

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 14, 2012

A. John Voelker
Acting 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 No. 2011AP1777

Cir. Ct. No. 2010SC34257

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

EQUITY ASSETS LIMITED, LLC,

PLAINTIFF-APPELLANT,

v.

**MICHAEL GARLAND, D/B/A GARLAND TRUCKING, JOHN DOE, D/B/A
GARLAND TRUCKING AND JANE DOE, D/B/A GARLAND TRUCKING,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN SIEFERT, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Equity Assets Limited, LLC, (“Equity Assets”) by its employee, Larry N. Scruggs Jr., appeals from the order dismissing Equity Assets’s complaint for eviction and damages and reopening a default judgment. We affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

BACKGROUND

¶2 On November 8, 2010, Scruggs filed an eviction complaint in small claims court alleging that Michael Garland “refused to pay owner rent ... [and] refused to allow owner entry” to certain property. Attached to the complaint was a notice to quit or pay rent, dated October 20, 2010, and signed by Scruggs on behalf of Equity Assets. Because of a request for substitution, the case was transferred to another judge. Thereafter, on December 13, 2010, Scruggs obtained a default judgment against Garland.

¶3 After other proceedings not relevant to this appeal, Garland, by counsel, moved to reopen and dismiss the default judgment and eviction action against him on the grounds that it was earlier obtained by Scruggs through fraud on the court. Garland argued that Scruggs’s action was fraudulent because Equity Assets did not own the property from which eviction was sought. The circuit court granted the motion. Scruggs moved for reconsideration and filed additional affidavits in support of his motion. The circuit court denied the reconsideration motion without a hearing. This appeal follows. Equity Assets, by Scruggs,² appeals only the circuit court’s decision and order reopening the default judgment and dismissing the eviction action.

² Scruggs has a law degree, but at all times material to these proceedings his license to practice law in Wisconsin has been suspended for disciplinary reasons. Because the circuit court concluded Scruggs was an employee of Equity Assets, WIS. STAT. § 799.06(2) permits him to represent the entity in small claims proceedings. *See id.* This privilege for a business entity to be represented by an employee extends to the appeal of a small claims judgment or order. *See Holz v. Busy Bee Contracting, Inc.*, 223 Wis. 2d 598, 605-06, 589 N.W.2d 633 (Ct. App. 1998).

STANDARD OF REVIEW

¶4 In a small claims action, WIS. STAT. § 799.29(1)(a) permits the circuit court to “reopen default judgments upon notice and motion or petition ... and good cause shown.” *Id.* Large claim actions may be reopened pursuant to WIS. STAT. § 806.07(1) “[o]n motion and upon such terms as are just, the court ... may relieve a party ... from a judgment ... for the following reasons: ... (c) [f]raud, misrepresentation, or other misconduct.” *Id.* (some formatting altered).

¶5 The decision of whether to reopen a default judgment is committed to the sound discretion of the circuit court. *See Kovalic v. DEC Int’l*, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994). A circuit court’s decision on a motion to reopen will not be disturbed absent an erroneous exercise of discretion. *See Dugenske v. Dugenske*, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). An erroneous exercise of discretion will not be found if the record shows the circuit court examined the relevant facts, applied the correct law, “and set forth a process of logical reasoning.” *Button v. Button*, 131 Wis. 2d 84, 99, 388 N.W.2d 546 (1986). We may search the record to determine if it supports the circuit court’s discretionary decision. *Countrywide Home Loans, Inc. v. Schmidt*, 2007 WI App 243, ¶22, 306 Wis. 2d 200, 742 N.W.2d 901. We may also decide on grounds other than those articulated by the circuit court. *See Mercado v. GE Money Bank*, 2009 WI App 73, ¶2, 318 Wis. 2d 216, 768 N.W.2d 53.

