunction hearing took place as scheduled on February 24, 2023. Johnson did not appear at the hearing, and the circuit court did not address her letter requesting a change of venue. After asking Petitioner whether everything that she had written in her petition was true and correct, the court granted an injunction. It issued a written injunction order, which was mailed to Johnson at her Milwaukee address.

On April 6, 2023, Johnson filed a motion for relief under WIS. STAT. § 806.07. In her motion, Johnson indicated that she did not attend the scheduled hearing due to “logistic[al]

issues,” and because she had mistakenly believed that her request for a change of venue would stay the proceedings on the injunction hearing. Johnson argued that relief was warranted under § 806.07(1)(a) (providing a means for relief from judgment due to “excusable neglect”) and § 806.07(1)(h) (addressing “any other reasons justifying relief”).

In the motion she filed in the circuit court, Johnson asserted that her mistaken belief was based on discussions she had with the clerk of court. Specifically, she asserted, the clerk’s office “provided an outline of a typical procedure [by] which motions such as a change of venue are determined,” which “depicted motions to be reviewed in advance of a proceeding to allow for strategy and challenges to take place.” Johnson asserted that she did not attend the scheduled hearing because her discussion with the clerk’s office led to her having “a reasonable belief” that her letter “would in fact stay any current proceedings.”

The circuit court held a hearing on Johnson’s WIS. STAT. § 806.07 motion and denied it. The court explained that, even if it had addressed Johnson’s change-of-venue letter at the injunction hearing, it could not have given Johnson the relief she requested. That is, the court said, it had no authority to transfer the case to Milwaukee County, and that the court would not have been able to extend the deadline for holding the hearing without Petitioner’s consent.

The circuit court also squarely addressed Johnson’s asserted belief that her change-of-venue letter would stay the injunction proceeding, and implicitly found that belief to be unreasonable. The court noted that Johnson did not receive any response from the court after she filed the letter, and the court asked: “[I]f you did not hear anything would you not then have assumed that the hearing was going on as scheduled?” Johnson responded that she had taken

action—she called the clerk’s office, which “instructed” her to “apply for a change of venue.”

The court replied:

Okay. And you did [apply for a change of venue]. And then you do not hear anything. You do not hear that the hearing has been cancelled. You do not hear that it has been changed to a different date, which, by the way, legally a Court cannot change the date. It has to be held within that period of time. Why would you not have shown up?

Johnson then indicated that the reason she did not attend the hearing was due to mechanical issues with her car.

Johnson appeals the denial of her motion under WIS. STAT. § 806.07.<sup>2</sup> We review the grant or denial of a motion under § 806.07 for an erroneous exercise of discretion. *Edlund v. Wisconsin Phys. Serv. Ins. Corp.*, 210 Wis. 2d 638, 644, 563 N.W.2d 519 (1997); *see also Connor v. Connor*, 2001 WI 49, ¶18, 243 Wis. 2d 279, 627 N.W.2d 182 (“We will not disturb a circuit court’s decision regarding excusable neglect unless an erroneous exercise of discretion is clearly shown.”). “A circuit court does not erroneously exercise its discretion if its decision is based on the facts of record and on the application of a correct legal standard.” *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶29, 326 Wis. 2d 640, 785 N.W.2d 493 (citations omitted). “We generally look for reasons to sustain a circuit court’s discretionary determination,” and “[w]e will

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<sup>2</sup> The appellant’s brief does not comply with WIS. STAT. RULE 809.19(8)(bm), which addresses the pagination of appellate briefs. *See* RULE 809.19(8)(bm) (providing that, when paginating briefs, parties should use “Arabic numerals with sequential numbering starting at ‘1’ on the cover”). This rule has recently been amended, *see* S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021), and the reason for the amendment is that briefs are now electronically filed in PDF format, and are electronically stamped with page numbers when they are accepted for eFiling. The pagination requirements ensure that the numbers on each page of a brief “will match ... the page header applied by the eFiling system, avoiding the confusion of having two different page numbers” on every page of a brief. Supreme Court Note, 2021, RULE 809.19.

not reverse a discretionary determination ... if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court’s decision.” *Id.*, ¶30 (citation omitted). Here, Johnson contends that the circuit court erroneously exercised its discretion, but she does not identify any legal or factual error that the circuit court made.

Johnson first argues that, even if it is true that the circuit court could not have granted a change of venue or an extension of the injunction hearing, that does not foreclose the court from considering a properly supported motion for relief under WIS. STAT. § 806.07. We generally agree, but this argument does not address the court’s rationale for denying relief under § 806.07. As shown above, the transcript of the court’s decision demonstrates that the court denied the motion, at least in part, because it determined that Johnson’s asserted reason for missing the hearing was unreasonable and did not warrant relief under § 806.07.

As noted, WIS. STAT. § 806.07(1)(a) provides that relief from judgment may be granted if the judgment was entered as a result of “excusable neglect.” As defined in Wisconsin case law, “excusable neglect” is “not synonymous with neglect, carelessness or inattentiveness,” and is instead the neglect that “might have been the act of a reasonably prudent person under the same or similar circumstances.” *Gerth v. American Star Ins. Co.*, 166 Wis. 2d 1000, 1007, 480 N.W.2d 836 (Ct. App. 1992).

Here, Johnson argues that she exhibited “due diligence” by filing her change-of-venue request before the scheduled hearing. The circuit court addressed that argument when it implicitly determined that, in the absence of some kind of confirmation from the clerk’s office or the court after Johnson filed her letter, it was not reasonably prudent for Johnson to assume that

the hearing had been cancelled or stayed. We are not persuaded that this determination is clearly erroneous.

We now turn to WIS. STAT. § 806.07(1)(h), which is a “‘catch-all’ provision” that “allow[s] relief from judgment for ‘any other reasons justifying relief.’” *Miller*, 326 Wis. 2d 640, ¶32 (citation omitted). Wisconsin cases have interpreted this provision to require a showing of “extraordinary circumstances,” which is determined by considering a “wide range of factors,” “including but not limited to” the five factors set forth in *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 552-53, 363 N.W.2d 419 (1985). *Miller*, 326 Wis. 2d 640, ¶¶35-36. Here, Johnson notes the existence of these five factors in her appellant’s brief, but she does not address these five factors, nor does she develop an argument to explain why the circuit court was required to find that the circumstances here were extraordinary. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (a court need not address undeveloped arguments).<sup>3</sup>

IT IS ORDERED that the circuit court’s order is affirmed.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*

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<sup>3</sup> Johnson makes a number of other arguments in her appellant’s brief about her right to due process and meaningful access to the courts. Johnson does not attempt to tie these arguments to the legal standards in WIS. STAT. § 806.07, but even if we were to assume that she means to argue that these circumstances make this case “extraordinary,” we disagree. Johnson was given notice of the hearing and an opportunity to be heard—both on the petition for a harassment injunction and on her motion for relief. Although Johnson argues that the circuit court could have done more to accommodate her difficulties in attending an injunction hearing in Dane County, Johnson did not request any accommodation other than a change of venue.