

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 19, 2017

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 Nos. 2016AP807
2016AP1539**

Cir. Ct. No. 2014SC895

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

TEAM PROPERTY MANAGEMENT, LLC,

PLAINTIFF-APPELLANT,

V.

JONATHON DIEDRICH AND THOMAS DIEDRICH,

DEFENDANTS-RESPONDENTS.

APPEALS from a judgment and orders of the circuit court for Ozaukee County: JOSEPH W. VOILAND, Judge. *Affirmed.*

¶1 REILLY, P.J.¹ In these consolidated cases, Team Property Management, LLC (Team) appeals from an order granting summary judgment to Thomas Diedrich and vacating a default judgment against Jonathon Diedrich in a small claims lawsuit and an order denying Team’s motion for reconsideration and request for sanctions. Team also appeals from a monetary judgment for costs granted in favor of Thomas. As we agree with the circuit court’s conclusion that Team is not entitled to relief, we affirm.

BACKGROUND

¶2 On December 11, 2014, Team filed a summons and complaint in small claims court against former tenants Jonathon and Thomas Diedrich for “caus[ing] substantial damage to the premises” the two previously rented from Team. Thomas filed an answer and affirmative defenses, but Jonathon failed to answer or appear. The court commissioner entered a default judgment against Jonathon. Thomas filed a motion for summary judgment, arguing that the claim was barred by the statute of limitations, while Jonathon filed his answer and moved to reopen and vacate the default judgment against him. The court commissioner granted both motions, dismissing the action as to both Thomas and Jonathon.

¶3 Team requested de novo proceedings before a circuit court judge, and Thomas refiled his motion for summary judgment. The circuit court found no disputed issues of material facts and concluded that the claims against the Diedrichs were barred by the statute of limitations. Team appealed to this court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

and simultaneously filed a motion for reconsideration, to which Thomas filed a brief opposing the motion for reconsideration and a request for costs. In response to Thomas' brief, Team filed a motion for sanctions against Thomas, claiming "untrue arguments" and "blatant untruth[s]." The circuit court denied Team's reconsideration and sanction motions and awarded costs to Thomas—\$200 on each motion. Team appealed. We granted Team's motion to consolidate the appeals.

DISCUSSION

Summary Judgment

¶4 We agree that summary judgment in favor of the Diedrichs was appropriate as Team's claim for damages was barred by the statute of limitations. WISCONSIN STAT. § 893.43 states an action for any breach of contract must be brought within six years of the accrual of the cause of action. Wisconsin case law has long held that a contract cause of action accrues and the statute of limitations begins running "from the moment the breach occurs." *CLL Assocs. Ltd. P'ship v. Arrowhead Pac. Corp.*, 174 Wis. 2d 604, 609, 497 N.W.2d 115 (1993) (citations omitted).

¶5 Team argues that pursuant to WIS. STAT. § 704.19(6), the statute of limitations began running on March 30, 2009, sixty days after Team first learned the Diedrichs vacated the premises in late December 2008. Team does not dispute, however, that it personally served the Diedrichs with a fourteen-day notice to pay rent or vacate the premises on October 7, 2008. Tenancy expired, and subsequently breach of the contract occurred, when a failure to pay or vacate occurred fifteen days after the notice. Therefore, the statute of limitations began

running on October 22, 2008, and stopped on October 21, 2014. *See* WIS. STAT. § 990.001(4). Accordingly, this claim, brought on December 11, 2014, was fifty-one days late.

¶6 We also conclude that no issues of material fact are present. *See* WIS. STAT. § 802.08(2). Team argued two factual issues: (1) one of the Diedrichs was seen removing a vehicle from the premises in late December 2008, and (2) “the lateral drain of ... the [premises] was found to be thoroughly plugged with in excess on [sic] one hundred blue shop towels in late December 2008, or January 2009.” Neither of these facts, if true, change the statute of limitations analysis addressed above or provide a sufficient reason for the delay in bringing the claim and are, therefore, not material to the dispute.

¶7 Team also argued that granting summary judgment in this case was inappropriate and contrary to WIS. STAT. § 799.209(3). Section 799.209(3) articulates the procedure for trials or similar hearings in small claims court and states that “[a]t any trial, hearing or other proceeding under this chapter ... [t]he court or circuit court commissioner *may* conduct questioning of the witness and shall endeavor to ensure that the claims or defenses of all parties are fairly presented to the court or circuit court commissioner.” (Emphasis added.) Because the statute provides that the court or court commissioner may conduct questioning, the court is under no obligation to do so if it feels the issues have been fairly presented.² *See also* WIS. STAT. § 799.04 (providing that “the general rules of practice and procedure in chs. ... 801 to 847 shall apply” to small claims actions,

² Subsections (1), (2), and (4) of WIS. STAT. § 799.209 indicate actions the court *must* take, while subsection (3) uses language implying judicial discretion.

including summary judgment proceedings under WIS. STAT. § 802.08). The circuit court did not err.

