

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 23, 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. 2013AP2278

2011CV015772

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

JAY'S PETRO MART, LLC,

PLAINTIFF-RESPONDENT,

v.

MUHAMMAD NASIR KHAN, D/B/A SOLO OIL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM S. POCAN, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 BRENNAN, J. Muhammad Nasir Khan, d/b/a Solo Oil, appeals from the entry of default judgment to Jay's Petro Mart as a sanction against Khan for non-compliance with court orders. Khan also appeals from the order denying

his WIS. STAT. § 806.07(1) (2011-12)¹ motion to reopen the judgment. Because the circuit court properly exercised its discretion in both instances, we affirm.

BACKGROUND

¶2 On October 13, 2011, Jay's Petro Mart filed suit against Khan, d/b/a Solo Oil, alleging that Khan sold motor vehicle fuel below cost, in violation of the Wisconsin Unfair Sales Act. Khan retained counsel, who filed an answer and alleged several affirmative defenses on November 30, 2011.

¶3 Jay's served discovery requests on Khan by mail on January 16, 2012. Khan's answers were due on February 20, 2012. Despite several extensions and multiple letters requesting compliance, Khan did not respond to the discovery requests.

¶4 On February 24, 2012, the circuit court entered a scheduling order, which required discovery to be completed by September 21, 2012. The scheduling order also contained a warning in boldface that: "The court will sanction parties who fail to comply with the provisions of this order without good cause. Sanctions may include entering judgment or dismissing claims or defenses."

¶5 On July 23, 2012, approximately six months after it had served Khan with its discovery requests, Jay's filed a motion to compel because Khan had not responded to the requests. The circuit court scheduled a hearing on the motion for September 4, 2012.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

¶6 On August 24, 2012, Khan’s attorney, Randall Nash, filed a motion to withdraw as counsel with a supporting affidavit. The motion was based on Khan’s failure to cooperate with Attorney Nash. Attorney Nash’s affidavit indicated that, over several months, Attorney Nash had attempted to contact Khan by telephone, mail, and email. Attorney Nash explained that Khan did not return any of his telephone calls, letters, or emails, and failed to cooperate with him in other respects. The motion to withdraw was also accompanied by the notarized affidavit of Mary V. Dutton. In her affidavit, Dutton swore that, on August 23, 2012, she served the motion to withdraw on Khan by mail, both at the business address for Solo Oil and at his home address.

¶7 On September 4, 2012, the circuit court held a hearing on Jay’s motion to compel and Attorney Nash’s motion to withdraw. The circuit court started the hearing ten minutes late to give Khan a chance to participate, but Khan did not appear. At the hearing, Attorney Nash further explained his efforts to contact Khan and the lack of cooperation he received from Khan.

¶8 The circuit court granted Attorney Nash’s motion to withdraw. The court also ordered that “[f]ull responses from the Defendant to the discovery sought shall be provided to the Plaintiff on or before September 24, 2012,” thereby extending the discovery deadline set in the court’s original scheduling order by a few days.

¶9 The circuit court asked Attorney Nash to draft an order granting the motion to withdraw and memorializing the new discovery deadline. The court specifically stated that it wanted the order to be very detailed and thorough so that “there’s no question that [Khan] ... knows what is going to happen and then they are going to have to make some choices either to represent themselves or hire

alternative counsel.” The written order the court signed on September 17, 2012, set a status conference date for October 19, 2012, and expressly stated that Khan’s failure “to provide full responses to the discovery sought in this case may result in the Court ordering a sanction, including money judgment or any other order as the Court in its discretion deems appropriate.”

¶10 Khan still failed to respond to Jay’s discovery requests by the new court-ordered deadline. However, he did appear *pro se* at the status conference on October 19, 2012. When asked by the court why he had not responded to Jay’s discovery requests, Khan claimed that he was unaware of the requests and that he had only discovered that Attorney Nash had withdrawn from the case by checking the docket online.² Khan told the court that he had not received any letters from Attorney Nash because his business had closed, he had moved, and he had not provided Attorney Nash with his new address. In a conflicting statement, however, Khan also told the court that he had asked Attorney Nash to stop representing him on November 30, 2011, that is, the day after Attorney Nash answered the complaint. Khan did not explain why he also did not respond to Attorney Nash’s telephone calls and emails.

