



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT IV**

June 8, 2016

To:

Hon. Julie Genovese  
Circuit Court Judge  
Br. 13, Rm. 8103  
215 South Hamilton  
Madison, WI 53703

Carlo Esqueda  
Clerk of Circuit Court  
Room 1000  
215 South Hamilton  
Madison, WI 53703

Clayton Patrick Kawski  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Johnny Lacy Jr. 71373  
Wisconsin Secure Program Facility  
P.O. Box 9900  
Boscobel, WI 53805-9900

Special Litigation & Appeals Unit  
P.O. Box 7857  
Madison, WI 53707-7857

Wisconsin Secure Program Facility  
1101 Morrison Dr.  
P.O. Box 1000  
Boscobel, WI 53805-1000

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

---

2015AP1927

State of Wisconsin ex rel. Johnny Lacy, Jr. v. Bill Clausius  
(L.C. # 2013CV2858)

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

Johnny Lacy appeals an order denying as untimely his motion for relief from a judgment or order, filed pursuant to WIS. STAT. § 806.07 (2013-14).<sup>1</sup> He argues that his motion was timely under WIS. STAT. RULE 808.08(3). Based upon 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. We affirm the order.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

We review a circuit court's order granting or denying a motion for relief under WIS. STAT. § 806.07 for an erroneous exercise of discretion. See *Lenticular Europe, LLC v. Cunnally*, 2005 WI App 33, ¶9, 279 Wis. 2d 385, 693 N.W.2d 302.

Lacy's motion for relief was filed August 20, 2015. The order from which he sought relief, which related to a denial of a request for a document in a prison file, was filed April 9, 2014.<sup>2</sup> Lacy alleged in his August 20<sup>th</sup> motion that he was entitled to relief under WIS. STAT. § 806.07. Section 806.07 states in relevant part:

(1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15(3);

....

(h) Any other reasons justifying relief from the operation of the judgment.

(2) The motion shall be made within a reasonable time, and, if based on sub. (1)(a) or (c), not more than one year after the judgment was entered or the order or stipulation was made. A motion based on sub. (1)(b) shall be made within the time provided in s. 805.16....

WISCONSIN STAT. § 805.16(4) provides, “[A] motion for a new trial based on newly discovered evidence may be made at any time within one year after verdict.”

---

<sup>2</sup> The merits of the underlying matter are not before us. The case was dismissed by this court after Lacy failed to file a brief in his appeal of the circuit court's final order granting the defendant's motion to quash the writ of mandamus.

In Lacy's motion, we see three alleged bases for relief. As to the first, WIS. STAT. § 806.07(1)(a), the rule for a motion for relief based on paragraph (1)(a) is that it must be made "not more than one year after the judgment was entered or the order or stipulation was made." Section 806.07(2). In this case, Lacy waited more than 16 months. Therefore, any relief based on paragraph (1)(a) is foreclosed because Lacy's motion is untimely.

As to the second, paragraph (1)(b), relating to newly discovered evidence, the same time period applies under WIS. STAT. § 805.16(4), and therefore the same result is reached.

As to the third, paragraph (1)(h), the catch-all of "[a]ny other reasons justifying relief," the motion must be filed "within a reasonable time" after the order. WIS. STAT. § 806.07(1)(h). We review the circuit court's decision that the motion was not filed within a reasonable time for erroneous exercise of discretion. The Supreme Court upheld a circuit court's exercise of discretion when the circuit court ruled that an § 806.07 motion filed six months after a judgment was not filed within a reasonable time. See *Rhodes v. Terry*, 91 Wis. 2d 165, 171-76, 280 N.W.2d 248 (1979). In light of *Rhodes* and in view of the delay in this case, the circuit court did not erroneously exercise its discretion when it concluded that Lacy had not filed his motion within a reasonable time as required by the statute.

Lacy relies on language in WIS. STAT. § 808.08(3) stating that "an extension of the one-year period may be granted ...." However, his reliance on that language is unavailing because it is located in a statute that defines procedures applicable to matters where action or further proceedings are ordered following an appeal, "[w]hen the record and remittitur are received in the trial court." Sec. 808.08. No action or further proceedings were ordered following Lacy's dismissed appeal, and § 808.08 has no application to this case.

Upon the foregoing reasons,

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

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*