Default Judgment

¶8 We affirm the circuit court’s decision to reopen and vacate the default judgment against Jonathon. WISCONSIN STAT. § 799.29(1) provides that a motion to reopen in small claims court must be made within one year of the judgment being entered³ and may be granted if “good cause” is shown. Sec. 799.29(1)(a), (c). Our review on motions to reopen is whether the circuit court erroneously exercised its discretion. See *Kovalic v. DEC Int’l*, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994).

¶9 In granting the motion, the circuit court applied the factors under WIS. STAT. § 806.07(1)(h), “justifying relief in the interest of justice” as discussed in *Miller v. Hanover Insurance Co.*, 2010 WI 75, ¶36, 326 Wis. 2d 640, 785 N.W.2d 493.⁴ The circuit court relied heavily on that fact that Jonathon presented meritorious defenses to the small claims action and that if the court reopened the case Jonathon would succeed on the merits.

³ The default judgment was entered against Jonathon on February 19, 2015. On March 5, 2015, Jonathon filed a motion to reopen and vacate the judgment. The motion was filed timely.

⁴ The circuit court based its decision to reopen and vacate the default judgment on WIS. STAT. § 806.07(1)(h), which provides that the court may “relieve a party ... from a judgment” for “any other reasons justifying relief from the operation of the judgment.” We note, however, that WIS. STAT. § 799.29 is the “exclusive procedure for reopening a default judgment in small claims proceedings.” *King v. Moore*, 95 Wis. 2d 686, 690, 291 N.W.2d 304 (Ct. App. 1980); see also *Mercado v. GE Money Bank*, 2009 WI App 73, ¶10, 318 Wis. 2d 216, 768 N.W.2d 53 (“Section 806.07 does not apply to small claims cases.”).

¶10 We agree that the circuit court properly exercised its discretion in reopening and vacating the default judgment against Jonathon. Although the circuit court applied WIS. STAT. § 806.07(1)(h), Team was not adversely affected by the court’s failure to apply the “good cause” standard under WIS. STAT. § 799.29. The term “good cause” is not defined by statute, but courts generally consider the factors described in § 806.07(1). The circuit court properly addressed and applied the “interest of justice” factors under § 806.07(1)(h) to the facts of this case to justify the lateness of Jonathon’s answer and to reopen and vacate the default judgment. Reopening the default judgment against Jonathon was not an erroneous exercise of the circuit court’s discretion.

Sanctions

¶11 We affirm the circuit court’s denial of Team’s motion for sanctions under WIS. STAT. § 802.05. It is within the discretion of the circuit court to determine if a sanctionable violation occurred and what is an appropriate sanction. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *see also Jandrt v. Jerome Foods, Inc.*, 227 Wis. 2d 531, ¶31, 597 N.W.2d 744 (1999) (explaining that because § 802.05 is patterned after Federal Rule of Civil Procedure 11, we may use federal case law to help interpret the statute); *Johnson v. Allis Chalmers Corp.*, 162 Wis. 2d 261, 273-75, 470 N.W.2d 859, 863-64 (1991), *overruled on other grounds by Industrial Roofing Servs. v. Marquardt*, 2007 WI 19, 299 Wis. 2d 81, 726 N.W.2d 898. “A discretionary decision will be sustained if the circuit court has 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.” *Johnson*, 162 Wis. 2d at 273.

¶12 Team filed a motion for reconsideration after the circuit court granted Thomas’ motion for summary judgment. Opposing the motion for reconsideration, Thomas filed a brief arguing that reconsideration under WIS. STAT. § 805.17 is only applicable after trial to the court, citing this court’s holding in *Continental Casualty Co. v. Milwaukee Metropolitan Sewerage District*, 175 Wis. 2d 527, 533, 499 N.W.2d 282 (Ct. App. 1993) (“[When] read within the context of [§] 805.17, it is clear that subsection (3) was intended to only apply to motions after a trial to the court.... [Section 805.17] logically cannot apply in a summary judgment context.”). Team moved for sanctions against Thomas, claiming that he “submitted an untrue argument to the Court, and refused to withdraw or amend it after numerous notices.” Team claimed that WIS. STAT. § 799.445 specifically allows motions for reconsideration on summary judgment decisions.

¶13 The circuit court found no justification to impose sanctions on the basis of Team’s disagreement with Thomas’ legal argument. We agree that Thomas’ argument was “warranted by existing law,” *see* WIS. STAT. § 802.05(2)(b), and we conclude that the decision to deny Team’s motion for sanctions was reasonable.⁵

⁵ In his brief in opposition to the motion for sanctions, Thomas requested costs, which the circuit court granted. In contesting the award of costs, Team cites no legal authority and constructs no argument as to why the circuit court erred, claiming only that the “request for costs was inappropriate, and therefore, ought to be reversed.” We do not address inadequately briefed arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). The circuit court exercised discretion in awarding the motion costs, and the motion costs awarded were within the amounts set out by WIS. STAT. § 814.07. Therefore, we affirm the circuit court’s judgment awarding motion costs.

By the Court.—Judgment and orders affirmed.

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

