COURT OF APPEALS
DECISION
DATED AND FILED

October 28, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-0764 **Cir. Ct. No. 04SC000041**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ZANDER SOLUTIONS, LLC.,

PLAINTIFF-RESPONDENT,

V.

JEFF KOENIGS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Jackson County: GERALD W. LAABS, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Jeff Koenigs appeals an order denying his motion to reopen a default judgment against him in a small claims action. We affirm.

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

Background

¶2 Zander Solutions filed a small claims action against Koenigs, alleging that Koenigs had stopped payment on a check he had written to cover waterproofing work Zander Solutions had performed. The summons and complaint stated that the hearing would be held at 9:00 a.m. on February 10, 2004, and advised Koenigs that he could dispute the matter either by appearing at the time and place stated or by filing a written answer on or before the date and time stated.

¶3 Koenigs did not appear at the scheduled hearing, and the court issued a default judgment. Later that same day, the court received in the mail a letter from Koenigs answering the complaint and asking for permission to appear telephonically at the hearing due to health problems. The clerk of court advised Koenigs by letter that the response was late and default judgment had been entered.

¶4 Koenigs filed a motion to reopen the judgment, alleging that he had mailed his response on February 7, 2004, and that the court's failure to receive it before the hearing time was the result of "inadvertence" because he had relied on the United States postal service to deliver it the next business day. The court denied the motion without a hearing, concluding that Koenigs' allegations were insufficient to establish mistake, inadvertence, or excusable neglect.

Discussion

¶5 WISCONSIN STAT. § 799.29(1) provides that the trial court in a small claims action "may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown." We review the trial court's decision

whether to reopen a judgment under the standard for discretionary decisions, considering only whether the trial court reasonably considered the facts of record under the proper legal standard. *See* ***Nelson v. Taff***, 175 Wis. 2d 178, 187, 189, 499 N.W.2d 685 (Ct. App. 1993).

¶6 In considering whether good cause has been shown, the court may consider the factors set forth in WIS. STAT. § 806.07(1), including "[m]istake, inadvertence, surprise, or excusable neglect." Excusable neglect "is that neglect which might have been the act of a reasonably prudent person under the circumstances." ***Baird Contracting, Inc. v. Mid Wis. Bank of Medford***, 189 Wis. 2d 321, 324, 525 N.W.2d 276 (Ct. App. 1994). Excusable neglect does not, however, include situations brought about by the moving party's own carelessness or inaction. ***Martin v. Griffin***, 117 Wis. 2d 438, 443, 344 N.W.2d 206 (Ct. App. 1984). In addition to establishing excusable neglect, a party seeking relief from a default judgment must show that he or she has a meritorious claim or defense. ***Hollingsworth v. American Fin. Corp.***, 86 Wis. 2d 172, 184, 271 N.W.2d 872 (1978).

¶7 Here, the trial court's form order correctly cites the proper legal standard. It does not provide an explanation for why the trial court reached the decision it did. However, "'[b]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions.'" ***Burkes v. Hales***, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991) (citation omitted). Thus, we may affirm a discretionary decision if we can determine for ourselves that the facts of record provide a basis for the trial court's decision. *See* ***State v. Gray***, 225 Wis. 2d 39, 51, 590 N.W.2d 918 (1999).

¶8 Though it is not necessarily the decision we would make if we were reviewing the issue *de novo*, we are satisfied that the trial court could reasonably determine that a prudent defendant who has notice of a scheduled small claims hearing, and who has mailed an answer asking for permission to appear telephonically, would at least take the step of calling the court to verify that the answer was received and/or that the court had granted his request to appear telephonically. Furthermore, as Zander Solutions points out, if Koenigs wanted verification that his answer had been received before the scheduled hearing, he could have sent his answer by certified mail, as he apparently sent other letters in this matter. In sum, the trial court could properly conclude that mailing an answer on the Saturday before a scheduled Tuesday morning hearing, without taking any further action to confirm that it had been received, did not constitute excusable neglect.

By the Court.—Order affirmed.

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