

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2002

Cornelia G. Clark
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. 01-2712
STATE OF WISCONSIN**

Cir. Ct. No. 01-SC-5478

**IN COURT OF APPEALS
DISTRICT IV**

RIPPLE MANAGEMENT,

PLAINTIFF-RESPONDENT,

v.

DIANA GOODAVAGE,

DEFENDANT-APPELLANT,

JOSEPH STEARNS,

DEFENDANT.

APPEAL from a judgment of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

¶1 VERGERONT, P.J.¹ Diana Goodavage appeals the judgment of eviction based on a stipulation she entered into with Ripple Management. She contends the circuit court erroneously exercised its discretion in denying her motion for relief from the stipulation.² We conclude the court properly exercised its discretion and therefore affirm.

BACKGROUND

¶2 Ripple Management filed a small claims complaint against Goodavage and her son, Joseph Stearns, on May 22, 2001, alleging that the balance of the May rent was unpaid and seeking an eviction. Attached to the complaint was notice to Goodavage and Stearns, dated May 7, 2001, requiring that they pay back rent of \$739 by May 12, 2001, or their tenancy would be terminated.

¶3 On the date set for trial, Ripple Management, by Thomas Ripple, and Goodavage, represented by counsel, signed a written stipulation in which the lease was extended to September 30, 2001, unless Goodavage vacated sooner, and interest of \$130 on the security deposit was agreed upon. The stipulation was made on a small claims “Eviction Stipulation” form. One of the form provisions is that in the event “the defendant(s) fail(s) to vacate by the date specified”—in this stipulation, noon on September 30, 2001—“the plaintiff shall be entitled to an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

² The motion for relief from the stipulation was heard and decided by Dane County Judge C. William Foust.

ex parte judgment of eviction (without further notice to defendant(s) ...), and an immediate issuance of a writ of restitution ... for removal from the premises.”

¶4 The circuit court reviewed the stipulation in the presence of the parties and Goodavage’s counsel and observed that the stipulation did not address payment of rent. Upon ascertaining that Goodavage was at that time current with her rent and the parties had intended that she continue to pay rent in a timely fashion while she remained there, the court, with the agreement of the parties, added to the stipulation a provision concerning rent payments. Goodavage’s counsel asked Goodavage if she understood and was in agreement with this addition, and Goodavage answered “yes.” The court then signed an order approving the stipulation and providing that, “Plaintiff shall be entitled to an ex parte judgment upon proper affidavit, if the defendant(s) defaults as to ANY provisions of the above stipulation.”

¶5 On July 23, 2001, Goodavage, representing herself, moved to set aside the stipulation. In her accompanying affidavit she averred: Stearns is her adult son who lives with her and has a mental disability; Ripple Management refused to give him an application for a nearby apartment that Ripple Management managed, and, on information and belief, the reason was Stearns’ disability; she receives Section 8 federal rent voucher, and her former counsel had misrepresented that if Ripple Management succeeded in obtaining a writ of restitution, that could jeopardize her Section 8 voucher, but she later learned this was not true; she forgot to include in the stipulation that she would need a good reference in order to find another place to live; she signed the stipulation under duress caused by pressure from her former counsel and her own psychological disability; and the stipulation provided she must move out by noon on September

30, but must pay rent for the entire month, and her former counsel refused to correct this defect.

¶6 At the hearing on her motion, the court asked Goodavage to explain why it should set aside the stipulation. Goodavage answered at length, explaining that she signed the stipulation based on the inaccurate information that she might lose her Section 8 voucher if she were evicted, and that was the only reason she signed the stipulation. She also mentioned that her attorney was hostile to her, and “there’s a few other things,” but she stated she wanted to “stick with this main subject, that it was really based on [her] belief that [she] would lose [her] Section 8 voucher.” After the court heard from Ripple, Goodavage discussed her son’s unsuccessful effort to apply for an apartment managed by Ripple Management and the difficulty she would have in finding a similar apartment if this stipulation were not set aside.³

¶7 In order to resolve the issue of whether Goodavage had been given inaccurate information about the effect of an eviction for non-payment on her Section 8 voucher, the court placed a telephone call to Goodavage’s former counsel.⁴ Goodavage’s counsel stated that she did not specifically recall telling Goodavage that if she lost an eviction action she could lose her Section 8 voucher,

³ Goodavage asserted that she had paid the May rent due within the five days specified in the notice, but Ripple disputed this. There also was discussion about whether Section 8 regulations prohibited Ripple Management from not renewing Goodavage’s lease in the absence of nonpayment of rent. Ripple’s position was that it could; Goodavage’s position was that it could not; but neither had any materials or citations to present to the circuit court to resolve this issue.

