

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 21, 2009

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. 2008AP1147

STATE OF WISCONSIN

Cir. Ct. Nos. 1999CV5303
2000CV1705

**IN COURT OF APPEALS
DISTRICT I**

RONALD W. MORTERS,

PLAINTIFF-APPELLANT,

V.

CHARLES H. BARR AND TIG INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS.

SHANNON L. MORTERS,

PLAINTIFF,

V.

CHARLES H. BARR AND TIG INSURANCE COMPANY,

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN A. FRANKE and DENNIS P. MORONEY, Judges. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Ronald W. Morters appeals from that portion of the order of the circuit court that denied his motion to set aside a judgment for frivolous costs in the amount of \$10,000. He argues that the circuit court erred when it refused to vacate the judgment under WIS. STAT. § 806.07 (2005-06).¹ Because we conclude that the circuit court properly concluded that Morters was not entitled to have the judgment set aside, we affirm.

¶2 This case has a long history. It began when Morters, his wife and granddaughter brought a personal injury action in Waukesha County. They were represented in that case by the respondent in this appeal, Charles H. Barr. Barr had the matter mediated. As a result of the mediation, the Morters were offered the equivalent of a \$771,000 jury verdict. The Morters rejected the offer, fired Barr, and hired another law firm to represent them. This law firm stipulated to the case being decided by arbitration. The Morters were unhappy with this decision, fired the second law firm, and hired a third attorney. Ultimately, the Morters went to arbitration and the arbitrator decided that the Morters were entitled to approximately \$500,000. Ronald Morters then challenged the motion filed by his first two attorneys to have their fees taken out of the settlement. The circuit court ruled that the Morters did not have just cause to fire the attorneys and that they were entitled to their fees.

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

¶3 Morters and his granddaughter then brought separate actions against Barr and his insurer, TIG Insurance Company, for professional negligence and breach of contract. The trial court ultimately dismissed all of Morters's claims. Barr and TIG then brought a motion arguing that the suit had been frivolous and asking for costs and attorneys' fees. Morters appealed the dismissal.

¶4 This court affirmed the dismissal and found the appeal to be frivolous. *Morters v Barr*, No. 2001AP2011, unpublished slip op. (Apr. 30, 2002). We remanded to the circuit court for a determination of the amount of costs on appeal. The court awarded \$3567.35 in costs against Morters. The supreme court reversed our determination that the appeal was frivolous.² While the frivolous appeal costs matter was pending in the supreme court, the circuit court assessed Morters an additional \$10,000 in costs for frivolousness at trial. Morters again appealed, and this judgment was affirmed.

¶5 In 2007, Morters attempted to refinance his home. He was informed that there were outstanding judgments against him, including the \$3567.35 and \$10,000 judgments. Morters asked the bank to obtain a payoff letter from Barr. Barr responded saying that Morters owed three judgments, including the two at issue in this appeal. A copy of Barr's letter was forwarded to TIG's attorney, William Croke, the attorney for respondents here. Attorney Croke did not respond to the letter.

² By an order dated October 21, 2002, the supreme court granted a petition for review with respect to the issue of whether the appeal was frivolous, vacated our decision that it was frivolous, and remanded it to this court solely for reconsideration of whether the appeal was frivolous. Upon reconsideration, we determined that the appeal was not frivolous, but awarded the respondents all costs and fees. *Morters v Barr*, No. 2001AP2011, unpublished slip op. (WI App Jan. 14, 2003).

¶6 Morters then brought a motion in the circuit court to be relieved from these two judgments. Morters argued that the \$3567.35 judgment had been set aside by the supreme court. He further argued that because of this judgment, he had been unable to refinance his house. Consequently, he asked that he be relieved of the \$10,000 judgment because he believed that Barr's action was "a calculated attempt to collect what he knew was not owed to him."

¶7 At the hearing on the motion, the circuit court granted the portion of the motion that vacated the \$3567.35 judgment. As to the \$10,000 judgment, the court questioned whether it had the authority to grant relief from an otherwise valid judgment based on a party's bad actions. For the purpose of the motion, however, the court assumed it had the authority to do so, and denied the motion. The court found that Morters had not established any malfeasance by Barr.

¶8 Morters argues to this court that the \$10,000 judgment should be set aside under WIS. STAT. § 806.07(1)(h). That section provides that the court may relieve a party from judgment for any reasons "justifying relief from the operation of the judgment." *Id.* Whether to grant relief from judgment under this section is a discretionary determination for the circuit court. *Allstate Ins. Co. v. Brunswick Corp.*, 2007 WI App 221, ¶5, 305 Wis. 2d 400, 740 N.W.2d 888. The statute gives the court "broad discretionary authority and invokes the pure equity power of the court." *Id.*, ¶6 (citation omitted). To determine whether relief is warranted, the circuit court must assume the allegations of the motion are true. *Id.* The circuit court must hold a hearing if the facts are so extraordinary or unique as to warrant relief. *Id.* After holding a hearing, the decision whether to grant relief is within the circuit court's discretion. *Id.*

¶9 In this case, the circuit court held a hearing. The court first noted that it questioned whether it had the authority to impose what amounted to a sanction by vacating an otherwise valid judgment because a party had misbehaved in some respect. The court assumed for the purposes of the motion that it did. The court then determined that Morters had not established that Barr and his attorney acted with the intent to collect on what they knew was a bad debt. The court found that while Barr’s actions may have been suspicious to Morters, there was “nothing close to evidence here that he was acting in bad faith.” The court concluded that the burden was on the plaintiff to raise more than a suspicion, and the plaintiff had not met that burden.

¶10 Based on this record, we conclude that the circuit court followed the proper procedure and appropriately exercised its discretion when it denied the motion. Consequently, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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

