

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 29, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-1153

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ROBERT STEIGERWALDT,

PLAINTIFF-APPELLANT,

V.

**TOWNSHIP OF KING, HELEN KENNEY AND
JESSICA SOUCY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Lincoln County:
GARY L. CARLSON, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Robert Steigerwaldt appeals an order denying his motion to vacate a stipulation and dismissing his open records action against the Township of King and its present and former clerk. Steigerwaldt argues that the stipulation was unenforceable because he did not agree to it and his attorney was

not authorized to agree on his behalf. He also argues that the court should have vacated the stipulation because it was improvident or induced by misunderstanding or mistake, it was void for failure of a contingency and it was void because it violates public policy. We reject these arguments and affirm the order.

Following three hours of negotiations, the parties reported to the trial court that they had reached a settlement. The Township's attorney recited the terms of the settlement: Steigerwaldt will not make any requests for public records generated prior to the date of the hearing with one exception involving records relating to a liquor license matter; the Township will dismiss its counterclaim and pay \$4,500 toward Steigerwaldt's attorney's fees; and there will be a press release that the parties will work on together in which the Township will acknowledge that Steigerwaldt had complained to the town concerning his inability to obtain requested public documents from the former clerk who had died and those requests were not fulfilled in a timely manner. Steigerwaldt's attorney then added that the town would be required to keep a file of Steigerwaldt's correspondence and that the press release would have to acknowledge the legitimacy of Steigerwaldt's requests. The Township's attorney immediately indicated his agreement with those terms.

The court then personally addressed Steigerwaldt and asked whether the agreement was acceptable to him. Steigerwaldt responded "My concern is that they do acknowledge my requests were legitimate and they uncovered Ms. Kenney's [the former clerk] misconduct." The court then accepted the stipulation and directed the parties to agree to the press release within thirty days. Steigerwaldt then interjected, "I have one concern. I am sure it is a request --."

The trial court then interrupted and instructed Steigerwaldt to address any concerns through his counsel.

Steigerwaldt argues that he did not accept the settlement and was cut off by the trial court when he attempted to voice his disagreement. The trial court found that Steigerwaldt had accepted the agreement. That finding is not clearly erroneous. *See* § 805.17(2), STATS. The trial court properly rejected Steigerwaldt's assertion that he never agreed to refrain from asking for additional preexisting documents.¹ That part of the stipulation was the only concession made by Steigerwaldt to induce the settlement. When asked for his comments on the stipulation, he related other concerns without mentioning that he did not accept the only part of the agreement that benefited the Township. The trial court found that Steigerwaldt's final attempt to state his "concern" after the court accepted the stipulation was not an attempt to express disagreement with the stipulation as recited, but only to state his "triumphs." The context of the entire hearing supports that finding. The parties recited a detailed exception to the agreement not to request existing documents, thus showing that the restriction on Steigerwaldt was a part of the negotiations and an integral part of the stipulation. The trial court reasonably found incredible his assertion that his counsel had not consulted with him before agreeing to limit his access to existing documents is not credible.

The stipulation recited on the record in open court satisfies the requirements of § 807.05, STATS. Steigerwaldt appeared in person, and did not

¹ In his affidavit in support of the motion to vacate the stipulation, Steigerwaldt states that he never agreed to refrain from making future requests for documents from the Township. The affidavit overstates the agreement recited by the parties. The agreement only requires Steigerwaldt to refrain from directly or indirectly asking for documents in existence before the date of the hearing. It does not foreclose his requesting all future documents.

voice any objection to the stipulation as recited and, as found by the trial court, did not intend to withdraw from the stipulation when the trial court interrupted his final statement expressing “concern.” Under these circumstances, Steigerwaldt’s attorney’s authority to stipulate on his behalf is not at issue because Steigerwaldt’s participation in the hearing makes the stipulation binding on him. A party cannot stand by silently while a stipulation is made and object only after the court has accepted the stipulation. *See Czap v. Czap*, 269 Wis. 557, 560, 69 N.W.2d 488, 489 (1955).

The trial court reasonably exercised its discretion when it denied Steigerwaldt’s motion to vacate the stipulation. This court will sustain a discretionary act if the trial court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *See Phone Partners Ltd. v. C.F. Communications*, 196 Wis.2d 702, 710, 542 N.W.2d 159, 162 (Ct. App. 1995). The trial court appropriately denied the motion to vacate the stipulation based on its finding that the stipulation was not the result of a misunderstanding or mistake, but merely that Steigerwaldt no longer liked the deal he made. *See Pasternak v. Pasternak*, 14 Wis.2d 38, 46, 190 N.W.2d 511, 515 (1961). The parties recited and fine-tuned the terms of the stipulation and Steigerwaldt expressed two “concerns” that indicated what he thought was important in the stipulation. It is not reasonable to believe that his attempt to express an additional “concern” constituted an attempt to disagree with the settlement, particularly on a term that was central to the agreement and for which a major exception had been negotiated. The transcript of the hearing at which the stipulation was presented does not support Steigerwaldt’s assertion that he was ignorant of his rights or that his

counsel acted without his knowledge and consent when the stipulation was reached.

The trial court properly rejected Steigerwaldt's assertion that the stipulation should be vacated for failure of a contingency, the failure to agree on a press release within thirty days. While it is true that the parties did not agree to the language of the press release within thirty days of the stipulation, the trial court reasonably found that Steigerwaldt's bad faith refusal to negotiate the press release with the town was the reason for the failure. At the time the stipulation was recited, Steigerwaldt expressed two concerns regarding the press release and the Township's attorney readily agreed to both of those terms. In his affidavit in support of the motion to vacate the stipulation, Steigerwaldt does not mention the parties' failure to agree on the press release. It appears that the only reason the parties did not agree is that Steigerwaldt changed his mind on the stipulation and refused to participate in further discussions. The trial court properly exercised its discretion when it refused to allow Steigerwaldt to take advantage of his own bad-faith breach of the agreement.

Finally, enforcement of the stipulation does not violate public policy. While the public records law creates a presumption of public access to records of public agencies, the law does not preclude a party from voluntarily relinquishing his rights in return for monetary and other considerations. This court has previously upheld a stipulation in which a party agreed not to use the open records law to obtain a videotape. *See Vandervelden v. Victoria*, 177 Wis.2d 243, 256, 502 N.W.2d 276, 281 (Ct. App. 1993), *cert. denied*, 510 U.S. 946 (1993). The stipulation compromised only Steigerwaldt's rights, not those of other citizens. The stipulation does not implicate the public's right to documents. The trial court properly concluded that public policy does not require relief from the stipulation.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

