

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 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. 2008AP2550

Cir. Ct. No. 2006CV357

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**BARRY SERIER, HEATHER SERIER, RANDY EVERSON, ELMER SERIER,
HARVY SERIER, MARVELL SERIER AND THE CITIZENS FOR A SAFE
AND PEACEFUL EAU GALLE AND RUSH RIVER TOWNSHIP, INC.,**

PLAINTIFFS-APPELLANTS,

v.

**CENTRAL ST. CROIX ROD AND GUN CLUB, INC., ST. CROIX COUNTY
ALLIANCE OF SPORTSMEN CLUBS, INC. (A/K/A ST. CROIX COUNTY
ALLIANCE OF CONSERVATION CLUBS, INC.), JOHN DOES 1-10,
JANE DOES 11-20, JOHN SMITHS 1-10 AND JANE SMITHS 11-20,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for St. Croix County:
ERIC J. LUNDELL, Judge. *Reversed and cause remanded with directions.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 HOOVER, P.J. Barry Serier and others (the neighbors) appeal a judgment allowing Central St. Croix Rod and Gun Club, Inc. and others (the club) to continue operating a firing range pending the construction and implementation of designated safety improvements. The neighbors argue the club failed to satisfy the requirements of a stipulation and order and, therefore, should have been permanently enjoined from using firearms at the club property. We agree with the neighbors and reverse and remand for the circuit court to enter a permanent injunction against firearm use at the club property, in accordance with the parties' agreement.

BACKGROUND

¶2 The neighbors own land surrounding the club property on all four sides, except for a narrow driveway strip. Within one mile of the club property, there are twenty-eight homes, multiple churches, motels, restaurants, gas stations, a daycare center, and a county bike route. The neighbors sued the club, alleging trespass and nuisance, and requested temporary and permanent injunctive relief prohibiting the use of firearms at the club property.¹ Among other things, the complaint alleged the neighbors had experienced numerous near misses with errant bullets and that their buildings and trees contained bullets and bullet holes.

¶3 The neighbors moved for summary judgment and included a report from their expert, who opined, "In over 50 years of experience using, supervising

¹ The neighbors begin the procedural history section of their brief stating: "The unceasing, uncontrolled and unsafe firing of weapons at the approximately 11-acre parcel owned by the [club] forced Appellants to take legal action to protect their families and their neighborhood." The neighbors provide no record citation in support of this assertion. To the extent such a statement is appropriate in an appellate brief, it belongs in the argument section.

the use of, and the designing and construction of firearm range facilities worldwide, this is the single worst example of a firearms range site, layout, design, construction, operation, and use that I have ever witnessed.” The report also noted alcohol was being sold and consumed at the club, and documented bags of empty beer cans, as well as individual cans scattered about.

¶4 In its decision denying cross-motions for summary judgment, the court noted the expert’s opinion and observed that neighbors had recovered bullets, pellets, and other debris from their properties; witnessed bullets passing overhead or striking nearby buildings; and experienced out of control machine gun fire at the range on more than one occasion. The neighbors also averred they heard shooting after dark on numerous occasions.

¶5 The case proceeded to a bench trial, but the parties reached a settlement agreement prior to its conclusion. The agreement was presented in open court. The circuit court then filed a written “Injunction, Order for Judgment, and Judgment” adopting the parties’ stipulation. The three-page stipulation and order stated, in part:

1. The use of firearms at the Gun Club Property [has] repeatedly trespassed on the property of the individual Plaintiffs.
2. The use of firearms at the Gun Club Property [has] unreasonably interfered with the individual Plaintiffs’ use and enjoyment of their property.
3. The continued use of firearms at the Gun Club Property as currently configured and operated is sufficiently probable, indeed likely, to result in future trespass and nuisance causing Plaintiffs irreparable harm.
4. All use of firearms at the Gun Club Property is prohibited until further Order of this Court.

The stipulation and order further provided that the club could move the court to lift the injunction by presenting a plan including physical modifications to the property and changes to its operation and supervision that would “ensure that all shot, bullets, and other projectiles are maintained on the Gun Club Property.”

¶6 The stipulation and order also specified numerous details regarding the proposed plan itself, as well as how and on what dates the club could proceed to present its plan for approval. Following submission of the plan, the order allowed the club an evidentiary hearing to demonstrate to the court that no projectiles would leave the property. Further, the stipulation and order stated if the club either failed to present a plan by the specified date or “does not prevail at the evidentiary hearing, this injunction shall become permanent.”

¶7 As scheduled, the club submitted its safety plan and the court conducted the evidentiary hearing. At the conclusion of the two-day hearing, the court determined the plan “is not adequate,” but stated, “I personally think that there still is a plan that’s—that will work to eliminate projectiles off the property, but the one that’s been presented does not work like that. And I think it needs to be refined and resubmitted.” The court then listed examples of deficiencies that needed correction, including installing overhead baffles on both the pistol and rifle ranges, shortening the rifle range, moving the rifle range, installing a berm along the pistol range, reconfiguring the trap range, limiting the shot size used on the trap range, and utilizing a different wind speed for calculations.

