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DISTRICT IV

October 10, 2024

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You are hereby notified that the Court has entered the following opinion and order:

2023AP1578

Scott Austin v. Ricky Roesler (L.C. # 2019CV293)

Before Kloppenburg, P.J., Blanchard, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Angela Campbell, pro se, appeals a circuit court order that denied Campbell's motion to reopen an order granting summary judgment in favor of Scott Austin. Based on our review of the

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We summarily affirm.

In November 2019, Scott Austin filed this action seeking a declaratory judgment that he is entitled to one-third of two payable-on-death (“P.O.D.”) accounts established by his grandmother, Marion Roesler, at Bank Mutual. The P.O.D. accounts, which were created in 2008 and 2011, listed Roesler’s husband and three children (including Campbell) as beneficiaries. Roesler’s husband and one of her children (Austin’s mother) predeceased Roesler. On March 9, 2022, the circuit court granted summary judgment to Austin and ordered that Austin is entitled to his mother’s one-third share of the P.O.D. accounts. Campbell appealed, and we affirmed. *See Austin v. Roesler*, No. 2022AP453, unpublished slip op. (WI App May 11, 2023).

On July 10, 2023, Campbell moved for relief from the summary judgment order under WIS. STAT. § 806.07(1)(b), (c), and (h), based on newly discovered evidence, based on misconduct, and in the interest of justice. Campbell offered, as newly discovered evidence, the policies for P.O.D accounts from Associated Bank, which acquired Bank Mutual in 2018, and material on the general policies for P.O.D. accounts in the banking industry. Campbell argued that, pursuant to that material, Austin is not entitled to his mother’s share of the P.O.D. accounts. She also argued that she is entitled to relief because opposing counsel’s failure to disclose that material was misconduct and because it showed that relief is necessary to accomplish justice. The circuit court denied the motion for relief from the judgment on grounds that all of Campbell’s arguments had either already been decided or were “too late.” Campbell moved for reconsideration, which the court also denied.

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

We review a circuit court’s denial of relief under WIS. STAT. § 806.07(1) for an erroneous exercise of discretion. *See Schauer v. DeNeveu Homeowners Ass’n, Inc.*, 194 Wis. 2d 62, 70, 533 N.W.2d 470 (1995). We will affirm a discretionary decision of the circuit court “if there appears any reasonable basis” for the court’s decision. *Gooch v. Gooch*, 107 Wis. 2d 704, 711, 321 N.W.2d 354 (Ct. App. 1982).

Campbell argues that the circuit court erred by denying her motion for relief under WIS. STAT. § 806.07(1). Campbell argues that she is entitled to relief from the summary judgment order: (1) under WIS. STAT. § 806.07(1)(b) based on newly discovered evidence; or (2) under § 806.07(1)(h) in the interest of justice.² We conclude that the circuit court properly exercised its discretion by denying Campbell’s claims for relief based on newly discovered evidence or in the interest of justice.³

First, we conclude that the circuit court properly exercised its discretion by denying Campbell’s motion for relief based on newly discovered evidence because the motion was untimely. A motion for relief based on newly discovered evidence under WIS. STAT. § 806.07(1)(b) must be brought within one year. *See* WIS. STAT. §§ 806.07(2), 805.16(4). Here, Campbell filed her motion for relief from judgment in July 2023, more than a year after the March 2022 summary judgment order was entered. Because the motion for relief based on newly

² Campbell states that she is not pursuing her claim that she is entitled to relief based on misconduct under WIS. STAT. § 806.07(1)(c). Therefore, we do not address that claim in this opinion.

³ To the extent that the circuit court did not sufficiently explain its exercise of discretion, this court will search the record for reasons to sustain the circuit court’s discretionary determination. *See Long v. Long*, 196 Wis. 2d 691, 698, 539 N.W.2d 462 (Ct. App. 1995). Moreover, we need not affirm using the same rationale as the circuit court. *See The Farmers Auto. Ins. Ass’n v. Union Pac. Ry. Co.*, 2008 WI App 116, ¶34, 313 Wis. 2d 93, 756 N.W.2d 461 (we may affirm a correct circuit court decision for reasons other than those relied upon by the circuit court).

discovered evidence was untimely, the circuit court did not erroneously exercise its discretion by denying relief.

Second, we conclude that the circuit court properly denied Campbell’s motion for relief in the interest of justice because Campbell failed to show “extraordinary circumstances” or that the motion was made within a “reasonable time.” See *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶¶9, 12, 282 Wis. 2d 46, 698 N.W.2d 610 (relief available under WIS. STAT. § 806.07(1)(h) “only in unique and extraordinary circumstances” and “only if the motion is made within a reasonable time”). Extraordinary circumstances exist only when the sanctity of the final judgment is outweighed by “the incessant command of the court’s conscience that justice be done in light of all the facts.” *Id.* (quoted source and emphasis omitted).

Campbell contends that the summary judgment ruling was contrary to justice because it was based on the terms of the P.O.D. accounts when they were opened at Bank Mutual. She contends that there is a disputed issue of material fact as to which terms control the P.O.D. accounts because Associated Bank subsequently acquired Bank Mutual. However, the issue of whether Austin is entitled to his mother’s share of the P.O.D’s accounts according to the controlling terms of those accounts was fully litigated on summary judgment and in the prior appeal. It was well within the circuit court’s discretion to determine that the existence of other policies for Associated Bank’s P.O.D. accounts, and in the banking industry generally, do not amount to “extraordinary circumstances.” Additionally, it was well within the court’s discretion to determine that Campbell’s argument—made sixteen months after the summary judgment order was issued, and

after that order was affirmed on appeal—came too late.⁴ Therefore, we conclude that the court did not erroneously exercise its discretion by denying Campbell’s motion for relief in the interest of justice.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

⁴ To the extent that Campbell asserts difficulty in her attempts to obtain Associate Bank’s policies, Campbell does not provide specific facts as to her attempts to obtain that material to establish that her motion was made within a “reasonable time.”