In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

KRISTINE TIMMERMAN, INDIVIDUALLY, AND AS GUARDIAN OF BRUCE TIMMERMAN, Appellants, v. ACTUANT CORPORATION, ENERPAC TOOLGROUP, CORPORATION, ENERPAC CORPORATION, AND LACLEDE CHAIN MANUFACTURING COMPANY, LLC, Respondents.	)	ED113598 Filed: June 9, 2026

Appeal from the Circuit Court of St. Louis County
The Honorable Thomas C. Albus

Introduction

The incident giving rise to this litigation occurred on June 4, 2019, on a farm in Cuba City, Wisconsin as appellant Bruce Timmerman tried to detach a trailer from a farm vehicle using a hydraulic tool and a large metal chain. The metal chain broke and struck Timmerman in the head and throat. In 2022, Timmerman's wife and guardian, appellant

Kristine Timmerman, sued the above-named Actuant and Enerpac entities (collectively, Enerpac), the manufacturer of the hydraulic tool, and Laclede, the manufacturer of the chain. The Timmermans filed the suit in the St. Louis County circuit court and filed the same lawsuit the next day in the Milwaukee County, Wisconsin circuit court.

Respondents each moved to dismiss the Wisconsin case asserting faulty service of process and that Wisconsin's three-year statute of limitations had run. At an April 20, 2023 hearing on those motions, the Wisconsin circuit court ordered the Timmermans' suit dismissed with prejudice on the merits under Wis. Stat. section 805.03 because the Timmermans' counsel did not appear at the hearing. The Timmermans filed no challenge to the dismissal in the circuit court and filed no appeal to the Wisconsin appellate court such that the judgment became final in June 2023. Instead, the Timmermans sought to litigate the St. Louis County case at bar.

In early 2024, in the St. Louis County case, Respondents each filed a motion for summary judgment based on res judicata requesting the Missouri court give full faith and credit to the Wisconsin judgment. The court granted Respondents' summary judgment motions without explanation.

The Timmermans now invite this court to wade deep into Wisconsin legal waters, waters the Timmermans chose not to touch themselves when they declined to challenge the Wisconsin court's dismissal through a motion to vacate pursuant to Wis. Stat. section 806.07 and then through an appeal. Instead, the Timmermans allowed the dismissal to become a final judgment and thus deprived the parties, the Missouri trial court, and this court of the benefit of the Wisconsin appellate court's opinion on the following issues:

(1) whether the Wisconsin judgment is res judicata because it is not a valid judgment under due process principles since the Timmermans received no notice — actual or constructive — that their failure to appear for the hearing that day could result in the dismissal with prejudice on the merits under Wis. Stat. section 805.03; and (2) whether the Wisconsin court's dismissal was *penal* in nature so as to be considered an exception to the full faith and credit clause because Missouri courts need not give res judicata treatment to *penal* judgments.

We affirm. The Timmermans' appeal is an unauthorized collateral attack on a final judgment which is unavailing under both Missouri and Wisconsin law. *Warren v. Associated Farmers, Inc.*, 825 S.W.2d 901, 905 (Mo. App. 1992); *Mercado v. GE Money Bank*, 768 N.W.2d 53, 58 (Wis. Ct. App. 2009). The Timmermans seek to sidestep such prohibition by claiming the Wisconsin judgment is void because it was issued in violation of their due process rights; but this claim is ill-fated by the Timmermans' failure to see matters through in Wisconsin. *Id*. In effect, the Timmermans' decision to forgo a post-judgment motion and an appeal in Wisconsin fatally undermines their void judgment claim.

Background

Bruce Timmerman's injury occurred as he attempted to disconnect a trailer from a farm vehicle using an Enerpac hydraulic toolset which included a six-foot metal chain with a grab hook manufactured by Laclede. Because the connecting pin had jammed, Timmerman wrapped the chain around the tongue of the trailer and sought to use the hydraulic tool to dislodge it. The chain broke and struck him.

Kristine Timmerman became her husband's guardian and on June 6, 2022, the Timmermans filed this suit alleging strict liability, negligence, and breach of implied warranty against Enerpac and Laclede. The next day, they filed an identical suit against the same defendants in the Circuit Court of Milwaukee County, Wisconsin.

Respondents filed separate motions to dismiss the Wisconsin case on the basis of the statute of limitations and defective service of process. Initially, Respondents scheduled the motions for hearing on December 6, 2022 but the hearing was continued several times at Timmermans' counsel's request. Ultimately, on January 23, 2023, the court granted the Timmermans' motion to continue the hearing and entered its order setting the matter for April 20, 2023, an order Timmermans' counsel prepared.

