

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 24, 2009

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. 2008AP1914

STATE OF WISCONSIN

Cir. Ct. Nos. 2005SC12688
2005SC39689

**IN COURT OF APPEALS
DISTRICT I**

**LEGACY PROPERTY MANAGEMENT SERVICES, LLC,
D/B/A TIMBER RIDGE APARTMENTS,**

PLAINTIFF-RESPONDENT,

v.

JUDITH KOIER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MEL FLANAGAN, Judge. *Affirmed.*

¶1 CURLEY, P.J.¹ Judith Koier appeals from an order denying her motions to vacate a default judgment of eviction and a default money judgment and return all garnished funds arising out of the two 2005 small claims judgments.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2007-08).

One judgment evicted her from an apartment owned by Legacy Property Management Services, LLC (Legacy), doing business as Timber Ridge Apartments (Timber Ridge), and the other ordered her to pay a money judgment for unpaid rent. Later, her wages were garnished until the \$2820.68 money judgment and costs were paid.² Koier claims that the trial court erred in denying her motion because the underlying judgments were void due to improper service. Although the trial court incorrectly ruled that Koier's motion was subject to the reasonable time requirement found in WIS. STAT. § 806.07(2) (2007-08), the right result was reached because here, the doctrine of equitable estoppel prohibited Koier from raising the void judgment issue. Therefore, this court affirms, albeit on other grounds. *See State v. Holt*, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985) (We may affirm a trial court's decision on other grounds even if we do not agree with its reasoning.).

I. BACKGROUND.

¶2 According to the affidavits and documents found in the record, in 2004, Koier rented a Timber Ridge apartment for her daughter and two grandchildren after her daughter was unable to rent it due to an inadequate credit rating. Before renting to Koier, Legacy required Koier to provide sufficient information so that Legacy could obtain her credit report. To this end, she gave them her address, telephone number, social security number, and her employer's

² These matters were consolidated by the trial court. Because this appeal is from two small claims actions, no written order is in the file, and this court is relying on the docket entries pursuant to WIS. STAT. § 808.03(1)(b) (2007-08).

All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

name. Koier signed a lease that specifically permitted her daughter and grandchildren to live in the apartment. In March 2005, the acting property manager left a “Notice To Pay Rent Or Vacate Premises” at the apartment. When the rent was not paid, Legacy started an eviction action against Koier claiming that she was delinquent in paying the rent. Despite having Koier’s actual address, the process server attempted personal service on Koier at the leased apartment. A copy of the eviction summons and complaint were also mailed to her using the leased apartment address. On the return date for the eviction action, Koier did not appear. Her daughter, however, made an appearance and the caption was amended to add her as a defendant.³ Eventually, a default judgment of eviction was entered against Koier.

¶3 In November 2005, Legacy commenced an action seeking a money judgment against Koier for \$2820.68, in addition to costs related to the action. This amount was calculated by multiplying the months the rent had gone unpaid and subtracting out the security deposit. Again, despite knowing Koier’s actual address, the address for Koier listed on the summons and complaint seeking the money judgment was the Timber Ridge apartment, and the process server attempted to serve her with a copy of the summons and complaint at that address. An affidavit of the process server states that he was told that the occupants had moved out in the middle of May 2005, and the affidavit claims that the process server attempted to locate Koier through the post office and Consolidated Court Automated Programs (CCAP), without success. Copies of the small claims publication notice and complaint were mailed to Koier at the Timber Ridge

³ Later, her name was removed from the caption as she was added by the clerk in error.

address. The law firm representing Legacy then served the summons by publication. A default judgment was entered against Koier.

¶4 Koier's wages were then garnished to satisfy the outstanding judgment. According to the letter brief submitted on behalf of Legacy, Koier's attorney then contacted Legacy's attorney in January 2006. Koier's attorney requested various documents regarding the eviction and the money judgment. These documents were sent to him. Later, Koier's attorney called Legacy's attorney's office and stated that Koier wished to pay \$500 per month on the judgment. Despite Legacy's approval of the payment plan, the payment arrangement never went into effect. Legacy was then forced to commence two subsequent garnishment actions, and the judgment was ultimately satisfied in October 2006. At no time during these discussions was the service of process issue ever raised.

¶5 In June 2008, motions seeking to vacate the judgments based upon improper service were filed by Koier. The trial court denied the motions, stating that the reasonable time requirement found in WIS. STAT. § 806.07 prohibits the entertaining of the motions.⁴ This appeal follows.

II. ANALYSIS.

¶6 Koier argues that because the default judgments were based on void judgments, the reasonable time limitation found in WIS. STAT. § 806.07 does not apply. This court agrees with the latter argument; to wit, that the reasonable time

⁴ At the time that this motion was heard, Legacy had pending a large claim action against Koier for additional rent because the apartment could not be rented for the remainder of the lease. That case is not part of this appeal.

requirement found in § 806.07(2) does not apply because § 806.07 does not govern small claims actions. Section 806.07 reads, in relevant part:

Relief from judgment or order. (1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(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.

