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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1107**

Meria Murray,
Appellant,

vs.

Bill Zimbinski,
Respondent,

Rachel Zimbinski,
Respondent.

**Filed March 30, 2010
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 081230025

Meria Murray (pro se appellant)

Rachel Zimbinski, Bill Zimbinski (pro se respondents)

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-tenant challenges the district court's denial of her motion to vacate the dismissal of her claim against respondent-landlords. We affirm.

DECISION

Pro se appellant-tenant Meria Murray sued respondent-landlords Bill and Rachel Zimbinski in conciliation court to recover her security deposit withheld by respondents after she moved out of her apartment in December 2008. Appellant failed to appear at the March 2009 hearing, and the court granted default judgment in favor of respondents and dismissed appellant's claim with prejudice. The court subsequently denied appellant's motions to vacate the default judgment and for a limited removal and a new hearing in district court. Appellant now challenges the district court's denial of her motion to vacate the default judgment.

Conciliation court claims are governed by the Minnesota Rules of General Practice. Minn. R. Gen. Pract. 501; *see also Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004) (stating that specific conciliation court rules displace general civil procedure rules). Rule 512(g) provides that “[s]hould [a] plaintiff fail to appear at the trial, but [the] defendant appears, the [court] may hear the defendant and may[] order judgment of dismissal on the merits.” The court may still vacate the default judgment “on a proper showing by the defaulting party of lack of notice, mistake, inadvertence or excusable neglect as the cause of that party's failure to appear.” Minn. Gen. R. Pract. 520(a). A denial of a motion to vacate a default judgment will not be disturbed absent an abuse of discretion. *Imperial Premium Fin., Inc. v. GK Cab Co.*, 603 N.W.2d 853, 856-57 (Minn. App. 2000).

While the district court did not specify a basis for denying appellant's motion to vacate, appellant argued to the district court that her failure to appear was excusable

neglect. We therefore assume that the district court denied appellant's motion based on a failure to demonstrate excusable neglect, and review accordingly. *See generally Kroning v. Kroning*, 356 N.W.2d 757, 760 (Minn. App. 1984) (stating that we may assume, from nature of relief requested, that the district court considered and rejected arguments contrary to its decision).

Failure to appear when a plaintiff is aware of the trial date is not a reasonable excuse for neglect. *See generally O'Neil v. Kelly*, 307 Minn. 498, 499, 239 N.W.2d 231, 232 (1976); *Liedtke v. Ferguson*, 370 N.W.2d 477, 478 (Minn. App. 1985), *review denied* (Minn. Sept. 13, 1985). Here, appellant was aware of her court date; she claims that she confused the hearing time due to her disabilities. As proof of this excuse, appellant submitted a photocopy of her personal calendar, complete with a notation on the hearing date reading, "Court @ 10:30 housing." Appellant provides no proof of any impairment which would contribute to tardiness or cause her to confuse the hearing time, which was scheduled for 10:00. This explanation was heard by the district court three times—first by the signing judge who refused to grant appellant's ex parte motion to vacate, next by the judge presiding over her motion to vacate the judgment, and finally before a third judge in appellant's motion for a limited removal—and appellant's argument failed to persuade the district court in each instance. Appellant presents no reasonable excuse for her failure to appear, and thus the district court did not err by denying her motion to vacate.

Affirmed.