¶11 The circuit court explained that Khan had violated the court’s order, but that it was not going to strike Khan’s answer as a sanction, although that would be the next sanction necessary to keep the case moving if Khan did not comply. The court again explained that it would impose a lesser sanction, but that

² Khan did not explain why he had not also noticed the September 24, 2012 discovery deadline on the docket online.

if Khan continued to ignore the court's orders it would have no choice but to strike Khan's answer and allow Jay's to take a default judgment, stating:

Now, today, I'm going to impose a monetary sanction and requir[e] you to do certain things by a particular date.

But if you fail to do that, I am really going to have no choice next time but to strike your answer and allow [Jay's] to take a default judgment.

And you tell me today that's not what you want; you want to defend this matter.

And I want to be really clear, because I don't really have any other choice.

So, I have sort of gone through my bag of possibilities or sanctions here. And you sort of run the gamut now.

¶12 The circuit court then ordered that Khan provide full responses to Jay's discovery requests on or before November 19, 2012. The court also ordered Khan to pay Jay's actual attorney fees incurred in bringing the motion to compel and attending the hearings, capped, however, at \$1000. Khan did not argue that the \$1000 sanction was inappropriate or that he was unable to pay it. Finally, the court reiterated again that if Khan did not pay the sanction or respond to the discovery, much more serious sanctions, such as striking the answer and granting Jay's a default judgment, would likely be appropriate.

¶13 On November 19, 2012, the court-ordered deadline for Khan's discovery responses and the \$1000 sanction, Jay's received a letter from Khan's newly-retained attorney with Khan's interrogatory responses. It is undisputed that

Khan failed to fully respond to at least two of the interrogatories.³ Khan's new counsel indicated that the responses were prepared by Khan without the assistance of counsel, but that counsel would supplement them if necessary and appropriate. Khan's new attorney asked Jay's to "let us know if you believe the responses are incomplete in any way, in which case we will work on remedying any deficiency as quickly as possible."

¶14 Khan paid part, but not all, of the \$1000 sanction by the court-ordered deadline. Through the November 19 letter from his attorney, Khan told Jay's that he would pay the remainder of the sanction on an installment plan of his own choosing.

¶15 In response, Jay's wrote to Khan's attorney on December 7, 2012, and asked him to work with Khan to "respond appropriately to interrogatories asking for the basis and all facts supporting the denials in the answer as well as all bases and facts supporting the affirmative defenses pled as part of defendant's answer." The letter also asked for full payment of the sanction, as the court had ordered.

¶16 Khan did not respond to Jay's December 7, 2012 letter. Consequently, on February 20, 2013, one year after the discovery responses were originally due, and not having heard back from either Khan or his attorney in response to its December 7 letter asking them to supplement Khan's incomplete

³ Khan admits in his brief to this court that his responses to at least two of the questions posed to him by Jay's were "deficient" and that "he stumbled over two of the interrogatories." Khan claims that he "largely misunderstood what the interrogatory was asking of him" and "[a]s a consequence, [his] answers to those two interrogatories were both nonsensical and, in the case of one of them, seemingly condescending, though such was never Khan's intent."

discovery responses, Jay's renewed its motion for sanctions. A hearing on the motion was set for March 29, 2013. Khan did not file a response to the renewed motion for sanctions.

¶17 At the March 29 hearing, Khan's attorney responded to the motion for sanctions for the first time. He claimed that Khan had eventually paid the \$1000 sanction previously imposed by the court, albeit after the court-ordered deadline. Furthermore, with regard to Khan's deficient responses to Jay's discovery requests, Khan's counsel argued that Khan had appropriately responded to the vast majority of Jay's discovery requests and that the two incomplete responses were not "incomplete in a way that's material to this case."

¶18 The circuit court addressed Khan's contention that his discovery responses were not "incomplete in a way that's material to this case," noting that it was not for Khan to decide which interrogatories he would answer and what information was necessary to Jay's. The court found that, instead of answering two of Jay's interrogatories, Khan: (1) took a "cheap shot" at Jay's by accusing it of just being interested in getting Khan's business information;⁴ and (2) made

⁴ Interrogatory question number eight asked Khan as follows: "State the basis for and all facts supporting your denial in paragraph 7 of your answer." Khan responded:

Your complaint []Nature of Defendants Activity No.9 states "Since May 2011, the defendant has sold motor vehicle fuel at less than cost as defined in WIS. STAT. 100.3(2)(1m)(c)".

