COURT OF APPEALS
DECISION
DATED AND FILED

February 19, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal Nos. 03-1242
03-1243

Cir. Ct. No. 02SC008288
02SC009175

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

No. 03-1242
TONY SCHROECKENTHALER AND DENISE SCHROECKENTHALER,

PLAINTIFFS-RESPONDENTS,

V.

ROGER PHILBRICK,

DEFENDANT-APPELLANT.

No. 03-1423
ROGER PHILBRICK,

PLAINTIFF-APPELLANT,

V.

TONY SCHROECKENTHALER AND DENISE SCHROECKENTHALER,

DEFENDANTS-RESPONDENTS.

APPEAL from orders of the circuit court for Dane County: GERALD C. NICHOL, Judge. *Affirmed and cause remanded with directions.*

¶1 HIGGINBOTHAM, J.[1] Roger Philbrick appeals from an order of the circuit court denying his motion to reopen a small claims eviction action against him and his separate claim against his former landlords for the return of his security deposit. As best we can tell from his disorganized and disjointed arguments, Philbrick claims that the eviction itself was unjust because he did not receive proper notice, he had no opportunity to respond to the eviction action and his equal protection and due process rights were violated. These arguments are without merit.

¶2 We conclude that Philbrick waived the majority of his arguments by virtue of his stipulation to the dismissal of both claims. We further conclude that the circuit court properly exercised its discretion in declining to reopen the small claims action. We therefore affirm the order of the circuit court. Finally, because we conclude this is a frivolous appeal, we award the Schroekenthalers their costs and attorneys fees pursuant to WIS. STAT. § 809.25(3) and remand to the circuit court to determine the same.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

FACTS

¶3 On August 1, 2002, Tony and Denise Schroeckenthaler sued Philbrick in small claims court for eviction.[2] On August 27, 2002, Philbrick filed a separate action against the Schroeckenthalers in small claims court for the return of his security deposit. The two cases were consolidated and remain consolidated upon appeal.

¶4 A hearing on both cases was held on January 9, 2003. The minutes from both cases indicate that after the hearing, both cases were dismissed by stipulation of both parties after settlement. This stipulation was memorialized in writing, and the court commissioner dismissed both cases on January 9, 2003. The terms of the settlement required Philbrick to pay the Schroeckenthalers $371.16 by February 3, 2003; if payment was not timely made, the Schroeckenthalers could apply for and obtain an ex-parte judgment for the remaining balance.

¶5 On January 23, 2003, Philbrick filed an objection to the dismissal of the two small claims actions and a demand for a trial de novo. The circuit court denied the motion, concluding that because the action was dismissed by stipulation, there was no reviewable decision by the court commissioner. The circuit court then remanded the cases to the small claims court, where Philbrick filed a motion to reopen, arguing only that he had been denied an opportunity to be heard. This motion was denied on April 10, 2003. On April 11, 2003, Philbrick filed a request for a trial with the circuit court. This motion was denied on

[2] The record indicates that Philbrick failed to appear at the original October 11, 2002 return date on the eviction action and a default judgment was entered against him for this non-appearance. On October 17, 2002, Philbrick filed a motion to reopen the small claims judgment based upon mistake. This motion to reopen was granted on November 4, 2002.

April 23, 2003. Philbrick never made the $371.16 payment as set forth in the stipulation. On April 22, 2003, the Schroeckenthalers filed an affidavit of default and judgment was entered against Philbrick in the amount of $371.16. Philbrick appeals.

DISCUSSION

¶6 Philbrick argues that the eviction itself was unjust because he did not receive proper notice, he had no opportunity to respond to the eviction action and his equal protection and due process rights were violated. Because the court commissioner entered a default judgment against Philbrick, we cannot address the merits of the eviction action but can only address the propriety of the default judgment and Philbrick's motion to reopen.

¶7 WISCONSIN STAT. § 799.29 sets forth the exclusive procedure for reopening default judgments in small claims cases. ***King v. Moore***, 95 Wis. 2d 686, 687, 291 N.W.2d 304 (Ct. App. 1980). Subsection (1)(a) specifically prohibits appeals from default judgments; however a circuit court may, by order, "reopen default judgments upon notice and motion or petition duly made and good cause shown." Section 799.29(1)(a). "Good cause" is not a defined term but it does indicate an affirmative obligation on Philbrick's part. To determine whether good cause exists to reopen a default judgment, the circuit court may consider factors set forth in WIS. STAT. § 806.07(1), which include mistake, inadvertence and excusable neglect. This same rule applies to stipulated judgments as well. *See* WIS. STAT. § 799.29(2).

¶8 The determination of whether to vacate a default judgment is within the sound discretion of the circuit court and the circuit court's decision will not be disturbed unless there is an erroneous exercise of discretion. *See* ***Dugenske v.***

Dugenske, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). A circuit court's exercise of discretion will be sustained if it has applied the proper law to the established facts and if there is any reasonable basis for the court's ruling. *See* ***State v. Alsteen***, 108 Wis. 2d 723, 727, 324 N.W.2d 426 (1982). We will generally look for reasons to sustain a discretionary determination. ***Steinbach v. Gustafson***, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993). We may independently search the record to determine whether additional reasons exist to support the circuit court's exercise of discretion. *See* ***Stan's Lumber, Inc. v. Fleming***, 196 Wis. 2d 554, 573, 538 N.W.2d 849 (Ct. App. 1995).

