

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 10, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3187

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**CLARICE LEHN, D.D.S.,
f/k/a CLARICE BECKES, D.D.S.,**

Plaintiff-Respondent,

v.

MICHAEL J. KURZAWA,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. BARRON, Judge. *Affirmed.*

Before Sullivan, Fine and Schudson, JJ.

PER CURIAM. Michael J. Kurzawa appeals the denial of his motion to vacate the judgment entered by the circuit court. We affirm.

Kurzawa worked for Clarice Lehn, a dentist, and her husband, a plastic surgeon, as a manager and consultant in their professional practices.

Lehn brought a civil suit against Kurzawa for “breach of his employment agreement with the plaintiff” because he “wrongfully forged the plaintiff[’s] ... signature on the checks” and converted those funds for his personal use. Kurzawa later stipulated that he had breached his employment contract with Lehn; therefore, the only issue for the jury to decide was whether Kurzawa was liable for the converted funds. The jury found that he was.

Kurzawa filed a motion to vacate the judgment, pursuant to § 806.07(1)(c) and (h), STATS., approximately one year after entry of the judgment. His motion alleged “misconduct and misrepresentations” by Lehn. He charged that Lehn had “destroyed material documents” relating to her dentistry practice. The trial court denied Kurzawa’s motion. It ruled that Kurzawa had failed to file his motion in a timely manner because the “destruction of documents by the plaintiff was known to the defendant almost a full year before the trial” and that he had failed to prove any misconduct by Lehn. Further, the trial court noted that Kurzawa had failed to file any motions after verdict. *See* § 805.16(1), STATS.

Kurzawa’s first issue on appeal is whether his motion to vacate pursuant to § 806.07(1)(c) and (h), STATS., was timely. According to § 806.07(1)(c) and (h), “[o]n motion and upon such terms as are just, the court may relieve a party ... from a judgment, order or stipulation for the following reasons: ... (c) [f]raud, misrepresentation, or other misconduct of an adverse party” and “(h) [a]ny other reasons justifying relief from the operation of the judgment.” The motion must be made “within a reasonable time.” Section 806.07(2), STATS. The trial court is given broad discretion in deciding a motion for relief under § 806.07, STATS. *M.L.B. v. D.G.H.*, 122 Wis.2d 536, 541, 363 N.W.2d 419, 422 (1985). The trial court will not be overturned if the record shows that there is “a reasonable basis for the court’s determination.” *Id.*, 122 Wis.2d at 542, 363 N.W.2d at 422.

The trial court denied Kurzawa’s motion, noting that he was aware before the trial that Lehn had destroyed the documents, and that, accordingly, Kurzawa had not shown a reason to vacate the judgment. This conclusion was well within the ambit of the trial court’s discretion.

The appellant's second issue on appeal is his claim that Lehn's destruction of the documents and what he characterizes as her "alleged perjury" prevented him from "fully and fairly presenting his case." This is but another restatement of Kurzawa's argument for relief under § 806.07, STATS. As we have already noted, the trial court did not erroneously exercise its discretion in denying Kurzawa's motion.¹

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ Kurzawa's motion to vacate is subject to § 805.16(1), STATS., which requires that motions after verdict be "filed and served within 20 days after the verdict is rendered." Kurzawa failed to file a motion after verdict under § 805.16(1). He may not use the "catch-all" provision of § 806.07(1)(h), STATS., to "circumvent sec. 805.16." *Manly v. State Farm Fire & Casualty Co.*, 139 Wis.2d 249, 255, 407 N.W.2d 306, 308 (Ct. App. 1987).