

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RONALD L. CLARK,

Plaintiff,

v.

DUSTIN BARTON and  
NICOLE MILLER,

Defendants.

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ORDER

11-cv-757-slc

This is a civil rights action for false arrest. Plaintiff Ronald Clark commenced this suit in the Circuit Court for LaCrosse County on October 19, 2011; defendants were served on October 20, 2011. On November 7, 2011, defendants removed the case to this court. On December 2, 2011, plaintiff filed a motion for default judgment, dkt. 2, on the ground that defendants had failed to file their answer within the seven-day deadline prescribed by Fed. R. Civ. P. 81(c)(2)(C). Defendants responded by filing an answer on December 5, which plaintiff subsequently moved to strike on the ground that defendants were in default when they filed it. Dkt. 10. The motions for default and to strike the answer are now ripe.

The motions will be denied. Under Fed. R. Civ. P. 6(b)(1)(B), the court may extend the time for the doing of an act “if the party failed to act because of excusable neglect.” The term “excusable neglect” as used in Rule 6(b) is a flexible concept that encompasses late filings caused by inadvertence, mistake or carelessness. *Pioneer Investment Services Co. v. Brunswick Associates, Ltd.*, 507 U.S. 380, 389 (1993). In deciding whether a particular neglect is “excusable,” the court must consider all the relevant circumstances surrounding the omission, including the length and reason for the delay, its potential impact on judicial proceedings, whether the movant acted in good faith and the danger of prejudice to other parties. *Id.* at 395.

Having considered all the relevant circumstances, I am satisfied that excusable neglect has been shown. Defendants' lawyer avers that the failure to file the answer on time was the result of a calendaring error committed by his office. The three-week delay was relatively brief, had no impact on the judicial proceedings and did not prejudice plaintiff. Where, as here, the delay was the result of an honest mistake and has no adverse impact on the court or the parties, *Pioneer* counsels to permit the late filing.

#### ORDER

IT IS ORDERED that plaintiff's motion for default, dkt. 2, and motion to strike, dkt. 10, are DENIED.

Entered this 27<sup>th</sup> day of December, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge