COURT OF APPEALS DECISION DATED AND FILED

December 27, 2007

David R. Schanker
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. 2007AP941

Cir. Ct. No. 2005CX6

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EAGLE SPRINGS ENVIRONMENTAL, LTD, A DOMESTIC CORPORATION, AND LEE CRESCA, INDIVIDUALLY AND AS AN OFFICER OF EAGLE SPRINGS ENVIRONMENTAL, LTD,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Racine County: STEPHEN A. SIMANEK, Judge. *Affirmed.*

¶1 ANDERSON, P.J.[1] Eagle Springs Environmental, Ltd., seeks review of the circuit court's refusal to vacate and reinstate a judgment entered against it for violating a Department of Natural Resources administrative regulation. Eagle Springs maintains that its failure to learn of the December 5, 2006 entry of judgment until January 23, 2007, constitutes a circuit court "mistake" under WIS. STAT. § 806.07(1)(a), which justifies the vacation and reinstatement of the judgment. The facts of this case do not fit within the narrow exception to the general rule that a circuit court has no authority to vacate and reenter a judgment when the purpose is to allow an appeal; therefore, we affirm.

¶2 After a bench trial on September 21, 2006, the State was granted a judgment finding Eagle Springs had violated an environmental administrative regulation.[2] The State was directed to prepare an order for judgment. On

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

[2] The stages in the life of a judgment are described by words of art defined in the statutes.

> **806.06 Rendition, perfection and entry of judgment. (1)** (a) A judgment is *rendered* by the court when it is signed by the judge or by the clerk at the judge's written direction.
>
> (b) A judgment is *entered* when it is filed in the office of the clerk of court.
>
> (c) A judgment is *perfected* by the taxation of costs and the insertion of the amount thereof in the judgment.
>
> (d) A judgment is *granted* when given orally in open court on the record.
>
> **(2)** The judge or the clerk upon the written order of the judge may sign the judgment. The judgment shall be entered by the clerk upon rendition.

WIS. STAT. § 806.06 (emphasis added).

November 1, 2006, Eagle Springs filed a motion objecting to the State's proposed order and submitted an alternative order for judgment. The order for judgment proposed by Eagle Springs was signed by the circuit court on December 5, 2006, and it was filed with the clerk of courts on December 5, 2006. By operation of WIS. STAT. § 808.04(1), the ninety days for filing a notice of appeal ended March 5, 2007. Finally, the judgment was perfected on January 23, 2007, when allowable costs were inserted in the judgment.[3]

¶3 On March 5, 2007, Eagle Springs filed a "Motion for Relief from Judgment" pursuant to WIS. STAT. § 806.07 and a supporting affidavit. Eagle Springs sought to have the judgment vacated and then reinstated and cited to ***Edland v. Wisconsin Physicians Serv. Ins. Corp.***, 210 Wis. 2d 638, 563 N.W.2d 519 (1997). Eagle Springs' counsel prepared the supporting affidavit. Counsel averred that several weeks after filing the objection to the State's proposed order for judgment on November 1, 2006, he "spoke [t]o the Court's assistant regarding the status of the Court's determination on the content and form of the judgment and was informed that the Court would likely set the matter for a hearing." Counsel went on to state that he again contacted the Court's assistant on January 16, 2007, to inquire about the status of the judgment and

> was then informed for the first time that the Court has signed a judgment back in December and then had made a small amendment to the judgment by adding a costs amount on January 23, 2006 [sic]. The Court's assistant indicated that the judgment was held back because there needed to be a change or a calculation of the proper costs amount. The Court's assistant then told [counsel] that she would forward a copy of the Judgment to [counsel] right away.

[3] While the judgment is dated December 5, 2006, there is a notation in the right margin next to the allowed costs consisting of the circuit court's initials, "SAS" and a date, "1-23-07."

¶4 At the motion hearing, counsel for Eagle Springs told the court that he wanted to use the full ninety days after the judgment was entered to explain the issues on appeal to his client and to allow for financial arrangements to be made for appellate representation. He again cited to ***Edland***, asking the court to vacate and reinstate the judgment because of a mistake made at the court level. He stated that it was a reasonable assumption that he would get a mailed copy of the judgment after it was entered. In response, the State argued that, as a general rule, a circuit court does not have the authority to vacate and reinstate a judgment for the purpose of preserving appeal rights and that ***Edland*** is a narrow exception to that rule. The circuit court denied the motion, holding that it did not have the authority to grant the relief Eagle Springs was seeking. Eagle Springs appeals. The court pointed out that a miscalculation by counsel based upon potential misinformation from the court's assistant does not rise to the level of a mistake by a court, such as in ***Edland***.

