

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 19, 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. 2006AP3131

Cir. Ct. No. 2003CV3425

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DANIEL S. HUDSON,

PLAINTIFF-APPELLANT,

V.

MIDDLETON MOTORS, INC., DAVID HUDSON AND ROBERT HUDSON,

DEFENDANTS-RESPONDENTS,

NEW CENTURY, LLC,

DEFENDANT.

APPEAL from an order of the circuit court for Dane County:
ROBERT A. DE CHAMBEAU, Judge. *Affirmed.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Daniel Hudson appeals an order denying his motion for WIS. STAT. § 806.07 (2005-06)¹ relief from a judgment. The issue is whether the trial court properly exercised its discretion by denying relief. We affirm.

¶2 Hudson sued the respondents (collectively “Middleton Motors”), who filed three counterclaims. The trial court dismissed Hudson’s complaint and granted summary judgment to Middleton Motors on one counterclaim. The parties stipulated to dismissal of the remaining two counterclaims, without prejudice, so that Hudson could appeal as of right what would otherwise have been a non-final judgment subject only to permissive interlocutory appeal. *See* WIS. STAT. § 808.03(1). Middleton agreed not to refile the two dismissed counterclaims if the judgment dismissing Hudson’s complaint was affirmed on appeal, and reserved the right to refile them if the judgment was reversed or modified on appeal.

¶3 We dismissed Hudson’s appeal because parties may not appeal as of right after stipulating to entry of a conditional judgment. *See Cascade Mountain, Inc. v. Capitol Indem. Corp.*, 212 Wis. 2d 265, 269, 569 N.W.2d 45 (Ct. App. 1997). After dismissal of his appeal, Hudson moved in the trial court for relief under WIS. STAT. § 806.07, hoping to obtain an unconditional final judgment to appeal. Specifically, Hudson asked the trial court to vacate the conditional judgment and enter a final judgment dismissing Middleton Motors’ two remaining counterclaims with prejudice or, in the alternative, reinstate the two counterclaims so the parties could litigate them to finality. Middleton Motors opposed the

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

motion, and the trial court refused to grant relief. The court concluded that it lacked the discretionary authority to dismiss the two counterclaims with prejudice. The court also concluded that Hudson's mistake of law, in this case not foreseeing the *Cascade Mountain* bar to an appeal, failed to provide sufficient grounds to reopen.

¶4 We will affirm an order denying a motion for relief under WIS. STAT. § 806.07 unless the court erroneously exercised its discretion. See *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 541, 363 N.W.2d 419 (1985). The trial court properly exercises discretion by examining the relevant facts, applying a proper standard of law, and using a demonstrated rational process to reach a reasonable conclusion. See *Franke v. Franke*, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832.

¶5 Hudson contends that the trial court should have granted relief under WIS. STAT. § 806.07(1)(a), which allows relief for mistake, inadvertence, surprise, or excusable neglect; or under § 806.07(1)(h), which allows relief for “any other reasons” besides those specifically identified. In order to establish grounds for relief under § 806.07(1)(h), a party must demonstrate “extraordinary circumstances” that justify relief. *M.L.B.*, 122 Wis. 2d at 549. Here, the court reasonably determined that counsel's mistake concerning a well-established rule of appellate practice did not warrant relief under § 806.07(1)(a) and was not an extraordinary circumstance justifying relief under § 806.07(1)(h). At best, Hudson demonstrates that a court might reasonably have reached the opposite conclusion. However, the test for a discretionary decision is not whether we or some other court might have reached a different result, but whether the result reached by the trial court in the case before us lacks any reasonable basis. See *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). We also agree with the trial

court that it did not have the authority to grant one party's request to declare the other party's claims dismissed with prejudice without determining that they lacked merit.

¶6 Hudson also contends that, by opposing his motion to reopen, Middleton Motors has become judicially estopped from refiling their counterclaims. Because they are estopped, he continues, the court's order he appeals is now the final appealable document in the matter and he is now entitled to a review on the merits of the decision dismissing his complaint. We disagree. The parties' stipulation remains in effect. It, not estoppel, bars further litigation on the counterclaims. The conditional judgment remains in effect and the *Cascade Mountain* bar therefore remains in effect as well.

By the Court.—Order affirmed.

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