If you already know that there will be a denial to your question in paragraph 7, then you must have known that it was not required for your inquiry, and it would have no bearing on the outcome of the case. It seems your client is more interested in finding out about our business details than actually needing help from the courts to support your complaint.

unfounded accusations about the interrogatory's grammar.⁵ The court noted that discovery is a method for exchanging information, not insults. The court explained that Jay's attorney was legitimately using discovery to find out whether there were facts in dispute, which Khan's delays and non-responses thwarted. The court concluded that Khan had not provided full responses as was required by its order.

¶19 The circuit court then ordered default judgment as a sanction for Khan's continued failure to follow court orders. The court acknowledged the sanction was a severe one but found it necessary given Khan's repeated disregard of the court's orders, delaying the case for more than a year. Thereafter, a hearing on damages was set for May 23, 2013.

¶20 On April 8, 2013, prior to the damages hearing, Khan, through his attorney, filed a motion to reconsider or reopen the default judgment pursuant to WIS. STAT. § 806.07.

¶21 The circuit court held the damages hearing, as scheduled, on May 23. Finding damages uncontested, the court ordered Khan to pay \$286,214.35 to Jay's.

¶22 The circuit court also addressed Khan's motion to reconsider or reopen the default judgment at the May 23 hearing. The court noted Khan's right

⁵ Interrogatory question number nine asked Khan as follows: "State the basis for and all facts supporting your affirmative defense 2." Khan responded: "Your interrogatory no. 9 is quoted exactly from your document. Unfortunately it does not make any sense grammatically at all. I cannot answer something I cannot understand."

to bring the motion, but noted its frustration that Khan was “potentially delaying the case” by “fil[ing] a motion to reconsider on the liability, but you didn’t get a date for the hearing, which, of course, is required under the local rule.” The court told the parties it wished to brief and set a hearing on Khan’s motion in an expedited fashion, so that it could decide the motion before the judge was rotated to another court. The circuit court noted that it “remember[ed] this case probably more than most that I’ve handled in the last four ... years just because the violations of my orders, and, basically, your client thumbing his nose at both the Court, the Court’s order, and the other side has been so blatant.” The circuit court continued:

Plus, I was in a position to watch your client.

And a unique thing that the Trial Court has that the Appellate Courts don’t have is, I get to watch your client.

Right now, your client is sending a message to me by body language.

He has his arms folded, and he is holding his head in such a way that he is, again, showing me disinterest with this case and not showing the sort of respect and interest that he should in a case like this.

So, because of all that, I feel that I really should be the one ... to reconsider my own sanction orders in this case.

The court then set a briefing scheduling, which the parties agreed to, and set a hearing on the motion for July 5, 2013.

¶23 On June 10, 2013, the circuit court entered a written judgment memorializing its previous oral decisions for entry of default judgment and damages.

¶24 Prior to the July 5 hearing, Khan withdrew that portion of his motion seeking reconsideration of the circuit court’s default judgment order; however,

Khan continued to seek relief from the default judgment pursuant to WIS. STAT. § 806.07(1)(a) and (h). After reading the parties' briefs and providing counsel from both sides opportunities to make their case at the hearing, the court denied Khan's motion, summarizing its decision thusly:

So in conclusion, the court recognizes that it imposed a severe sanction when it struck Mr. K[ha]n's answer and granted default judgment.

However, Mr. K[ha]n's actions leading up to the entry of default throughout the pendency of this case were similarly severe such that the action was warranted.

The court only entered default judgment after affording Mr. K[ha]n multiple chances to actively participate in [t]his action.

Mr. K[ha]n has not convinced the court that the circumstances surrounding his noncompliance were extraordinary or unique such that relief may be warranted.

A written order denying Khan's motion to reopen was entered thereafter. Khan appeals.

DISCUSSION

¶25 On appeal, Khan argues that the circuit court erroneously exercised its discretion by entering default judgment against him for failure to comply with the court's orders. Additionally, he argues that the circuit court erroneously exercised its discretion in denying his motion for relief from default judgment pursuant to WIS. STAT. § 806.07(1)(a) and (h). For the reasons which follow, we disagree with Khan and affirm.

