

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 18, 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. 2007AP311

Cir. Ct. No. 1996FA125

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

HERBERT M. SCHABO,

PETITIONER-APPELLANT,

V.

ARLENE M. SCHABO,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Waupaca County:
JAMES T. BAYORGEON, Judge. *Affirmed.*

Before Higginbotham, P.J., Lundsten and Bridge, JJ.

¶1 PER CURIAM. Herbert Schabo appeals orders granting his motion to reopen the property division in his divorce, but denying him any additional

property. The court found that his former wife, Arlene Schabo, failed to disclose a valuable asset during their divorce proceeding. Nevertheless, the court awarded the asset in its entirety to Arlene. We conclude that Herbert waived his claim to a share in the asset, and therefore affirm.

¶2 The parties divorced in 1998. In 1999, they resolved a postjudgment litigation by a stipulation that included the following provisions:

Both parties ... waive any and all claims each may have against the other including any claims arising out of the property division as ordered in the judgment of divorce....

The parties understand that neither will have any claim against the other for any reason including a claim arising out of the property division previously ordered by the court.

The trial court approved the stipulation and amended the judgment according to its terms.

¶3 In 2006, Herbert filed his motion to reopen, and the trial court granted the motion on its finding that Arlene had failed to disclose her retirement asset. Before the trial court divided the asset, Herbert settled a malpractice action against his divorce attorney. The court then denied Herbert a share of the asset on its conclusion that the settlement included compensation for his nondisclosure claim against Arlene.

¶4 We construe a stipulation as a matter of law. See *Duhamé v. Duhamé*, 154 Wis. 2d 258, 262, 453 N.W.2d 149 (Ct. App. 1989). A stipulation incorporated into a divorce judgment is equivalent to a contract. See *Kastelic v. Kastelic*, 119 Wis. 2d 280, 287, 350 N.W.2d 714 (Ct. App. 1984). When the terms of a contract are plain and unambiguous, we will construe the contract as it stands. See *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990).

We give words in a contract their common and ordinary meaning. *See State ex rel. Siciliano v. Johnson*, 21 Wis. 2d 482, 487, 124 N.W.2d 624 (1963).

¶5 By the clear terms of the 1999 stipulation, Herbert waived his claim to a revised property division. Herbert contends that his stipulation only applied to known claims. However, the terms “any and all claims each may have” and “any claim against the other for any reason” are so plainly and unambiguously broad and inclusive that they necessarily include unknown claims, even if they are unknown because one party failed to disclose facts. Any other construction would be unreasonably narrow.

¶6 Our decision makes it unnecessary to determine whether the trial court properly relied on the malpractice settlement to deny Herbert a share of the retirement fund. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (If a decision on one point disposes of the appeal, we will not decide the other issues raised.).

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

