

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 27, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

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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. 2015AP547**

**Cir. Ct. No. 2014SC1409**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**SAMUEL L. BUOSCIO,**

**PLAINTIFF-APPELLANT,**

**V.**

**PARKER PEN COMPANY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Rock County:  
DANIEL T. DILLON, Judge. *Affirmed.*

¶1 KLOPPENBURG, P.J.<sup>1</sup> Samuel Buoscio appeals the order denying his motion to reopen a default judgment that had been entered against him.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶2 Buoscio filed a small claims complaint against Parker Pen Company, seeking the return of a pen that he alleges he sent for a warranty repair. Buoscio attached to the complaint a letter allegedly from Mary Boufford acknowledging receipt of the pen and stating that the pen was being sent to a repair facility in France. The complaint included a return date of June 27, 2014. Buoscio moved to be excused from appearing on that date due to his incarceration in Ohio. Parker Pen employee Boufford appeared for Parker Pen, and alleged that the letter that Buoscio attached to the complaint is fraudulent. The circuit court dismissed the case without prejudice for failure to state a claim.

¶3 Buoscio filed a motion to reopen the case. On August 6, 2014, the court commissioner issued a Notice of Hearing setting the case for a hearing on August 28, 2014. The Notice provided, “\*\*PLAINTIFF SHALL MAKE ARRANGEMENTS WITH PRISON TO APPEAR BY TELEPHONE AT HIS EXPENSE. HE IS TO CALL 1-608-743-2357.\*\*” The Notice also provided in bold type, “If you require reasonable accommodations due to a disability, in order to participate in the court process, please call 608-743-2200 at least 10 working days prior to the scheduled court date.”

¶4 On August 8, 2014, Boufford submitted a written request to appear at the hearing by telephone. On August 18, 2014, Buoscio filed a Motion asking to be excused from appearing by telephone, asserting that his only access to a telephone is by purchasing a calling card and he has no money to make such a purchase. On August 19, the court commissioner sent the parties a letter stating that the hearing “must go on as scheduled because there are issues of fact that must be decided,” including whether Parker Pen sent the letter attached to Buoscio’s complaint. The court commissioner explained that, “Each side will have to testify under oath and with the other side able to cross-examine any

witnesses.” The letter concluded, “If the plaintiff can make arrangements to be available and provide the necessary phone number, then the court will initiate the calls instead of making the parties pay for the call.”

¶5 Buoscio did not appear at the August 28, 2014 hearing and did not notify the court that he needed accommodations. Boufford appeared by telephone. The court commissioner entered a default judgment dismissing the action because of Buoscio’s failure to appear, and failure to “provide any means for the court to contact him, even at the court’s expense.”

¶6 Buoscio timely filed a motion for relief from judgment under WIS. STAT. § 806.07, and for de novo review by the circuit court. The circuit court denied the motion and dismissed the case, finding that Buoscio’s failure to appear was not a result of “mistake, inadvertence, surprise, or excusable neglect.”

¶7 Buoscio does not take issue with this finding, or identify any way in which the circuit court erred in determining that Buoscio failed to make the showing required to be entitled to relief from the court commissioner’s judgment of dismissal under WIS. STAT. § 806.07. Accordingly, I affirm on this basis. However, I also briefly address and reject the arguments that Buoscio does make.

¶8 Under WIS. STAT. § 799.22(1), when a small claims plaintiff fails to appear on the date set for trial, “the court may enter a judgment for the defendant dismissing the action, on motion of the defendant or on its own motion.” Buoscio argues that when the court commissioner entered judgment for Parker Pen when Buoscio failed to appear on the date set for trial, the court commissioner—and the circuit court by denying his motion to reopen—forced him to litigate his case by telephone rather than on written submissions only. Buoscio contends that in doing so the court violated his due process rights because, he asserts, he had no access to

a telephone by which the court could call him and he had no money to purchase a calling card that he could use to call the court. However, the court commissioner clearly and timely informed Buoscio that the court would call him at the court's expense in light of his asserted inability to afford a calling card. Buoscio provides no evidence supporting his assertion that there was no telephone number by which the court could call him at the court's expense.

¶19 Buoscio also maintains that regardless of whether he could call the court or the court could call him, the court commissioner should have decided his case based upon written submissions because the contested issues of fact and credibility identified by the court commissioner were raised outside the record and without making a motion or providing notice to Buoscio. There are at least two problems with his argument. First, Buoscio cites no law that requires a court to decide contested issues of fact and credibility on a paper record alone. Second, the validity of Buoscio's claims and, specifically, the letter he attached to his complaint purportedly from Boufford at Parker Pen, was properly raised by Boufford when she appeared at the June 27, 2014 hearing. Those issues were also properly identified by the court commissioner as requiring a trial to resolve. *See* WIS. STAT. § 799.20(1) (providing that “[o]n the return date of the summons ... the defendant may answer, move to dismiss ... or otherwise respond to the complaint”); *see also* WIS. STAT. § 799.206(1) (providing that “all actions and proceedings commenced under this chapter shall be returnable before a circuit court commissioner”); WIS. STAT. § 799.207(1) (providing that the circuit court commissioner “may hold a conference with the parties or their attorneys or both on the return date, examine pleadings and identify issues”). Moreover, the court commissioner's letter provided explicit notice of those issues to the parties. Accordingly, this argument is without merit.

¶10 Finally, Buoscio asks that this court review the record and consider any errors that it discovers but which he does not raise. While the appellate court makes some allowances for the failings of parties who, like Buoscio, appear pro se, “[w]e cannot serve as both advocate and judge,” *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), and will not scour the record to develop arguments for an appellant, *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Accordingly, I decline Buoscio’s invitation to search the record for issues that he does not raise.

¶11 In sum, I affirm the circuit court’s order denying Buoscio’s motion to reopen the judgment dismissing his case.

*By the Court.*—Order affirmed.

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

