

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 25, 2007

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. 2006AP3175

Cir. Ct. No. 2002CV57

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

SHORES CONDOMINIUM OWNER'S ASSOCIATION,

PLAINTIFF-RESPONDENT,

v.

MARK SCHLISE REVOCABLE TRUST DATED 1/14/91, BY PERSONAL REPRESENTATIVE ANTHONY SCHLISE, ANTHONY SCHLISE, RITA SCHLISE, THE COUNTY OF DOOR, CHICAGO TITLE INSURANCE COMPANY, EMILY S. BEAVER, ALBERT H. BEAVER & BARBARA J. BEAVER LIVING TRUST, BY PERSONAL REPRESENTATIVES ALBERT H. BEAVER & BARBARA J. BEAVER AND CHATEAU HUTTER CORPORATION,

DEFENDANTS-THIRD-PARTY PLAINTIFFS,

BARBARA J. BEAVER, ROBERT L. WARTH, MARY A. WARTH, CHRISTOPHER J. CALLEN, KATHLYN M. CALLEN, FRANK L. HARMISON, LINDA M. HARMISON, RICHARD J. BOUQUET, KAREN A. BOUQUET, SUSAN K. VINEYARD, CHARLES L. BITHER, LEANNE M. BITHER, LES A. FRINAK, VICKI L. FRINAK, DIANE J. HUML TRUST, ALLAN WATSON, MARIBETH WATSON, VICKY A. CARMEN, SAMUEL J. CARMEN, GLORIA ECKMAN REVOCABLE TRUST, TRUSTEE OF ROBERT E. & MADELINE A. HARLAN REVOCABLE TRUST 98, THE LIDDLE 2000 REVOCABLE TRUST, A/K/A CLIFFORD LIDDLE AND

**MARY LIDDLE, SHIRLEY K. PICKERING, GAIL D. WARREN,
MARGARET A. EVANS, A/K/A FORD TITUS, A/K/A MARGARET A.
EVANS REVOCABLE TRUST 1994, DAVID R. EVANS, A/K/A FORD
TITUS, A/K/A MARGARET A. EVANS REVOCABLE TRUST 1994,
CHATTEAU VILLAS, A/K/A SANDRA E. RADTKE, TED R. HAAG,
ANTHONY L. SCHLISE AND JOHN W. KOBUSSEN, JOHN HUTTER-EMILY
STEWART FOUNDATION, LTD., FORD TITUS, RICHARD BYRNE, MARY
BYRNE, DAVID EVANS, MARGARET EVANS, JOSEPH GALASKA, EDITH
GALASKA, WILLIAM HAYES, MARY HAYES, LESTER JACKSON, LOUISE
JACKSON, CARYLON KAGEN, DENNIS LEIGH, CONSTANCE LEIGH,
GERALD POBLOCKI, EILEEN POBLOCKI, RUBIDELL RECREATION
CORPORATION, AUGUST RYMUT, BONNIE RYMUT, DONALD SCHUENKE,
JOYCE SCHUENKE, BURTON ZUCKER, CHARLOTTE ZUCKER,
ASSOCIATED BANK GREEN BAY NATIONAL ASSOCIATION, M&I BANK
OF SHAWANO, FIRST NATIONAL BANK OF CHICAGO, N/K/A HOMESIDE
LENDING, MIDWEST MORTGAGE SERVICES, INC., HORICON STATE
BANK, BANC ONE MORTGAGE CORPORATION, CHASE MANHATTAN
MORTGAGE CORPORATION, NORTH SHORE BANK, M&I MARSHALL &
ILSEY BANK, HUTTER NORTHERN TRUST, A/K/A JOHN A. HUTTER,
JR., A/K/A MARION C. OWEN, UNKNOWNNS, HEIRS, GRANTEES,
DEWISEES, ETC., ROBERT E. HARLAN TRUSTEE, A/K/A ROBERT E.
& MADELINE A. HARLAN REVOCABLE TRUST 1998, CLIFF LIDDLE
TRUSTEE, SANDRA E. RADTKE AND TED R. HAAG, JOHN W.
KOBUSSEN, ROBERTA TITUS, BAYLAKE BANK, LAWYERS TITLE
INSURANCE CORPORATION, RICHARD A. HOWARTH, HOMESIDE
LENDING,**

DEFENDANTS,

ALBERT H. BEAVER,

**DEFENDANT-THIRD-PARTY
PLAINTIFF-APPELLANT,**

V.

TOWNSHIP OF EGG HARBOR AND RICHARD A. HOWARTH, JR.,

THIRD-PARTY DEFENDANTS.

APPEAL from an order of the circuit court for Door County:
DENNIS J. MLEZIVA, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Albert Beaver appeals an order enforcing a 2005 stipulation. He argues the court lacked jurisdiction to enforce the stipulation and should have struck two briefs filed by Shores Condominium Owner’s Association (Shores). We reject his arguments and affirm the order.