⁴ The court placed the telephone call after the court asked Goodavage why her former counsel was not present and Goodavage responded: “I did think of that. And I would have had to subpoena her. I don’t have a good answer for that.”

but she may have said that, and that is a potential consequence. Counsel explained that a ground for terminating a Section 8 voucher is a breach of a “substantial lease provision” and a failure to pay rent would be a substantial lease provision. Therefore, the agency could bring an administrative proceeding to terminate the voucher on that ground, although counsel said she did not know for certain if that would occur.

¶8 After her former counsel testified, Goodavage explained in more detail how she decided to move to set aside the stipulation. Within a few hours after she signed the stipulation, she realized she should not have done it, but she felt she needed to do it to protect her Section 8 voucher. A few days later at the library she read that one does not “automatically” lose a Section 8 voucher for an eviction: there is an automatic eviction only for committing certain crimes. When she read this, she decided that she should try to get the stipulation set aside; before that, even though she did not like the stipulation, she figured she was “stuck with it” because she signed it.

¶9 The court accepted Goodavage’s former counsel’s testimony and found that Goodavage had not signed the stipulation based on a mistaken view of the consequences to her Section 8 voucher. Rather, the court found she had weighed the possible risks and made a decision. The court concluded Goodavage had not entered into the stipulation based on mistake, inadvertence, surprise, or excusable neglect, and it denied her motion.

¶10 A judgment of eviction was entered on October 3, 2001, after Ripple filed an affidavit averring that Goodavage had not abided by the terms of the stipulation.⁵

DISCUSSION

¶11 WISCONSIN STAT. § 806.07 provides that a circuit court may relieve a party from a stipulation on certain specified grounds, including mistake, inadvertence, surprise, or excusable neglect, § 806.07(1)(a), and any other reasons justifying relief, § 806.07(1)(h). The decision is committed to the circuit court's discretion and we affirm if the circuit court applied the correct legal standard to the facts of record and reached a reasonable result. *Milwaukee Women's Med. Serv. v. Scheidler*, 228 Wis. 2d 514, 525, 598 N.W.2d 588 (1999).

¶12 We conclude the circuit court properly exercised its discretion in deciding that Goodavage had not shown mistake, inadvertence, surprise, or excusable neglect. The court credited her prior counsel's testimony, which it is entitled to do. *See State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990) (it is the role of the trier of fact to determine the credibility of witnesses and to weigh the evidence). In any event, her prior counsel's explanation of the potential consequences of an eviction action on a Section 8 voucher is not inconsistent with what Goodavage said she learned at the library: the fact that one does not automatically lose one's voucher because of eviction for nonpayment is not inconsistent with that being a potential consequence. Therefore, the court

⁵ The circuit court denied Goodavage's motion for a stay pending appeal, and denied her two subsequent motions for reconsideration of that denial. This court denied her motion for ex parte emergency relief pending appeal on the ground that she had not made a showing that she had a chance of succeeding on appeal.

could reasonably decide, based on Goodavage's own testimony, that she had not signed the stipulation based on inaccurate information, but had rather changed her mind about the risks she was willing to take.

¶13 Goodavage contends the circuit court erred because it did not consider the assertion in her affidavit that she had signed the stipulation under duress caused by pressure from her counsel and her own psychological disability. We disagree. Goodavage's affidavit contained a general conclusory statement on this topic. When given the opportunity to explain to the court why it should set aside the stipulation, she did not elaborate on the issue of duress, but instead focused on what her counsel had told her about the consequences to her Section 8 voucher. It was reasonable for the court to decide from Goodavage's comments that she viewed her prior counsel's statements to her on that topic to be the justification for setting aside the stipulation.

¶14 Similarly, the court did not err in failing to decide that Goodavage was entitled to have the stipulation set aside because she did not know, until she received a copy of the stipulation in the mail after July 6, that it provided for an ex parte writ of restitution in the event of a default. Goodavage did not mention this in her affidavit, and devotes a brief paragraph to this in her fifteen-page brief accompanying her motion. The court gave her ample opportunity at the hearing to explain why the stipulation should be set aside, and Goodavage did not mention her lack of knowledge of the ex parte provision. Thus, we conclude the court did not err in failing to grant relief on this basis.

¶15 Goodavage also raises a number of other issues that she did not raise in her motion to set aside the stipulation—such as the circuit court's lack of personal jurisdiction over Stearns. We do not decide issues that were not first

presented to the circuit court. See *Bishop v. City of Burlington*, 2001 WI App 154, ¶7, 246 Wis. 2d 879, 631 N.W.2d 656, review denied, 2001 WI 117, 247 Wis. 2d 1035, 635 N.W.2d 783 (Wis. Sept. 19, 2001) (No. 00-2346).

¶16 In summary, we conclude the circuit court applied the correct law to the facts that Goodavage presented, in light of the arguments she made, and the decision not to set aside the stipulation was reasonable. We therefore affirm the judgment of eviction.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

