

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 11, 2010

David R. Schanker
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. 2009AP1920

Cir. Ct. No. 2006CV81

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**WILLIAM SELENSKE AND ROBERT SELENSKE, AS SPECIAL
ADMINISTRATORS OF THE ESTATE OF LOUISE SELENSKE,**

PLAINTIFFS-RESPONDENTS,

v.

RICHARD SELENSKE AND RNS FARMS, LLC,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Langlade County:
FRED W. KAWALSKI, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Richard Selenske and RnS Farms appeal a judgment based on a jury verdict finding that Selenske unduly influenced his late mother in some real estate and stock transactions. Selenske contends a juror,

Ronald Seis, was statutorily, objectively and subjectively biased. Because we conclude Selenske is estopped from raising that issue, we affirm the judgment.

¶2 During voir dire, after both parties named their witnesses, the court asked whether any prospective juror was related by blood or marriage to Richard Selenske or was related or acquainted with any member of his family, or whether they had any feeling of bias or prejudice for or against the parties. Seis did not respond. Richard Selenske contends Seis was related to and knew members of the Selenske family. In support of his post-trial motion, he submitted affidavits from himself, his son Stacey Zaverousky, and Seis.

¶3 Seis's affidavit states he was related to Zaverousky, although it does not indicate the nature of the relationship. He became aware at some undisclosed time during the trial that he was related to Zaverousky, but did not inform the court. He states he went to school with Zaverousky and he knew Richard Selenske and had conversations with him as a child. After the trial, he told Zaverousky that he should not have been on the jury because of his relationship with and knowledge of the Selenske family. Zaverousky's affidavit indicated Seis "sought him out" at the county fair and "took great pleasure" in informing Zaverousky he had been on the jury and had ruled against Zaverousky's father, Richard Selenske. Richard Selenske's and Zaverousky's affidavits allude to a history of disputes between Richard Selenske and his neighbor, George Packard, Seis's grandfather.

¶4 We conclude Selenske is estopped from claiming juror misconduct. A litigant may not sit with information that gives him notice of a juror's bias and, only after an adverse verdict, attempt to impeach the verdict by alleging juror misconduct. *Schumacher v. Milwaukee*, 209 Wis. 43, 243 N.W. 756 (1932). A

party is required to bring any supposed impropriety or error to the court's attention and obtain a ruling at the earliest opportunity, or the supposed error is deemed waived. *Grottkaw v. State*, 70 Wis. 462, 472, 36 N.W. 31 (1888).

¶5 While the affidavits are vague regarding the exact nature of the relationship between Seis and Zaverousky, Selenske and Zaverousky were in a better position to know about the relationship than was Seis. The names and addresses of the prospective jurors were available for review before trial. If Selenske and Seis had spoken on many occasions years ago, Selenske was as knowledgeable about the conversations as Seis. Because Selenske has a different last name than his son, Zaverousky, and Zaverousky's name was not mentioned during voir dire, Seis had no reason to suspect Zaverousky's involvement in the case. It is not clear why animosity between the families would result in bias against Richard Selenske and in favor of William and Robert Selenske. However, assuming this animosity provided any basis for disqualifying Seis, the affidavits show both Richard Selenske and Zaverousky knew of the dispute with Seis's grandfather.

¶6 Because we conclude Selenske is estopped from claiming juror misconduct by his failure to timely raise the issue, we need not determine whether he has established Seis's statutory, objective or subjective bias. We also need not determine whether the affidavits alleging Seis's bias were admissible under WIS. STAT. § 906.06(2) (2007-08).

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2007-08).