(2) *The motion shall be made within a reasonable time*, and, if based on sub. (1)(a) or (c), not more than one year after the judgment was entered or the order or stipulation was made. A motion based on sub. (1)(b) shall be made within the time provided in s. 805.16. A motion under this section does not affect the finality of a judgment or suspend its operation. This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court.

(Emphasis added.)

¶7 The case of *King v. Moore*, 95 Wis. 2d 686, 291 N.W.2d 304 (Ct. App. 1980), is instructive. There, this court determined that the time limit set by

the small claims statute within which a defendant can move to reopen a default judgment takes precedence over the time limit in WIS. STAT. § 806.07. *King*, 95 Wis. 2d at 689-90. The statute controlling default judgments in small claims actions is found in WIS. STAT. § 799.29(1), and reads:

Default judgments. (1) MOTION TO REOPEN. (a) There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown.

(b) In ordinance violation cases, the notice of motion must be made within 20 days after entry of judgment. In ordinance violation cases, default judgments for purposes of this section include pleas of guilty, no contest and forfeitures of deposit.

(c) *In other actions under this chapter, the notice of motion must be made within 12 months after entry of judgment unless venue was improper under s. 799.11. The court shall order the reopening of a default judgment in an action where venue was improper upon motion or petition duly made within one year after the entry of judgment.*

(Emphasis added.)

¶8 Therefore, a defendant normally has twelve months to bring a motion to reopen a small claims default judgment. Under this statute, Koier’s motion to vacate would have been tardy. However, as explained by our supreme court in *Neylan v. Vorwald*, 124 Wis. 2d 85, 100, 368 N.W.2d 648 (1985), a void judgment may be expunged by a court at any time. Extrapolating from the holding in *Neylan*, a void judgment would not be subject to the time limitation found in WIS. STAT. § 799.29(1) that requires a motion to reopen a default judgment “within 12 months after entry of judgment.” But that conclusion does not end the analysis.

¶9 Here, the doctrine of equitable estoppel comes into play. The doctrine of equitable estoppel focuses on the conduct of the parties. *Affordable Erecting, Inc. v. Neosho Trompler, Inc.*, 2005 WI App 189, ¶17, 286 Wis. 2d 403, 703 N.W.2d 737, *aff'd*, 2006 WI 67, 291 Wis. 2d 259, 715 N.W.2d 620. The elements of the doctrine are: “(1) action or nonaction, (2) on the part of one against whom estoppel is asserted, (3) which induces reasonable reliance thereon by the other, either in action or nonaction, and (4) which is to his or her detriment.” *Id.*

¶10 Before applying the facts of this case to the elements, it is important to examine when Koier would have actually learned of the suits. First, it is quite likely that Koier knew of the existence of the eviction action back in 2005, despite the failure to serve her at her actual residence, because her daughter appeared at the hearing and would have, in all likelihood, told Koier of the suit. Also, presumably she would have been aware of her daughter and grandchildren’s move out of the apartment sometime in May 2005, as reported to the process server. However, even if her daughter chose not to tell Koier of the eviction action and Koier was unaware of their move, then Koier would first have had knowledge that she had been sued in both the eviction action and the money judgment in early 2006 because: (1) money was being taken out of her wages; and (2) she hired a lawyer to contact Legacy’s attorney and obtain the documents related to the suit, including the affidavits of service.

¶11 It is at this point that it would have been reasonable for Koier to challenge the service of both suits, as she now had notice that the summons and complaint were both served at the leased apartment rather than her residence. Instead, Koier chose to negotiate a payment plan which she later abandoned. This, in turn, required Legacy to commence two additional garnishment actions against

her. It was not until the judgment was satisfied and the money dispersed to Legacy that Koier decided to challenge the service of the earlier suits. This was slightly more than three years after the first action was filed, and over two years after her attorney contacted Legacy's attorney.

¶12 Applying the elements of equitable estoppel, Koier's nonaction for over two years of failing to raise a possible defense to either the eviction or the money judgment and her failure to object to the garnishment induced reasonable reliance on Legacy that its various suits were proper. So, too, Koier's failure to challenge the garnishment resulted in Legacy's attorney believing he was free to disperse the funds taken from Koier's wages to Legacy. It would be extremely detrimental to now require Legacy to pay back money rightfully owed to it because of Koier's refusal to pay rent at an apartment that she leased. Thus, Koier is equitably estopped from now raising the issue of void judgments. For these reasons, the order of the court denying the motion to vacate and return the garnished money is affirmed.

By the Court.—Order affirmed.

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

