

1 STATE OF WISCONSIN CIRCUIT COURT COUNTY OF SAWYER

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3 Gudrun L. Casper,)
4 Plaintiff,)
5 -vs-)
6 Patrick Rogers, et. al.,)
7 Defendants.)

ORIGINAL

FILED
MAY 30 2017

Sawyer County
Clerk of Circuit Court
Hayward, WI 54843

) Motion Hearing
) Case No. 2014 CV 34

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9 The above-entitled matter coming on to be
10 heard before the Honorable Eugene Harrington,
11 Circuit Court Judge for Washburn County, without a
12 jury, on the 17th day of February, 2017, commencing
13 at the hour of 1:40 p.m. in the Courthouse in the
14 City of Hayward, County of Sawyer, State of
15 Wisconsin.

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17 APPEARANCES:

18 Gudrun L. Casper, the Plaintiff, appeared
19 pro se.

20 Michael Kelsey, Attorney at Law, 1063 N.
21 Kanas Ave., PO Box 718, Hayward, Wisconsin 54843,
22 appeared representing the Defendants.

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IN OPEN COURT

THE COURT: 14 CV 34, it's Gudrun Casper and Patrick Rogers and others. Ms. Casper is here. She is pro se. Rogers are here through Michael Kelsey.

Ms. Casper, this is a motion, sort of a motion to vacate a default judgment dismissing your claim. You wrote me a letter saying that you don't remember being told you had to appear for the pretrial conference, that you had had all your witnesses ready to go, all those sort of things.

MS. CASPER: Yes, your Honor.

THE COURT: So make your record.

MS. CASPER: With respect to the court and without request for special treatment --

THE COURT: Wait. You are asking for special treatment?

MS. CASPER: No.

THE COURT: You are not going to get any.

MS. CASPER: No. Without request for special treatment, I'm making the following request for reconsideration of the order for dismissal based on the fact that I did not get the notification. I was unaware of the -- I

1 was aware of the February 10th but not the
2 January 5th trial.

3 You had gone off the record, were speaking
4 with the clerk, or I'm not sure what your title
5 would be, I'm sorry, but at no point did you
6 question or ask, you know, whether I had any
7 conflict of that date, if it worked for me.

8 The trial, I basically said if we set a
9 trial I would make anything work. As far as
10 the pretrial went, I did notice there was one
11 issue with it that on our hearing on 9-23, 2016
12 there was a notification of address change that
13 Mr. Kelsey had asked for verification, and it
14 was provided in there that I have a P.O. box,
15 that 15 Schmidt is my physical address but I
16 have very bad problems with mail delivery there
17 and also provided an email address, and you had
18 told them to use both of those.

19 I did not receive an email or anything in
20 the P.O. box, and when I got the notice of the
21 hearing this time for this reconsideration, I
22 noticed I got it in email that they had in
23 record still the 15 Schmidt Terrace, not the
24 P.O. box.

25 So I never did get -- when you said,

1 stated on the October 15th at the time that we
2 scheduled the hearing, you said that you would
3 send out an amended scheduling order. You had
4 yelled at me about my phone, were asking if I
5 had -- was recording anything.

6 THE COURT: I don't think I yelled at
7 anybody.

8 MS. CASPER: Okay. Well, you reprimanded
9 me, asking if I was recording and I was not. I
10 was trying to check my calendar and place the
11 February 10th date in my calendar.

12 And so you had stated that you had, would
13 send out an amended scheduling order. So I was
14 just waiting for that to come through for the
15 exact times and dates, and I never received it.

16 I noticed -- I filed today an official --
17 I had sent to Mr. Kelsey, along with a copy of
18 the letter that I had sent to you that was
19 filed, I sent also a notification of change of
20 address because I do live here in Wisconsin
21 now. So it makes it easier to be here.

22 And I also filed that with the Court
23 because I noticed that the notice of hearings,
24 that they were still sending it to the physical
25 address of 15 Schmidt and not the P.O. box that

1 you stated in the 9-23 hearing that they had to
2 use.

3 THE COURT: I don't think I ordered
4 anybody to use anything. It's a litigant's
5 obligation to make sure that their particular
6 address is accurate with the clerk of the
7 court. I don't take care of the court file.

8 Here is what I know. The minutes reflect
9 that on October 14th, 2006 (sic) you were in
10 court. Mr. Kelsey was here.

11 MS. CASPER: Yes, sir.

12 THE COURT: You told me you were going to
13 obtain counsel. You had a meeting scheduled
14 for a lawyer later that day.