¶26 We review the circuit court's decisions deferentially, overturning the court's decisions only if it erroneously exercised its discretion. *See Industrial Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶41, 299 Wis. 2d 81, 726 N.W.2d

898 (default judgment); *see also Werner v. Hendree*, 2011 WI 10, ¶59, 331 Wis. 2d 511, 795 N.W.2d 423 (motion to vacate order pursuant to WIS. STAT. § 806.07). “The exercise of discretion requires a record of the [circuit] court’s reasoned application of the appropriate legal standard to the relevant facts in the case.” *Gaertner v. 880 Corp.*, 131 Wis. 2d 492, 498, 389 N.W.2d 59 (Ct. App. 1986). Thus, we will sustain the circuit court’s decisions if the court “‘examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.’” *See Marquardt*, 299 Wis. 2d 81, ¶41 (citation omitted). “Our job is not to Monday-morning quarterback the decision with the advantage of 20/20 hindsight.” *See id.*, ¶40. Indeed, we will affirm even if the evidence favoring the circuit court’s decision “is slight,” “unless it was impossible for the [circuit] court” to render its decision “in the exercise of its discretion.” *Gaertner*, 131 Wis. 2d at 498.

I. The circuit court properly exercised its discretion when it granted default judgment as a sanction for Khan’s repeated failure to obey court orders.

¶27 We turn first to Khan’s argument that the circuit court erroneously exercised its discretion when it entered default judgment as a sanction. To grant a default judgment for failure to comply with a court order, a circuit court must find “that the non-complying party has acted egregiously or in bad faith.” *See Marquardt*, 299 Wis. 2d 81, ¶43. A party’s failure to comply with a court order is egregious when there is no “‘clear and justifiable excuse.’” *See id.* (citation omitted).

¶28 Here, the circuit court found Khan’s continued failure to obey court orders to be egregious and in bad faith, summarizing its findings thusly:

I have little choice but to grant some sort of sanction. We're getting to the moment as to what that sanction should be. Clearly, the defendant is not taking this case or this court order seriously. I have an obligation to keep these cases moving, and this is a very old case.

As a practical matter, I would agree that the default judgment would be appropriate. It wasn't appropriate last time. That's why I gave him one more opportunity as I always do so that people can hopefully do what they are supposed to do.

At this point, if I simply gave -- if I simply basically stuttered and did the exact same thing I did last time which is require full discovery responses and made another economic sanction, this economic sanction was not followed and neither was the instruction regarding the discovery.

So really, it wouldn't be fair now to the plaintiff for me to basically stutter and do the same thing I did last time. So I have to find a different sanction. Unfortunately, I have to up the sanction level.

The defendant was warned of the scheduling order of what sanctions could occur. He was warned again when he was here. He was warned again as part of the Court's written order. For some reason, the defendant is not getting it.

At this point, I don't think I have any choice in the administration of justice and to keep this case moving for the plaintiff but to grant the default judgment.

¶29 The record in this case amply supports the circuit court's finding. Our review of the record reveals that Khan, at best, failed to update his address or otherwise meaningfully stay in contact with his attorney or the court from the time he filed his answer in November 2011, until the time he appeared in court in October 2012. At worst, Khan purposefully and actively avoided and ignored his attorney and the court during that same time period. Due to his failure to stay in contact with the court, Khan missed multiple discovery deadlines, delaying resolution of the case. Even after appearing before the court and after being

sanctioned \$1000 for his previous errors, Khan failed to abide by the circuit court's order that he pay the \$1000 in a timely fashion and that he answer Jay's discovery requests in full. Instead, Khan paid the sanction on a schedule of his own choosing and answered two of the interrogatories in a manner that he admits was "nonsensical" and "in the case of one of them, seemingly condescending." Khan ignored Jay's request that he clarify his interrogatory responses and then failed to file a response to Jay's renewed motion for sanctions. In short, the record plainly shows that Khan repeatedly and flagrantly ignored the court's orders even after being repeatedly warned that such disregard could result in entry of default judgment against him. The circuit court was more than justified in concluding that Khan's behavior was egregious and in bad faith, and its decision to enter default judgment was not an erroneous exercise of discretion. *See Marquardt*, 299 Wis. 2d 81, ¶43.

II. The circuit court properly exercised its discretion when it denied Khan's motion to reopen judgment under WIS. STAT. § 806.07(1).

¶30 Khan focuses the vast majority of his brief before this court on arguing that the circuit court erroneously exercised its discretion when it denied Khan's motion to reopen the judgment under WIS. STAT. § 806.07(1)(a) and (h) because, according to Khan, the judgment "constituted a draconian sanction of \$286,000 for an honest mistake made by a *pro se* defendant and which posed absolutely no hardship to the plaintiff." (Formatting altered.) We address each subsection of the statute in turn.