On April 14, a paralegal from Timmermans' counsel's office contacted the clerk in the chambers of the Wisconsin judge presiding over the matter, Judge Gwendolyn Connolly, asking whether the Timmermans would have to attend the April 20 hearing if they voluntarily dismissed the suit. According to the affidavit, the clerk advised that the Timmermans would not have to appear if the case was voluntarily dismissed. On April 19, counsel filed a motion for voluntary dismissal without prejudice. At the April 20 hearing, Respondents' counsel appeared but Timmermans' counsel did not. The court proceeded to consider the Respondents' motions to dismiss and the consequences of Timmermans' counsel's absence.

First, the court found that the Timmermans received proper notice of the hearing on the motions to dismiss. Further, the court found Timmermans' counsel's failure to appear to be egregious "in light of all the accommodations that apparently had been

made, and the long-standing notice that has been on the court's docket of [the] hearing." The court determined that Timmermans' counsel knew his presence was required at the April 20 hearing given his paralegal's then-recent inquiry as to whether a voluntary dismissal filing would excuse counsel's appearance. The court then noted that under Wis. Stat. section 805.04 and in contradiction to the paralegal's claim, a bare voluntary dismissal *without a stipulation from both parties* "doesn't excuse a non-appearance."

Next, the court announced that it had reviewed Respondents' motions to dismiss along with the Timmermans' response brief and was "prepared to address the motions" on their merits. Respondents' counsel summarized both their arguments and the Timmermans' response.[1] The court again stated it was prepared to rule on the motions before asking Respondents if they "wished for me to address the substance of these motions or … to simply find [the plaintiffs] in default as it relates to these motions here." At that point, Respondents' counsel conferred privately off the record before returning to ask the court to consider a default and dismissal with prejudice under "the [Wisconsin] statute 805.03 failure to prosecute or comply with the procedural statute."

The court orally granted Respondents' Wis. Stat. section 805.03 motion and then explained on the record the basis for its ruling. Specifically, the court noted its receipt *just that morning* of the Timmermans' ineffectual voluntary dismissal filing and the court

[1] Respondents refuted the Timmermans' effort to extend the statute of limitations by invoking the discovery rule based on Bruce Timmerman's traumatic brain injury. Respondents argued that the Timmermans had not sought to amend the petition in this regard and the discovery rule assertions do not appear on the face of the petition.

then made a record of counsel's unexplained and unexcused failure to appear. Next, the court detailed the three continuances that delayed the hearing from December 6, 2022 to the April 20, 2023 setting and that that setting resulted from a stipulation submitted by Timmermans' counsel and an order he prepared with the April 20 date and time, an order the court entered on January 24. Based on those circumstances, the Wisconsin court found counsel's non-appearance to be egregious and justified a default. The next day, April 21, the court entered its formal order dismissing the Timmermans' case with prejudice on the merits under Wis. Stat. section 805.03 "upon consideration of Plaintiffs' failure to appear" and "for the reasons stated on the record at the April 20, 2023 hearing." The Timmermans filed no post-judgment motion or appeal.

On May 9, 2023, the Timmermans filed an amended petition in this case, the St. Louis County case. In early 2024, each Respondent moved for summary judgment arguing that the Wisconsin judgment barred Timmermans' Missouri suit under res judicata and collateral estoppel. The Timmermans argued that the Wisconsin judgment was not res judicata because it was entered without proper notice in violation of due process. Alternatively, the Timmermans argued the Wisconsin judgment falls within the penalty exception to the full faith and credit clause.

The trial court granted summary judgment in favor of the Respondents.

Standard of Review

"[T]he preclusive effect of a judgment is determined by the law of the jurisdiction in which the judgment was rendered." *Strobehn v. Mason*, 397 S.W.3d 487, 494 (Mo. App. 2013). In both Wisconsin and Missouri, res judicata gives preclusive effect only to

valid judgments. *Menard, Inc. v. Liteway Lighting Prods.*, 698 N.W.2d 738, 755 (Wis. 2005); *Berry v. Chitwood*, 362 S.W.2d 515, 517 (Mo. 1962). The Wisconsin trial court's findings are reviewed by this court under a "clearly erroneous standard." *East Winds Properties, LLC v. Jahnke*, 772 N.W.2d 738, 743 (Wis. Ct. App. 2009). And the Wisconsin trial court's decision to dismiss a claim is reviewed for an erroneous exercise of discretion. *Buchanan v. General Casualty Co.*, 528 N.W.2d 457, 460 (Wis. Ct. App. 1995).