¶8 The neighbors objected that the stipulation and order only permitted the club one opportunity to present an acceptable plan, and the club had failed. The court nonetheless allowed the club an opportunity to present a revised plan, stating, “Obviously, I think it is too small a property. I want them to move this to

a larger property, obviously. But given the noise situation [and] the zoning situation ... I understand why they want to try to do it. And I am going to let them try.” However, the court stated it would allow the neighbors an opportunity to object to the revised plan and have another hearing. Further, the court reiterated the standard set forth in the stipulation and order:

But again the prohibition is we cannot have projectiles leaving the property. And not just incidentally, not just accidentally, and not intentionally, we just cannot have projectiles leaving the property.

¶9 After receiving the club’s revised plan, the court cancelled the scheduled evidentiary hearing and issued an order approving the plan and authorizing the range to reopen once the changes were implemented. The order stated it was

the opinion of this Court that the standard that should be set here is that the [club’s] plan ... must reasonably protect the surrounding property owners from projectiles leaving the property This Court believes that there is no such thing as total elimination of stray projectiles. The request by plaintiffs would be impossible to accomplish.

The neighbors moved for reconsideration, arguing the court erred in not enforcing the agreement and violated their due process rights by cancelling the evidentiary hearing. The court denied the motion in a written order and final judgment, and the neighbors now appeal.

DISCUSSION

¶10 The neighbors argue the circuit court was obligated to enforce the unambiguous terms of the parties’ agreement and order a permanent injunction

after the club failed to meet its burden at the evidentiary hearing.² The club does not contend the stipulation and order was ambiguous nor does it disagree with the neighbors' interpretation. Rather, the club asserts the parties' agreement was not an agreement because it was titled an "Injunction, Order for Judgment, and Judgment" and was not signed by the parties.

¶11 The club argues, "Since the 'agreement' is actually an order, the [neighbors'] argument [based on] contract law and enforcement of agreements authority does not apply." Ironically, the club then cites contract law in the next paragraph of its brief to argue the document's title should be construed against the neighbors as the drafter. Based on its premise the document is merely a court order, the club next cites a line of cases from the mid-1800's that held a circuit court may, on its own motion, modify any orders or judgments issued during that term.³ The club essentially then argues the court properly exercised its authority because injunctive relief is a discretionary matter and the court reviewed the evidence and reasoned its way to an equitable result.

¶12 Among other things, the club's argument ignores the record. The trial transcript states the following:

THE COURT: ... A stipulation and agreement has been reached, is that correct?

[NEIGHBORS' COUNSEL]: Yes, your honor.

² The neighbors also argue, regardless of the parties' agreement, the court erroneously exercised its discretion by failing to issue a permanent injunction because the second plan also failed to remedy the dangerous conditions at the club property. Additionally, the neighbors argue the court violated their due process rights by denying them a hearing on the second plan. Because we reverse the circuit court for failing to enforce the agreement, we need not address these additional arguments. *See State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

³ Today's circuit courts, of course, no longer operate only during limited "terms."

THE COURT: Did you want to recite that into the record. And let's have everyone in the room listen carefully to it because I'm going to ask the attorneys to ask you if this is your agreement for today.

The neighbors' counsel then read the entire agreement aloud. The club's counsel concurred and his clients individually told the court they accepted the agreement. The court stated it "has heard the agreement read into the record. I heard the attorneys ask their clientele whether it is acceptable. I heard yes unanimously. The Court will approve this agreement and I will now order it effective immediately." Further, the order itself states the parties reached an agreement prior to conclusion of the trial and that they stipulated to the order.

¶13 The club's argument also fails to acknowledge WIS. STAT. § 807.05,⁴ which permits parties to enter into stipulations or agreements in court or by signing a written instrument. "[A] settlement agreement is a contract and is governed by the traditional requirements for contracts." *American Nat'l Prop. & Cas. Co. v. Nersesian*, 2004 WI App 215, ¶14, 277 Wis. 2d 430, 689 N.W.2d 922. Where a contract is unambiguous, a court has no authority to relieve a party from disadvantageous terms to which the party agreed. *Rosplock v. Rosplock*, 217 Wis. 2d 22, 31, 577 N.W.2d 32 (Ct. App. 1998). And while a court may grant relief from a stipulation due to "mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or other misconduct of an adverse party," the club never asked the circuit court to exercise that authority. *Phone Partners Ltd. P'ship v. C.F. Commc'ns Corp.*, 196 Wis. 2d 702, 709-10, 542 N.W.2d 159 (Ct. App. 1995) (citing WIS. STAT. § 806.07).

⁴ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶14 By the terms of the club's own agreement, made in light of the progressing trial, the club was allowed one opportunity to present an acceptable, comprehensive safety plan. Thus, based on the conclusion the initial safety plan was inadequate, the law required the circuit court to enforce the parties' agreement by entering a permanent injunction after the evidentiary hearing.

By the Court.—Judgment reversed and cause remanded with directions.

Not recommended for publication in the official reports.