A. *WISCONSIN STAT. § 806.07(1)(a): Mistake, inadvertence, surprise, or excusable neglect.*

¶31 Khan first argues that the circuit court erroneously exercised its discretion when it denied his motion to reopen the default judgment pursuant to

WIS. STAT. § 806.07(1)(a) because he alleges that his failure to comply with the court's orders was the result of "an honest mistake made by a *pro se* defendant" and amounts to "excusable neglect." (Formatting altered.) The record belies his assertion.

¶32 WISCONSIN STAT. § 806.07(1)(a) permits a circuit court to "relieve a party ... from a judgment" for "[m]istake, inadvertence, surprise, or excusable neglect." When reviewing a circuit court's decision to deny a § 806.07(1)(a) motion, we must determine whether the circuit court erroneously exercised its discretion in deciding "whether the conduct of the moving party was excusable under the circumstances." See *State v. Schultz*, 224 Wis. 2d 499, 502, 591 N.W.2d 904 (Ct. App. 1999). "Excusable neglect' is that neglect which might have been the act of a reasonably prudent person under the circumstances." See *id.* "It is not synonymous with neglect, carelessness or inattentiveness." *State v. A.G.R.*, 140 Wis. 2d 843, 848, 412 N.W.2d 164 (Ct. App. 1987).

¶33 The circuit court, after summarizing the relevant law, concluded that Khan had "not met his burden of showing excusable neglect, surprise, inadvertence or mistake such that the court will grant relief under [WIS. STAT. § 806.07(1)(a)]." The court stated that Khan's assertions that "he gave his best attempt to discovery responses while acting Pro Se," "ignores the fact that the court entered default judgment due to a number of [Khan's] actions" and "not simply [on] a couple of discovery responses." Rather, the circuit court noted that it was "the totality of violations, the court documented" that demonstrated that Khan was not entitled to relief from judgment under § 806.07(1)(a). Again, the record supports the court's conclusion.

¶34 To begin, Khan’s assertion that his status as a *pro se* defendant should excuse his ill-conceived discovery responses is disingenuous at best. While Khan may have chosen to complete his responses without the assistance of counsel, when Khan finally served his discovery responses on Jay’s in November 2012, he did so *through counsel*. In fact, Khan’s counsel explicitly told Jay’s to “let us know if you believe the responses are incomplete in any way” so that counsel could “work on remedying any deficiency as quickly as possible.” However, even after Khan received a letter from Jay’s asking him for more complete responses to two of the interrogatory questions, while represented by counsel, he still failed to fully respond.

¶35 Second, Khan’s failure to fully and appropriately respond to two of Jay’s interrogatories was not the only reason for the circuit court’s sanction. Rather, the court’s decision to enter default judgment was based upon the totality of Khan’s behavior throughout the pendency of the case, including: Khan’s failure to keep in contact with his counsel or the court for months at a time, resulting in missing multiple discovery deadlines; Khan’s failure to pay the initial monetary sanction by the court-ordered deadline; and the content of Khan’s responses to Jay’s interrogatories, which the circuit court described as including a “cheap shot.”

¶36 Third, even if Khan was acting *pro se* at the time he filed his incomplete responses to Jay’s interrogatories, his *pro se* status does not excuse his failure to abide by the court’s orders. “The right to self-representation is not a license not to comply with relevant rules of procedural and substantive law.”

Waushara Cnty. v. Graf, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (brackets, internal quotation marks, and citation omitted).⁶

¶37 In sum, the circuit court clearly set forth its rationale for finding that Khan’s continued disregard of court orders was not excusable neglect, and the record supports the circuit court’s findings. The court did not erroneously exercise its discretion when it denied Khan’s motion to reopen under WIS. STAT. § 806.07(1)(a).

B. *WISCONSIN STAT. § 806.07(1)(h): Any other reasons justifying relief from the operation of the judgment.*

¶38 Finally, Khan argues that the circuit court erred in denying his motion to reopen under WIS. STAT. § 806.07(1)(h) because he claims that he acted in good faith, that Jay’s was not prejudiced by his actions, and that the court did not take into consideration all of the relevant factors. We disagree.

