

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 11, 2014

Diane M. Fremgen
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. 2013AP1632

Cir. Ct. No. 2013FO15

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

DOOR COUNTY,

PLAINTIFF-RESPONDENT,

V.

GREGORY R. URBAN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Door County:
D. T. EHLERS, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Gregory Urban, pro se, appeals an order denying his motion to reopen a default judgment. Urban argues the circuit court erred by failing to reopen his default judgment because his request was filed within twenty

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

days of the default judgment, and because the result would be different at a new hearing. We affirm.

BACKGROUND

¶2 On January 3, 2013, Urban was issued a trespassing citation. Urban entered a not guilty plea and, ultimately, the matter was scheduled for a court trial on June 25, 2013.

¶3 Urban failed to appear at the June 25 court trial. At that time, Door County was prepared to try the case and its subpoenaed witnesses were present. The County requested the court to enter a default judgment against Urban based on his nonappearance. The County also moved to introduce into evidence a letter written by Urban to the victim's husband, in which the County stated Urban "essentially admits his wrongdoing."² The circuit court admitted the letter into evidence and entered a default judgment against Urban based on his nonappearance.

¶4 Approximately three weeks later, on July 15, 2013, Urban wrote a letter to the circuit court asking for a retrial. Urban stated he had a defense to the trespass citation—specifically, he was a census worker and therefore allowed to enter individuals' property. Urban also asserted he never admitted any

² In the letter, Urban stated, in part:

I know I was in the entry and by law that is trespassing but I do not think that I am that wrong. So I am going to ask for a jury trial after I plead not guilty and we will see if 6 or 12 people who live up here think I was wrong to shut the door and go in the entry. I am just letting you know so you can be advised on what is going to happen.

wrongdoing, and he argued he could not be guilty of criminal trespass to land because the victim allowed him access to her entry and never asked him to leave. Finally, he explained he failed to attend the scheduled court trial because he had vehicle trouble and was unable to call the court.

¶5 The court denied Urban's request to hold a retrial. The court reasoned Urban waited "over two weeks" to inform the court he could not attend the hearing because of car trouble. Urban appeals.

DISCUSSION

¶6 At the outset, we note Urban's request for a retrial is more properly characterized as a motion to reopen a default judgment. A circuit court's determination on whether to grant or deny a motion to reopen a default judgment is reviewed under an erroneous exercise of discretion standard. *See Dugenske v. Dugenske*, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). Under this standard, we will affirm the circuit court's discretionary holding as long as the circuit court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *Bank Mut. v. S.J. Boyer Const., Inc.*, 2010 WI 74, ¶20, 326 Wis. 2d 521, 785 N.W.2d 462.

¶7 Urban bears the burden of proving he is entitled to relief from the default judgment. *Carmain v. Affiliated Capital Corp.*, 2002 WI App 271, ¶23, 258 Wis. 2d 378, 654 N.W.2d 265. WISCONSIN STAT. § 806.07(1) outlines eight reasons a circuit court, in its discretion, may relieve a party from a judgment:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15(3);

- (c) Fraud, misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released or discharged;
- (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
- (g) It is no longer equitable that the judgment should have prospective application; or
- (h) Any other reasons justifying relief from the operation of the judgment.

WIS. STAT. § 806.07(1)(a)-(h).

¶8 Urban argues the circuit court erred by denying his request for a retrial because he filed his request within twenty days after judgment was entered, car problems prevented him from attending the hearing, and he has a meritorious defense to the trespass citation. Specifically, Urban asserts he is a census worker and is permitted to travel door-to-door. He also contends he did not commit the crime of trespass because the victim never asked him to leave.

¶9 The County responds the circuit court properly exercised its discretion by denying Urban's motion to reopen. It emphasizes Urban waited approximately three weeks to inform the court he failed to appear because of car trouble. The County asserts it is "incredulous that Urban could not inform the court earlier of any legitimate excuse for his failure to appear at his trial in a timely fashion." The County contends the victim has a right to timely disposition and finality, and it is unfair to the victim in this case, who was purportedly confronted by Urban in her home, to reopen the default judgment.

¶10 The County also argues Urban does not have a meritorious defense to the trespass allegation. It emphasizes that Urban was cited for forfeiture

trespass, contrary to DOOR COUNTY, WIS. ORDINANCE § 31.02 1.c., and not charged with criminal trespass to land.³ It highlights Urban’s letter that stated, in part: “I know I was in the entry and by law that is trespassing but I do not think that I am that wrong.” The County contends Urban has presented “no evidence, nor does any exist, that would allow the defendant or any Census worker to enter a person’s home without the consent of someone lawfully on the premises.”

¶11 Urban did not file a reply brief in response to the County’s arguments and, therefore, we deem them conceded. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed conceded). In any event, as stated previously, we review the circuit court’s decision denying a motion to reopen a default judgment for an erroneous exercise of discretion. *See Dugenske*, 80 Wis. 2d at 68. It appears from the record that, given the length of time it took Urban to inform the court of his car trouble, the court simply did not believe Urban’s excuse. Urban does not explain why the court erred by denying his motion based on the fact that he waited more than two weeks to inform the court of his vehicle trouble. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we

³ DOOR COUNTY, WIS. ORDINANCE § 31.02 provides, in relevant part:

1. It shall be unlawful for any person in the County of Door to:

....

- c. To commit any trespass upon the property of another, or to injure or destroy any growing crops, trees, plants, or vegetation, or any fence, building or other property thereon. Maliciously deface, injure or damage any building, bridge, structure, tree, shrubbery, vegetation or property whatever, of the public or any other person, or be guilty of any other disorderly conduct or breaking of the peace.

need not consider undeveloped arguments). Accordingly, we affirm the circuit court's denial of his motion to reopen the default judgment.

By the Court.—Order affirmed.

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

