

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 24, 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. 2006AP246**

**Cir. Ct. No. 2004PR38**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE ESTATE OF FREDERICK R. SCHWERTFEGER:**

**JOHN ELLIOTT KOLTER BOSSMANN,**

**APPELLANT,**

**V.**

**ESTATE OF FREDERICK R. SCHWERTFEGER,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Dodge County:  
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. John Bossmann appeals the circuit court’s order denying his motion to reopen under WIS. STAT. § 806.07 (2005-06).<sup>1</sup> Bossmann sought to reopen a claim against Frederick Schwertfeger’s estate that was withdrawn by stipulation of the parties. The issue is whether the circuit court properly exercised its discretion in denying the motion. We affirm.

¶2 WISCONSIN STAT. § 806.07 provides that the circuit court may reopen an order or judgment for various reasons. The court may reopen if the movant shows “[m]istake, inadvertence, surprise, or excusable neglect.” Section 806.07(1)(a). The court may also reopen if the movant shows “[f]raud, misrepresentation, or other misconduct of an adverse party.” Section 806.07(1)(c). The party seeking relief must make an additional showing that he or she has a claim capable of surviving a judgment on the pleadings. See *J.L. Phillips & Assoc., Inc. v. E & H Plastic Corp.*, 217 Wis. 2d 348, 358, 577 N.W.2d 13 (1998).

¶3 Our review of a circuit court’s decision denying a motion to reopen under WIS. STAT. § 806.07 is limited to whether the circuit court misused its discretion. *State ex rel. Cynthia M.S. v. Michael F.C.*, 181 Wis. 2d 618, 624, 511 N.W.2d 868 (1994). However, whether a claim is capable of surviving a judgment on the pleadings is a question of law, which we review de novo. See *J.L. Phillips & Assoc.*, 217 Wis. 2d at 360; *Eternalist Found., Inc. v. City of Platteville*, 225 Wis. 2d 759, 769-70, 593 N.W.2d 84 (Ct. App. 1999).

¶4 The court denied the motion to reopen for three primary reasons: (1) Bossmann’s characterization of his attorney’s approach as being “overall

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

lackadaisical” did not constitute mistake, inadvertence, surprise, or excusable neglect within the meaning of WIS. STAT. § 806.07; (2) his lawyer’s conduct in stipulating to withdrawal of the claim did not constitute “fraud ... *of an adverse party*” under § 806.07 because Bossmann’s lawyer is not a party adverse to Bossmann; and (3) Bossmann did not have a claim capable of surviving judgment on the pleadings.

¶5 Although we agree with the circuit court’s assessment on all three points, we focus here on whether Bossmann had a claim capable of surviving judgment on the pleadings. Bossmann contends that Attorney Schwertfeger embezzled millions of dollars from his parents while doing their estate planning and administering their estates. He bases his claim on the fact that his father ran a “highly prosperous” drug store for two generations and “had a reputation as a successful investor,” and thus should have saved millions of dollars, which must have been stolen by Schwertfeger. Although Bossmann generally claims he is the victim of Schwertfeger’s fraud, he has not alleged that any of the elements of fraud have been met. *Ritchie v. Clappier*, 109 Wis. 2d 399, 404, 326 N.W.2d 131 (Ct. App. 1982) (“[t]he elements of fraud are a false representation made with intent to defraud and reliance by the injured party on the misrepresentation”). In fact, we conclude that there is no reasonable inference, based on Bossmann’s allegations, that his parents had millions of dollars, which was then depleted. As aptly stated by the circuit court, Bossmann’s claim is built on “[w]ild speculation and conjecture,” not on any evidence that assets or money were transferred illegally from Bossmann’s relatives or their estates to Schwertfeger. Therefore, the circuit court properly denied the motion to reopen.

*By the Court.*—Order affirmed.

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