¶39 WISCONSIN STAT. § 806.07(1)(h) permits the circuit court to grant relief from judgment for “[a]ny other reasons justifying relief.” Relief under this section may only be afforded “when extraordinary circumstances are present justifying relief in the interest of justice.” *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶35, 326 Wis. 2d 640, 785 N.W.2d 493. “The party seeking relief bears the burden to prove that extraordinary circumstances exist.” *Id.*, ¶34. “Extraordinary circumstances are those where the sanctity of the final judgment is

⁶ With respect to his motion to reopen under WIS. STAT. § 806.07(1)(a), Khan also argues that the circuit court failed to properly consider that Khan promptly filed his motion to reopen. See *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 476, 326 N.W.2d 727 (1982) (When considering a motion to reopen for mistake, inadvertence, or excusable neglect, the circuit court must consider later “prompt action combined with the reasons advanced by the dilatory party for the omission.”). However, Khan’s prompt motion to reopen the judgment does not excuse his repeated and flagrant disregard of the circuit court’s orders for the entire pendency of this case.

outweighed by the incessant command of the court’s conscience that justice be done in light of all the facts.” *Id.*, ¶35 (citations, internal quotation marks, brackets and emphasis omitted).

¶40 In exercising its discretion under WIS. STAT. § 806.07(1)(h), the circuit court should “consider a wide range of factors’ ... always keeping in mind the competing interests of finality of judgments and fairness in the resolution of the dispute.” *Miller* 326 Wis. 2d 640, ¶36 (citations omitted). Although other factors may be relevant, the court must consider five “interest of justice” factors, which are:

whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; whether the claimant received the effective assistance of counsel; whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments; whether there is a meritorious defense to the claim; and whether there are intervening circumstances making it inequitable to grant relief.

See id., ¶¶36, 41 (citation and quotation marks omitted).

¶41 When denying Khan’s motion to reopen pursuant to WIS. STAT. § 806.07(1)(h), the circuit court cited to the five “interest of justice” factors and explicitly noted that it was required to take those factors into consideration. The court then cited to the “totality of violations” committed by Khan during the course of the action and noted that the court had given Khan “chance after chance to participate in the action,” but Khan failed to do so. As such, the circuit court concluded thusly:

In examining Mr. K[ha]n’s allegations, the court does not find them to be extraordinary or unique such that relief may be warranted. Even just when the competing

interest of finality of judgments and relief from unjust judgments would not cause this court to reopen the case.

Mr. K[ha]n asserts without any further detail in [his] materials that the judgment was not the result of conscientious, deliberate and well-informed choice. However, the court gave Mr. K[ha]n a number of opportunities to participate in the action and having specific direction from the court as to what he needed to do. Mr. K[ha]n continued to deliberately disobey court orders.

Mr. K[ha]n also asserts that he did not have the effective assistance of counsel at the time of his discovery responses. However, Mr. K[ha]n fails to address the fact that the court only entered default as a sanction after a number of missteps in this case not solely based on his Pro Se discovery responses.

Mr. K[ha]n is correct that the court has not considered the merits of the case and he has at least offered a potential meritorious defense to Jay[']s claim.

....

However, Mr. K[ha]n's actions leading up to the entry of default throughout the pendency of this case were similarly severe such that the [default judgment] was warranted.

The court only entered default judgment after affording Mr. K[ha]n multiple chances to actively participate in his action.

Mr. K[ha]n has not convinced this court that the circumstances surrounding his noncompliance were extraordinary or unique such that relief may be warranted.

¶42 The circuit court's decision in that regard was thoughtful, detailed, and as we have repeatedly established throughout this opinion, amply supported by the record. While the circuit court noted that there may be some factors mitigating for reopening judgment—for instance, the possibility of a meritorious defense—the circuit court did not find that those factors, on balance, required reopening the judgment in light of Khan's conduct. The circuit court clearly took

all the relevant factors into consideration, but concluded that Khan’s flagrant and repeated refusal to obey the court’s orders required entry of default judgment against him, and did not warrant reopening that judgment. In doing so, the circuit court properly exercised its discretion.

CONCLUSION

¶43 Khan argues repeatedly throughout his brief that “equity” requires reopening the judgment. However, the circuit court and Jay’s showed endless patience with Khan despite the fact that he again and again ignored court orders—either through disinterest, inattentiveness, or active resistance. Khan had been given over a year to fully respond to Jay’s discovery requests but did not do so, despite multiple extensions of time and a request for clarification. A \$1000 sanction did not deter Khan. As such, the circuit court did not erroneously exercise its discretion when it determined that the only step left—in the interest of fairness to Jay’s and in the interest of seeking finality in our litigation—was to enter default judgment. We affirm.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