¶9 However, in the exercise of its discretion, the court should recognize that (1) the statute relating to vacating default judgments is remedial and should be liberally construed; (2) "the law prefers, whenever reasonably possible, to afford litigants a day in court and a trial on the issues;" and (3) "as a corollary to this preference, default judgments are regarded with particular disfavor …." *See* ***Dugenske***, 80 Wis. 2d at 68. Therefore, the central issue is whether Philbrick has established that the court misused its discretion in denying his motion to reopen, bearing in mind the substantial hurdle Philbrick must overcome which is mitigated only by the two caveats in ***Dugenske***. We conclude that Philbrick has not overcome this hurdle.

¶10 In Philbrick's motion to reopen to the court commissioner, his only justification for reopening was that he did not have an opportunity to be heard. In his motion to the circuit court to reopen the cases, Philbrick argued that the court commissioner's notes establishing that the parties had reached an agreement were wrong; he further claimed that he was not allowed to speak at the hearing about either case except to answer to the charges of damages submitted by the Schroeckenthalers. Here, Philbrick first argues that the eviction itself was unjust

because he did not receive proper notice. Because Philbrick did not raise the issue of improper notice before either the court commissioner or the circuit court as reason to reopen, he has waived it. ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980) (we will not hear matters raised for the first time on appeal).

¶11 Philbrick next argues he had no opportunity to respond to the eviction action. The record belies this assertion. A hearing on both small claims cases was held on January 9, 2003 and the minutes indicate that a trial was, in fact, held. This was Philbrick's opportunity to call witnesses and present evidence. While the minutes from this hearing do not indicate that any witnesses were called, there is no evidence in the record, other than Philbrick's unsworn statements, that he was denied the chance to do so. We have not been provided either a transcript or a tape of this proceeding and we must assume that the missing material supports the trial court's ruling. ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993).

¶12 Furthermore, it was at this hearing that Philbrick stipulated to the settlement and dismissal of both cases. While Philbrick argued to the circuit court that the court commissioner's notes regarding an agreement between the parties were wrong, he has provided no evidence in support of this claim. The minutes from the hearing indicate a stipulated dismissal was agreed upon by both parties and the court commissioner memorialized this agreement in a written decision. Without a tape or a transcript of this proceeding, all we have is Philbrick's unsworn statement challenging the notes contained with the minutes and the court commissioner's written decision. Again, we must assume that the missing material supports the trial court's ruling. ***Id***. Philbrick waived any challenges to any alleged deficiencies that may have occurred during the course of the trial by stipulating to the post-trial settlement and dismissal of the two cases.

¶13 Finally, Philbrick argues that his equal protection and due process rights were violated when the court commissioner and the court denied his motion to reopen the cases. First of all, Philbrick was given the opportunity to be heard and ultimately settled the cases; he cannot complain that he was not given the opportunity to be heard and that this alleged lack of opportunity violated his due process rights.

¶14 In addition, because Philbrick has not demonstrated the good cause necessary to reopen, his due process rights were not violated by the court commissioner's refusal to grant his motion. Furthermore, Philbrick merely mentions several constitutional cases but makes no real argument connecting these cases with the alleged infringement on his due process rights. We are not required to address "amorphous and insufficiently developed" arguments. ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995). We shall not address arguments that are supported by only general statements, are unsupported by citations to legal authority or are otherwise inadequately briefed. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶15 Philbrick's equal protection argument is equally without merit. The implication of this argument is that Philbrick's case was dismissed or he was somehow treated differently because of his status as a member of the Crow Creek Sioux Tribe. The record is absolutely devoid of any such evidence. In fact, there doesn't appear to be any mention of Philbrick's race anywhere in the record; the only mention of Philbrick's race is in his own brief. He has presented no evidence that a person of another race would have been treated differently.

¶16 The Schroekenthalers seek costs and attorneys fees pursuant to WIS. STAT. § 809.25(3) claiming they were required to defend a frivolous appeal. We

agree. WIS. STAT. § 809.25(3) permits recovery of costs and reasonable attorneys fees by respondents forced to defend against a frivolous appeal. The statute provides in relevant part:

> (c) In order to find an appeal or cross-appeal to be frivolous under par. (a), the court must find one or more of the following:
>
> 1. The appeal or cross-appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.
>
> 2. The party or the party's attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

Subsection (c)2. applies here.

¶17 Before the trial court, Philbrick waived the majority of his arguments by stipulating to the dismissal of both claims. The case was essentially settled, yet Philbrick persisted in trying to litigate this case although he should have known there was no reasonable basis in law or equity that could be supported by a good faith argument that he was entitled to reopen and have the case tried. He tried to reopen the case before the court commissioner and the trial court and was summarily rejected because the case was settled. Philbrick was informed in the clearest way that his attempts to further litigate this case were completely without merit. There is nothing in his arguments that could reasonably be construed as seeking an extension, modification or reversal of existing law. Had Philbrick properly researched the law and had he considered the basis upon which his motions to reopen were denied, this appeal would have been avoided and the Schroekenthalers would not have been required to expend their resources to defend against a patently frivolous appeal.

¶18 In sum, Philbrick waived the majority of his arguments by virtue of his stipulation to the dismissal of both claims. The circuit court properly exercised its discretion in declining to reopen the small claims action. We therefore affirm the order of the circuit court. Furthermore, we conclude this appeal is frivolous and remand to the circuit court to determine costs and reasonable attorneys fees to be awarded to the Schroekenthalers.

By the Court.—Orders affirmed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.