15 MS. CASPER: With Tim Sempf.

16 THE COURT: Mr. Kelsey stated that he
17 would like the matter to proceed. He was
18 concerned about delay, would further delay the
19 matter. Final pretrial scheduled for
20 January 5th, 2017, 8:30 a.m. That was on the
21 record.

22 You were here when I set that on the
23 record. Court trial scheduled for
24 February 10th at 9:00 a.m. It does say judge
25 to prepare amended scheduling order. I

1 probably didn't.

2 All motions due by December 13th, 2016.
3 You didn't file any motions, that I recollect,
4 on December 13th. You didn't appear for the
5 final pretrial on January 5th at 8:30 a.m.

6 On January 5th at 8:30 Mr. Kelsey did, and
7 I dismissed it at 8:37.

8 MS. CASPER: Yes, sir. I had received
9 the --

10 THE COURT: Have you ordered a transcript
11 of the October 14th, 2016 status conference?

12 MS. CASPER: Yes.

13 THE COURT: Have I said all that on the
14 record?

15 MS. CASPER: Yes, sir. I did -- I did not
16 hear you say that the January 5th. I
17 understood the February 10th. I did. And I
18 was putting that in my calendar when -- and I
19 was waiting on the scheduling order as the
20 Court did not ask for my input for scheduling.

21 And this was done basically to show
22 respect for the Court, and I didn't think it
23 was my right to interrupt you. So I was just
24 waiting for that to come through so that I knew
25 exactly what day and time I was supposed to be

1 there. Previously, you know, Kelsey had set --

2 THE COURT: Mr. Kelsey.

3 MS. CASPER: Sorry. Previously Mr. Kelsey
4 had set precedence of providing information to
5 me by emailing me, on sending me the, a court
6 scheduling up to that point.

7 THE COURT: Mr. Kelsey doesn't represent
8 you, though, does he?

9 MS. CASPER: No, sir.

10 THE COURT: And you did -- you did procure
11 a transcript from the October 14th, 2016
12 hearing.

13 MS. CASPER: Yes.

14 THE COURT: Stacy Lundmark was the court
15 reporter.

16 MS. CASPER: Yes. I also procured --

17 THE COURT: Does the court record reflect
18 that I told you that the pretrial conference
19 was January 5th at 8:30 a.m.?

20 MS. CASPER: Yes. I received that
21 yesterday.

22 THE COURT: Okay. So it's in the record.

23 MS. CASPER: Yes, sir.

24 THE COURT: So what good cause do you have
25 for me to ignore or cut you some slack, for the

1 lack of a better way to put this, from not
2 paying attention if that's what it was?

3 MS. CASPER: Sir, you had stated you would
4 send out an amended scheduling order.

5 THE COURT: What I said -- yes, I may have
6 said that. I probably did, but I told you on
7 the record the date of the pre-trial and that
8 you had to appear, and you did not.

9 MS. CASPER: You did not ask either, sir,
10 that -- whether I had any scheduling conflicts
11 or anything else. If I had the opportunity to
12 have looked at my phone and to check any
13 scheduling on that date, had I heard you, I did
14 not understand or hear that you -- I did
15 understand February 10th.

16 I knew when the trial was because you told
17 me that Tim would not -- Mr. Tim Sempf would
18 not be able to move it if he so chose to
19 represent me. He had scheduling conflicts and
20 stuff with that and could not do that, which
21 had I actually been asked or consulted as to
22 when the input on any scheduling, I already
23 knew that I had a labor audit with the North
24 Carolina Department of Labor. That went two
25 weeks, and it ended the day after this.

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2 paying attention if that's what it was?

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22 when the input on any scheduling, I already
23 knew that I had a labor audit with the North
24 Carolina Department of Labor. That went two
25 weeks, and it ended the day after this.

1 THE COURT: So you have filed a motion for
2 reconsideration.

3 MS. CASPER: Yes, sir.

4 THE COURT: Did you look at the rules of
5 civil procedure to determine what you had to
6 include in the motion that you want me to take
7 up?

8 MS. CASPER: Yes. I'm not sure if I did
9 it correctly or not.

10 THE COURT: You didn't file -- you didn't
11 file the appropriate supporting documentation.

12 MS. CASPER: Okay. What I had sent up was
13 an objection to the proposed order.

14 THE COURT: I have it in front of me,
15 ma'am.

16 MS. CASPER: Because at that time I had
17 just received the proposed order. It was not
18 signed when I received it in the mail, which
19 was three weeks later, two and a half weeks
20 later, sorry.

21 THE COURT: So I'm supposed to take your
22 word for it that you had this North Carolina
23 labor audit scheduled?

24 MS. CASPER: I can pull up --

25 THE COURT: I am here for your motion to

1 reconsider right now. Do you want me to do
2 this today or next week?

