

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 6, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-1820

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

MARY C. BEHRNDT,

PLAINTIFF-RESPONDENT,

V.

PATRICK BEHRNDT,

DEFENDANT-APPELLANT,

**MARGARET J. BEHRNDT, INDIVIDUALLY AND AS
TRUSTEE FOR THE BE ONE TRUST AND THE BE TWO
TRUST, KATHERINE SAYERS, SARAH FITCH, TONTO'S
TREES INC., DECOR CORPORATION, CROWN POINT
RESORT INC., CROWN POINT TIME SHARING INC.,
CROWN POINT TIME SHARING II INC., CROWN POINT
TIME SHARING III INC. AND VACATION RECREATION
INC.,**

DEFENDANTS-RESPONDENTS,

PAUL BEHRNDT AND EMILY KEARNS,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Waukesha County:
PATRICK L. SNYDER, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Patrick Behrndt appeals from the denial of his motion for relief from the trial court’s judgment dismissing Patrick and approving the settlement as to all other parties. The issue on appeal is whether the trial court erroneously exercised its discretion when it denied the motion for relief from the judgment. We conclude that the trial court correctly exercised its discretion and we affirm.

¶2 We first note what is not before the court. In his notice of appeal, Patrick referred to both the April 19, 2000 judgment and the postjudgment order denying his motion to vacate the judgment. The respondent moved to dismiss the appeal. While we denied the motion, we did hold that Patrick’s notice of appeal was not timely filed as to the April 19 judgment. Therefore, we have no jurisdiction to review that judgment. We do have jurisdiction, however, to review the order denying the motion to vacate the judgment.

¶3 On August 18, 1998, Mary C. Behrndt brought suit against her mother, Margaret J. Behrndt, and Mary’s five siblings (Patrick Behrndt, Paul Behrndt, Emily Kearns, Katherine Sayers and Sarah Fitch), as well as a Wisconsin corporation (Tonto’s Trees, Inc.) and six Arkansas corporations owned and operated by the family. An amended complaint later added Mary’s son, Justin Metzger, as an additional plaintiff. The gravamen of the complaint was that Margaret was guilty of conduct that prejudicially affected the carrying on of the family businesses.

¶4 Thereafter, all defendants, save Patrick, filed responses to the pleadings. At a pretrial conference, the trial court ordered the parties into mediation and ultimately, all parties ostensibly reached a stipulated agreement in the case. Initially, the stipulation anticipated the signature of each party to be valid. However, when Patrick would not sign the stipulation, the stipulation was amended to remove the necessity for the signatures of all parties in order to ensure the validity of the stipulation.

¶5 Trial was scheduled for April 5, 2000. Patrick appeared at the proceedings pro se. All other parties appeared with counsel. The attorneys informed the court that a settlement had been reached and all parties except Patrick had signed or would sign the stipulation. Additionally, Mary's attorney asked for a default judgment against Patrick. The attorney stated that Patrick had neither entered an appearance nor filed any pleadings in the case. Further, the attorney stated that the settlement provided for dismissal of all claims with prejudice and therefore, he was requesting an order barring Patrick from contesting any claims set forth in the action. The attorney for Margaret, the other four siblings and the Wisconsin corporation joined in the motion.

¶6 At that time, Patrick asserted that he did not join in the stipulation because it was not in the best interests of the corporation. He further stated that he was not prepared to proceed to trial. The trial court ruled that "[a]ll claims that are involved in this lawsuit will be dismissed with prejudice as to all parties therein contained."

¶7 The judgment dismissing all the claims and accepting the stipulation was entered on April 19, 2000. Patrick then sought relief from the court's

judgment through a motion to strike the stipulation and vacate the judgment.¹ The court denied that motion. Patrick now appeals.

¶8 Rulings on motions under WIS. STAT. § 806.07 (1999-2000)² are reviewed under the erroneous exercise of discretion standard. *Edland v. Wis. Physicians Serv. Ins. Corp.*, 210 Wis. 2d 638, 643, 563 N.W.2d 519 (1997). The appellate court will look for reasons to sustain the trial court's discretionary decision. *Looman's v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968).

¶9 Patrick did not provide this court with a transcript from the postjudgment hearing. The appellant has the burden to provide this court with the record necessary to review the issues raised. *State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). When an appeal is brought upon an incomplete record, this court will assume that the record supports every fact essential to sustain the trial court's decision. *Suburban State Bank v. Squires*, 145 Wis. 2d 445, 451, 427 N.W.2d 393 (Ct. App. 1988).

¶10 In its order, the trial court stated:

1. The motion of Patrick Behrndt to strike the stipulation and vacate the order of dismissal is denied for the reasons set forth by the Court, on the record, which included the following reasons:
 - a. That pursuant to Wisconsin Stat. § 806.07, Patrick Behrndt has no standing to object to the order

¹ Patrick's motion to strike the stipulation and vacate the judgment is actually a motion for relief from a judgment or order. A motion for relief from a judgment or order is governed by WIS. STAT. § 806.07 (1999-2000).

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

insofar as he was a named party to the litigation and did not file any answer or other responsive pleading;

- b. That on April 5, 2000, Patrick Behrndt appeared before the Court unprepared and unable to proceed with trial on the date scheduled; and
- c. That the Court finds that Patrick Behrndt did review and was aware of the terms of the settlement stipulation that was presented to this Court on April 5, 2000; that he knew that this matter was going to be tried unless the stipulation presented and accepted on April 5, 2000; and on that date, other than saying he objected to the settlement stipulation terms, he had nothing further to present to the Court.

¶11 As noted above, we will assume that the record supports every fact essential to sustain the trial court's decision. *Suburban State Bank*, 145 Wis. 2d at 451. Absent a sufficient record, we will affirm the trial court's decision. *Id.* The trial court's order suggests that Patrick's dismissal was due to his failure to prepare for trial.³ This is, effectively, a sanction-based dismissal.⁴ The trial court did not erroneously exercise its discretion in denying the motion for relief to vacate the judgment. *Id.*

By the Court.—Judgment affirmed.

³ See WIS. STAT. § 805.03.

⁴ The dismissal of the other defendants was based on the stipulation. Patrick suggests that Emily also did not sign the stipulation. Because Patrick cannot raise an objection for another, we need not address his challenge to the stipulation based on Emily's claimed failure to sign.

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