¶5 The question we are faced with is whether this case fits the narrow ***Edland*** exception to the general rule that a circuit court has no authority to vacate and reenter a judgment when its sole basis for doing so is the unadorned desire to allow an appeal. When we review an order denying a WIS. STAT. § 806.07 motion, we reverse only if there has been a clear erroneous exercise of discretion. ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 541, 363 N.W.2d 419 (1985). A court properly exercised its discretion "if the record shows that the circuit court exercised its discretion and that there is a reasonable basis for the court's determination." ***Id.*** at 542.

¶6 Eagle Springs asserts that the circuit court's assistant inadvertently lulled their counsel into an impression that the court would hold a hearing prior to signing one of the proposed judgments and calls this a mistake by the court. Eagle

Springs argues that ***Edland*** gives the court the authority to conduct an analysis of whether there had been a mistake and, if there was, the court should have vacated and reinstated the judgment.

¶7 In ***Edland***, the circuit court entered a dispositive document addressing the substantive issues in the case; at the bottom of the document was a carbon copy signal that the document was to be mailed to the attorneys. For some unknown reason, the document was never mailed. ***Edland***, 210 Wis. 2d at 641. The parties did not become aware of the document until the ninety-day statutory time limit for appeal had expired. ***Id.*** at 641. Within sixty days, the plaintiffs filed a motion to vacate and reinstate the order pursuant to WIS. STAT. § 806.07(1)(a); the defendants did not oppose the motion. ***Edland***, 210 Wis. 2d at 642. The court granted the motion, stating that it intended to mail the document and it was the mistake of the court that the document was not mailed. ***Id.***

¶8 The case reached the supreme court by certification and the court held:

> [W]hen the record demonstrates the circuit court's intention to send notice of an order to the parties, and the court subsequently acknowledges its mistake in failing to send such notice, it may effectively extend the time to appeal by vacating and reinstating its unnoticed order.

Id. at 640-41. In reaching this result, the court started with the proposition that WIS. STAT. § 806.07 is an attempt to balance the policy favoring finality with fairness. ***Edland***, 210 Wis. 2d at 644. The court noted that the statute enhances fairness by allowing the court to vacate judgments on certain equitable grounds. ***Id.***

¶9 The court examined ***ACLU v. Thompson***, 155 Wis. 2d 442, 455 N.W.2d 268 (Ct. App. 1990), and concluded that the "court correctly held that a circuit court has no authority to vacate and reenter an order or judgment when its sole basis for doing so is the unadorned desire to allow an appeal." ***Edland***, 210 Wis. 2d at 647. The court then concluded:

> [U]nder the circumstances of this case, the circuit court's mistake constitutes a compelling equitable consideration under § 806.07(1)(a) which outweighs the goal of finality and provides a basis for effectively extending the time to appeal.[4]

Edland, 210 Wis. 2d at 648.

¶10 We conclude that this case does not benefit from the ***Edland*** exception; the equities do not line up in favor of Eagle Springs. First, the court has not acknowledged that either it or its assistant made a mistake; at the most, the failure to notify counsel of the entry of judgment rises to the level of inadvertence. The ***Edland*** exception does not encompass general acts of inadvertence. *See* ***State v. Schultz***, 224 Wis. 2d 499, 502, 591 N.W.2d 904 (Ct. App. 1999) ("Not every mistake is sufficient per se to entitle a moving party to relief."). Second, the attorneys in ***Edland*** had "clean hands"; there is no indication that they had any knowledge the court had written and entered a dispositive document. Here, counsel for Eagle Springs called the court inquiring about the status of the proposed judgments and, when he was told a hearing might be held, he did nothing

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[4] It also overruled any language in ***ACLU*** that stands for the proposition that it is a blanket rule that a court cannot vacate and reinstate an order or judgment. ***Edland v. Wisconsin Physicians Serv. Ins. Corp.***, 210 Wis. 2d 638, 648, 563 N.W.2d 519 (1997). The holding in ***ACLU*** was narrowed not overruled by ***Edland***. ***Harding v. Kumar***, 2001 WI App 195, ¶12 n.2, 247 Wis. 2d 219, 633 N.W.2d 700.

to follow up. Eagle Springs does not have "clean hands"; it took no action to help itself and now cannot expect help from the court. *See* ***Zinda v. Krause***, 191 Wis. 2d 154, 174, 528 N.W.2d 55 (Ct. App. 1995) ("One of the fundamental tenets of equity is that a person seeking equitable relief must come to the court with clean hands.").

By the Court.—Order affirmed.

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