3 MS. CASPER: Well, today. I mean, I can
4 pull up an email and stuff where she was giving
5 me a finding. We were sitting there when she
6 called me back and spoke on the phone and told
7 me what her verdict was.

8 MR. KELSEY: Judge, if I may?

9 THE COURT: Go ahead, Mr. Kelsey. Set
10 your record for your client.

11 MR. KELSEY: First and foremost, Judge, I
12 don't remember what she is claiming, but then
13 again I can make mistakes. It was very clear
14 when you decided to set these. You asked me if
15 I could -- January 5th was okay, and I had my
16 calendar, Judge.

17 I remember -- and it was important for
18 this because, as Ms. Casper is saying, no
19 disrespect to what she is saying but she said
20 conveniently she is going to meet with
21 Mr. Sempf. And you said, sometimes I get
22 informal and tell Tim that it better be sooner
23 than later and contact me if there is a problem
24 with that date.

25 You never said that you were not going

1 to -- not have that on that day, from what I
2 remember, but you better make sure you talk to
3 an attorney right away because of the delay
4 that has been going on with this.

5 It was clear. Your Honor, as you know on
6 behalf of my clients, they looked on CCAP and
7 they saw it right away. They knew what was
8 going on, Judge. And you were very clear that
9 you said if she did not get an attorney she had
10 to be there in person.

11 This has been going on -- it's a 14 CV 34
12 case, and you wanted to get this -- let alone
13 the cost for my clients with two different
14 attorneys and everything else that we had.

15 Judge, to say I have an audit for
16 something in North Carolina, to say I'm going
17 to pull it up on a phone or do something, I
18 find it interesting. She has a phone hearing,
19 but why couldn't she do it from here then?

20 MS. CASPER: It wasn't a phone hearing.

21 THE COURT: Ma'am, it's not your turn.

22 MS. CASPER: Sorry, sir.

23 MR. KELSEY: So looking at these hits and
24 misses, Judge, this is serious. My clients
25 have expended great amounts of money. You

1 expected -- I guess if the role was reversed, I
2 would have no reason to ask for anything, and
3 I'm the attorney. To say oh, I'm not an
4 attorney but I am the litigant, cut me some
5 slack, this isn't a small claims matter, your
6 Honor.

7 It's large claims. There are rules and
8 procedures we have to have. And the concern
9 and costs go deep on this matter. To now say
10 I'm not sure, I forgot, or something like that,
11 there has to be good cause, Judge.

12 And, you know, she could have talked -- if
13 she actually looked with Mr. Sempf and went
14 there, we have no proof. But at the same time
15 I'm not denying -- he could have called. He
16 could have checked and said make sure you are
17 there.

18 You told us to be there in person. And I
19 asked if my clients had to be on the final
20 pretrial because they would have taken off time
21 from work and been there. They were at
22 other --

23 Judge, to sit there -- you also
24 accommodated her for appearing by telephone in
25 a hearing earlier in September because of an

1 A.D.A. situation that she had. So even if she
2 had this hearing she could have appeared by
3 phone. You already gave her that permission,
4 and we heard nothing.

5 Now we have to reopen it and start
6 basically from scratch because I've got to
7 subpoena people, we all have to, and take up
8 more court -- the Court's time and here in
9 Sawyer County.

10 Judge, this is not right. We have rules
11 of procedures. She had her chance. She has
12 had more than that. She has had two attorneys.
13 Whatever reason, why they have that, she can
14 say they didn't do something or whatever, but
15 that's not the issue, Judge.

16 This was simple scheduling. And if the
17 roles were reversed, I know I would not have,
18 be in a position to even ask to have this
19 reopened. Thank you, Judge.

20 THE COURT: Ms. Casper, rebuttal?

21 MS. CASPER: It is basically a matter of
22 simple scheduling. I already had a
23 pre-existing obligation that I would have said
24 something had I been consulted at the time.
25 You told me -- I've got the transcript from the

1 day that we were there. And in it, it
2 basically just says, this is what you had. I
3 did not hear the fact that you had January 5th
4 or I would have said something then or I would
5 have filed a change of date for the pretrial,
6 not the trial.

7 I already have all of my stuff put
8 together that I know that, you know, it is my
9 fault that I wasn't here on January 5th, but I
10 didn't know about it. The Court in the
11 transcript on the -- on 9-23 you did state on
12 there to use the P.O. box.

13 I filed everything the way that I'm
14 supposed to. I have been trying the best I can
15 to go through and do the court procedures and
16 learn them as I go along. I am not trying to
17 waste the Court's time.

18 I just want a trial that was promised to
19 me basically at the start of this. I mean, if
20 you are not going to reopen or reconsider it, I
21 would ask that you consider changing it to
22 dismissed without prejudice to at least give me
23 the opportunity to appeal if I so --

24 THE COURT: You still have the right to
25 appeal.

1 MS. CASPER: Okay.

2 THE COURT: Motion to vacate the default
3 judgment is denied. You say -- you say that
4 you weren't consulted with respect to the
5 scheduling of the final pretrial in January,
6 and the transcript is what the Court of Appeals
7 looks at. The transcript is what judges look
8 at. The transcript is what Mr. Kelsey looks
9 at.

10 There was no objection from you in that
11 scheduling process that you are now complaining
12 or explaining away that you were looking at
13 your cellphone calendar for whatever. By the
14 fact that you admit on the record today that
15 you had looked at your calendar --

16 MS. CASPER: I was trying to.

17 THE COURT: It's not your turn, ma'am.

18 MS. CASPER: Yes, sir.

19 THE COURT: Well, the civil rules of
20 procedure require that courts consult with
21 calendars. We did. You had your opportunity
22 to object. Even if you didn't look at it, you
23 had an opportunity well before this January 5th
24 day to let Mr. Kelsey know that we needed to
25 change the pretrial conference day. You could

1 have certainly called Mr. Kelsey and set up a
2 different pretrial conference day.

3 But now you are here complaining that
4 Mr. Kelsey was unfair or that I was unfair, and
5 the record is going to reflect that we gave you
6 every opportunity. We delayed this case any
7 number of times.

8 The file and the record are complete. You
9 failed to appear for the pretrial conference,
10 and that pretrial conference was scheduled for
11 January 5th. And for whatever reason you
12 didn't file your notice until January 27th for
13 reconsideration. You don't have a good excuse.

14 MS. CASPER: Because that's when I
15 received it.

16 THE COURT: Ms. Casper, you don't have a
17 good excuse for missing the hearing on
18 January 5th. That schedule was set on the
19 record with you in the room. And Mr. Kelsey is
20 correct, if a lawyer had been in your shoes, in
21 your chair, the lawyer wouldn't even be here
22 squawking about not paying attention and not
23 getting it correctly. Because that's it.

24 The record will reflect that you, as a pro
25 se client, a pro se litigant have had every

1 opportunity to prepare your case and be here.
2 And at the time of the pretrial conference you
3 failed to appear. You failed to make any
4 explanation before the hearing. The default
5 judgment was authorized under the rules. It
6 was appropriate.

7 You haven't carried the burden today to
8 show me that I should vacate the judgment or
9 otherwise give you relief from the judgment.
10 The judgment wasn't entered by mistake,
11 inadvertent surprise or excusable neglect. You
12 knew that there was a pretrial conference set.
13 I set it on the record, and you were in the
14 room when it was taken care of.

15 There isn't any newly discovered evidence.
16 There wasn't any fraud, misrepresentation, or
17 other misconduct by Mr. Kelsey, and the
18 judgment isn't void. Motion is denied.

19 Mr. Kelsey, prepare an order consistent
20 with that. Make it a final order for appellate
21 purposes so Ms. Casper has something if she
22 wants to take it to the Court of Appeals. Any
23 questions?

24 MR. KELSEY: No, your Honor. Thank you.

25 THE COURT: Any costs?

1 MR. KELSEY: I want to, Judge, but I'm --

2 THE COURT: Okay. If you want costs, ask
3 for them.

4 MR. KELSEY: Statutory costs I think is
5 only a hundred dollars, if I'm not mistaken,
6 Judge.

7 THE COURT: All right. Judgment for
8 statutory costs.

9 MR. KELSEY: Thank you, sir.

10 THE COURT: We're in recess.

11 (The proceedings are concluded at 1:58
12 p.m.)

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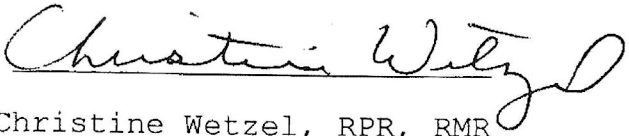
1 STATE OF WISCONSIN
2 COUNTY OF WASHBURN CERTIFICATE

3 I, Christine Wetzel, Official Court
4 Reporter in and for the State of Wisconsin, do
5 hereby certify that I reported the foregoing
6 matter and that the foregoing transcript,
7 consisting of 18 pages, has been carefully
8 compared by me with my stenographic notes as
9 taken by me in shorthand and thereafter
10 transcribed, and it is true and correct to the
11 best of my knowledge.

12 Dated this 8th day of May, 2017.

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Christine Wetzel, RPR, RMR

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