DISCUSSION

¶6 Scruggs argues that the circuit court erroneously exercised its discretion by reopening and dismissing the eviction judgment. We conclude that the circuit court did not erroneously exercise its discretion because the record amply supports a finding that the circuit court had “good cause” to reopen under

WIS. STAT. § 799.29(1)(a).³ The facts in the record also support a finding of “[f]raud, misrepresentation, or other misconduct” committed by Scruggs under WIS. STAT. § 806.07(1)(c),⁴ which would also constitute good cause under § 799.29(1)(a). Relevant facts which support the circuit court’s decision to reopen are discussed below. Multiple documents in the record support the circuit court’s finding that Equity Assets did not have an ownership interest in the property involved and that the ownership was misrepresented to the court by Scruggs at the time the action was filed. Such documents include:

- (1) A copy of a quitclaim deed dated November 16, 2009 prepared by Scruggs and signed by Scruggs as a “member” of Advanced Properties and Investments LLC, quitclaiming the property involved *to* Equity Assets Limited, LLC. The document indicates that it was recorded by the Register of Deeds on November 23, 2009. The document shows it was returned to *P.O. Box 180525, Delafield*.
- (2) A copy of a quitclaim deed dated February 12, 2010 prepared by Scruggs and signed by Scruggs as a “member” of Equity Assets Limited, LLC, quitclaiming the property involved *to* “L.J. Smith” at

³ WISCONSIN STAT. § 799.29(1)(a) provides: “[t]here shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown.”

⁴ WISCONSIN STAT. § 806.07 (1)(c) provides:

Relief from Judgment or Order. (1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

....

(c) Fraud, misrepresentation, or other misconduct of an adverse party[.]

P.O. Box 180525, Delafield. This document indicates that it was recorded by the Register of Deeds on April 29, 2010.

- (3) A handwritten “Damage Itemization” signed by “Larry Scruggs, owner” to which he attached a copy of a city water bill and sewage charge dated December 1, 2010, billed to “L.J. Smith” at *P.O. Box 180525, Delafield.* The document was filed on January 18, 2011.

(Emphasis added.) Post Office Box 180525, Delafield, is the only address provided for Scruggs in these documents and in the pleadings in this case and is the only address provided for L.J. Smith. It is also the address listed on the deeds for Equity Assets, or Advanced Properties and Investments.

¶7 At the hearing on the motion to reopen the default judgment, the circuit court asked Scruggs to explain how Equity Assets had an ownership interest in the property involved, and therefore had standing to bring the eviction action on November 8, 2010, when the quitclaim deed Scruggs signed on February 12, 2010, transferred Equity Assets interest to “L.J. Smith.” Scruggs claimed that “[t]he property was subsequently deeded back to Equity Assets.” However, when the court asked for the deed, which had not been recorded, Scruggs did not produce a deed. Instead he produced, for the first time at the hearing, what purported to be an affidavit from “L.J. Smith” claiming to have transferred the property on March 1, 2010 “to Larry Scruggs, Jr[.] as the owner.” Thus, even if one gives credence to the Smith affidavit, Equity Assets did not own the property when Scruggs began the eviction action on its behalf.

¶8 Scruggs did not explain why he recorded the February 12, 2010 deed from Equity Assets to L.J. Smith on April 29, 2010, nearly two months *after* Scruggs allegedly received a deed to the same property *from* L.J. Smith.

Scruggs's only "explanation" was that he was not required to record the deed, stating "I [could] take the deed, put it in my drawer, and hold it for the next hundred years if I chose to." Scruggs never explained why the deed he claimed transferred the property back to Equity Assets was not produced, but instead he relied on an affidavit from an unidentified person claiming a deed existed. The purported affiant, L.J. Smith is not identified by residence or street address, nor is it even clear that he or she is an adult. The recorded deed and the water bill addressed to Smith, but submitted by Scruggs, used Scruggs's P.O. Box 180525 in Delafield as Smith's address.

¶9 Based on this record, the circuit court could reasonably conclude that Scruggs misrepresented the ownership of the real property from which he sought to evict Garland. The circuit court could also reasonably conclude that such misrepresentation was intentionally and knowingly made by Scruggs. The circuit court could certainly conclude from this record that Equity Assets had no standing to proceed and that this conduct by Scruggs was good cause under WIS. STAT. § 799.29(1)(a) to reopen the default judgment and dismiss the eviction proceeding.

By the Court.—Order affirmed.

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