BACKGROUND

¶2 This appeal arises out of an action to quiet title brought by Shores in 2002. Shores named Albert and Barbara Beaver, among others, as defendants. The matter was tried in May 2005. On the second day of trial, the parties agreed to settle the case. They submitted a three-page “full settlement and release of claims” setting out fifteen numbered terms. The written settlement provided, among other things, that the Beavers would transfer their interests in most of the disputed parcel to Shores in exchange for \$20,000, payable to the Beavers’ attorney’s trust account. The Beavers confirmed on the record that the written settlement accurately reflected their agreement and asked the court to approve it. The court approved the settlement and dismissed the complaint with prejudice.

¶3 Shores filed a motion to enforce the settlement agreement and a brief in support of the motion in February 2006. The motion alleged that the Door County Register of Deeds had lost the quitclaim deed executed by the Beavers. When Albert Beaver learned of the lost deed, he recorded a document purporting to revoke the stipulation and asserting a claim to the disputed parcel. According to the motion, Beaver also trespassed and tried to enclose part of the disputed parcel.

Shores asked the court to enforce the settlement as written. Beaver objected to the court's jurisdiction and filed a brief and affidavit. He also filed a motion to strike Shores' briefs for failure to respond to his jurisdictional argument. The circuit court, in a written decision and order, granted Shores' motion to enforce the settlement and denied Beaver's motions to dismiss and to strike Shores' briefs.

DISCUSSION

¶4 Beaver's jurisdictional argument is a narrow one. He does not argue the court lacked personal or subject matter jurisdiction to enforce its judgment.¹ See *Phone Partners Ltd. P'ship v. C.F. Commc'ns Corp.*, 196 Wis. 2d 702, 709, 542 N.W.2d 159 (Ct. App. 1995). Instead, he argues the court lacked jurisdiction because Shores never made a motion for relief from the judgment under WIS. STAT. § 806.07(1).² That statute provides:

(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;

¹ The stipulated dismissal became the court's judgment when the court accepted it. See *Phone Partners Ltd. P'ship v. C.F. Commc'ns Corp.*, 196 Wis. 2d 702, 709, 542 N.W.2d 159 (Ct. App. 1995).

² Because Beaver relies on an alleged statutory limit on the court's power, not a constitutional one, his challenge is properly described as a challenge to the court's competency, not its jurisdiction. *In re Joshua S.*, 2005 WI 84, ¶16, 282 Wis. 2d 150, 698 N.W.2d 631. We use the term "jurisdiction" here solely for the sake of clarity in discussing Beaver's arguments.

- (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.

¶5 WISCONSIN STAT. § 806.07 does not govern situations, as here, where a party is seeking to enforce a judgment, order or stipulation. In fact, it governs precisely the opposite situation. “Relief from judgment” is non-enforcement of the judgment, order or stipulation. See *Phone Partners*, 196 Wis. 2d at 709. So, for example, “relief from judgment” includes a reduction in the monetary amount of a judgment. See *Price v. Hart*, 166 Wis. 2d 182, 192, 480 N.W.2d 249 (Ct. App. 1991).

¶6 Beaver argues *Phone Partners* holds that a stipulation may only be enforced by a motion under WIS. STAT. § 806.07. However, in *Phone Partners* the parties brought competing motions to enforce the judgment, not motions under § 806.07. *Phone Partners*, 196 Wis. 2d at 709. Neither party argued a motion under § 806.07 was required. On appeal, we concluded the circuit court acted within its discretion when it denied one of the parties’ motions, and affirmed the judgment. *Id.* at 712. We relied on § 806.07 and its progeny only for the proposition that actions “regarding the initial approval and enforcement of a stipulation and relief therefrom” are committed to the circuit court’s discretion. *Phone Partners*, 196 Wis. 2d at 710. Nothing in *Phone Partners* or § 806.07 places procedural hurdles on the courts’ inherent authority to enforce judgments as entered.

¶7 Beaver next argues the court erred in denying his motion to strike Shores' briefs. "Every court has inherent power, exercisable in its sound discretion, consistent within the constitution and statutes, to control disposition of causes on its dockets with economy of time and effort." *Carlson Heating, Inc. v. Onchuck*, 104 Wis. 2d 175, 181, 311 N.W.2d 673 (Ct. App. 1981). Here, the circuit court concluded Beaver's motion was not permitted by the court's briefing schedule, and further was without merit. Beaver argues Shores' briefs should have been stricken because they "rattle on and on with allegations and conclusions which are not before the court in evidentiary form and should not have been considered by the court." However, he does not discuss the court's holding that his motion was without merit, or the court's conclusion that the motion was not permitted under the briefing schedule. He therefore fails to identify any erroneous exercise of discretion by the circuit court, and we perceive none.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