Wisconsin and Missouri discourage collateral attacks on final judgments particularly when the party has not appealed that final judgment. *Warren*, 825 S.W.2d at 905; *Mercado*, 768 N.W.2d at 58.

Discussion

The Timmermans raise several interesting issues regarding the propriety under Wisconsin law of the Wisconsin judgment at issue in this case. But we decline to consider any of those issues because we conclude that this appeal is an unauthorized collateral attack on a final judgment.

A collateral attack is "[a]n attack on a judgment in a proceeding other than a direct appeal." *State v. Hershberger*, 853 N.W.2d 586, 590 (Wis. Ct. App. 2014); *see also Vilsick v. Fibreboard Corp.*, 861 S.W.2d 659, 662 (Mo. App. 1993) ("A collateral attack is an attempt to impeach a judgment in a proceeding not instituted for the express purpose of annulling the judgment."). It is "an attempt to avoid, evade, or deny the force and effect of a judgment in an indirect manner and not in a direct proceeding prescribed by law and instituted for the purpose of vacating, reviewing, or annulling it." *Mercado*, 768

N.W.2d at 57-58 (internal quotations omitted). "Wisconsin courts have recognized the general disfavor of allowing collateral challenges on the basis that 'they disrupt the finality of prior judgments and … undermine confidence in the integrity of our procedures ….'" *Id.* at 58 (quoting *Oneida County DSS v. Nicole W.*, 728 N.W.2d 652, 657 (Wis. 2007). Similarly, in Missouri, "[t]he dismissal of a case … may not be collaterally attacked for the purpose of permitting the same cause of action to be pursued by the same parties in a newly filed case." *Vilsick*, 861 S.W.2d at 662.

We find the *Warren* case to be on all fours and dispositive to this appeal. There, the circuit court dismissed Warren's civil action for defective animal feed against Purina and Associated Farmers due to Warren's failure to prosecute. 825 S.W.2d at 902. After the court denied Warren's motion to set aside the dismissal, Warren did not appeal that denial and instead filed "an identical petition" in the same court one month later. *Id.* The defendants filed a motion to dismiss on res judicata grounds arguing that the earlier dismissal was with prejudice under Missouri's procedural rules. *Id.* The trial court agreed and dismissed Warren's second suit. *Id.* Warren then moved for a rehearing claiming the first suit's dismissal was *without* prejudice. The trial court denied that motion and held that Warren's second suit amounted to an unauthorized collateral attack on a final judgment. *Id.* at 903.

Like here, Warren collaterally attacked the judgment dismissing his first suit on due process grounds claiming he was not given reasonable notice or an opportunity to be heard on the pivotal issue whether the dismissal was with prejudice or without. *Id.* at 904. The *Warren* court rejected that notion because Warren received notice of the dismissal in

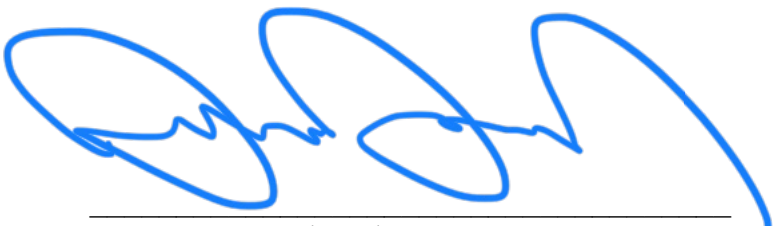
sufficient time to file an appropriate motion under Missouri Supreme Court Rules 74.03 (Notice of Entry of Orders and Judgments) and 74.06 (Relief from Judgment or Order) and therefore his due process rights remained available to him to challenge the denial of his motion to set aside the dismissal but he chose not to. *Id.*

Similarly, here, the Timmermans could have challenged, in the Wisconsin court, the April 21 dismissal as void "within a reasonable time" under Wis. Stat. section 806.07(1)(d) ("Relief from judgment or order") (upon a motion made within a reasonable time the court may relieve a party from a judgment if the judgment is void). To paraphrase Judge Montgomery in *Warren*, the Timmermans "created [their] own destiny by choosing to [litigate the Missouri case] rather than appeal" the Wisconsin judgment of dismissal. *Id*. at 905.

We acknowledge that Warren differs from this case in one obvious way because here the Timmermans attack is on another state's final judgment while Warren's attack is on a Missouri judgment pending in the same circuit before the same judge. But we see this as a distinction without a difference with respect to the legal principle upon which we base our holding — that collateral attacks on final judgments are not allowed.

Conclusion

We affirm.



James M. Dowd, Judge

Rebeca Navarro-McKelvey, Presiding Judge and
Gary M. Gaertner, Jr., Judge concur.