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**DISTRICT IV**

January 9, 2020

To:

Hon. Josann M. Reynolds  
Circuit Court Judge  
215 S. Hamilton St.  
Madison, WI 53703

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Carlo Esqueda  
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Dane County Courthouse  
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Madison, WI 53703

Glendale Stewart  
615 Skyview Place, #1  
Madison, WI 53713

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

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2019AP236

Glendale Stewart v. Richard F. Rice (L.C. # 2011CV3328)

Before Fitzpatrick, P.J., Blanchard and Graham, 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).**

Glendale Stewart appeals *pro se* from a circuit court order denying his motion to vacate a 2012 dismissal order. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

In 2011, Stewart filed a civil complaint against attorney Richard Rice and the law firm of Fox & Fox, S.C. The complaint sought compensatory and punitive damages for, among other allegations, legal malpractice related to an employment discrimination matter in which Rice represented Stewart. In an order issued January 3, 2012, the circuit court granted summary judgment in favor of the defendants and dismissed the complaint. Stewart filed a motion for reconsideration, which the circuit court denied on October 11, 2012. Stewart did not appeal either the dismissal order or the order denying reconsideration.

On April 3, 2013, Stewart filed a letter in the circuit court, again requesting reconsideration of its dismissal order. The circuit court denied the request. Then, on May 7, 2013, Stewart filed a motion to reopen the action. The circuit court issued an order on May 9, 2013, denying the motion and stating, “In light of plaintiff’s repeated filings raising the same issues, the court declines to consider future motions or requests to reopen or reconsider this matter.” Again, Stewart did not appeal those orders.

On May 28, 2013, Stewart moved to refile his civil complaint. The circuit court did not take any action on the motion. On December 21, 2018, Stewart filed a motion in this action to vacate the original judgment, asserting allegations of fraud and misrepresentation on the part of Rice and Fox & Fox, S.C. On January 17, 2019, the circuit court entered an order denying the motion. Stewart now appeals.

“[T]he circuit court’s denial of a motion to vacate under WIS. STAT. § 806.07 is a discretionary determination that we will not reverse absent an erroneous exercise of discretion.” *Werner v. Hendree*, 2011 WI 10, ¶59, 331 Wis. 2d 511, 795 N.W.2d 423. A circuit court

erroneously exercises its discretion when it applies the wrong legal standard or when the facts of record fail to support the court's decision. *Id.* That is not the case here.

Although Stewart cited WIS. STAT. § 806.07(1)(h) as the basis for his motion to vacate the judgment, the circuit court concluded that, in substance, the motion was governed by § 806.07(1)(c) because it alleged fraud and misrepresentation by an adverse party. We agree that this was the only reasonable interpretation of the substance of the motion and the applicable legal standard. The circuit court noted correctly that a motion for relief from judgment under § 806.07(1)(c) must be made “not more than one year after the judgment was entered or the order or stipulation was made.” Sec. 806.07(2). The court reasoned that, because over six years had passed between the time the circuit court entered its original dismissal order on January 3, 2012, and the time Stewart filed his motion to vacate in December 2018, the motion was untimely. Because the circuit court applied proper legal standards to the facts of the record, we are satisfied that the court did not erroneously exercise its discretion in denying Stewart's motion.

On appeal, Stewart attempts to overcome the untimeliness problem by arguing that there is no time limit for bringing an independent action based on fraud. In support of this argument, he cites WIS. STAT. § 806.07(2), which states, “This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court.” This argument is not properly before this court, however, because Stewart did not initiate an independent action. Rather, as discussed above, he filed a motion for relief from judgment in the same case in which the judgment was entered, alleging fraud and misrepresentation on the part of Rice and Fox and Fox, S.C. The circuit court therefore reasonably exercised its discretion when it concluded that the motion was untimely under § 806.07(1)(c) and (2).

IT IS ORDERED that the order is summarily affirmed under Wis. STAT. RULE 809.21(1).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*