COURT OF APPEALS
DECISION
DATED AND FILED

December 28, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-1003 **Cir. Ct. No. 03CV84**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

HELENA COKE, M.D.,

PLAINTIFF-APPELLANT,

V.

EAU CLAIRE WOMEN'S CARE SERVICE CORPORATION,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Eau Claire County: PAUL J. LENZ, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Helena Coke, M.D., appeals a summary judgment dismissing her complaint for wrongful termination of her employment contract against the Eau Claire Women's Care Service Corporation (the "Clinic"). Coke argues that (1) the trial court applied the wrong legal standard when it determined that the Clinic ended her employment for "cause"; (2) the Clinic breached the

employment contract; and (3) the reasons the Clinic gave were pretextual. Because Coke fails to demonstrate a dispute of material fact and the Clinic is entitled to judgment as a matter of law, we affirm the judgment.

BACKGROUND

¶2 Coke is a physician who was employed as an obstetrician and gynecologist under a two-year employment contract with the Clinic. Under the heading, "Termination by the [Clinic]," the contract provided:

> (x) The [Clinic] may terminate this Agreement at any time with "cause". For purposes of this Agreement, "cause" includes, but is not limited to, the following:
>
> ….
>
> 4. Conduct *found by the [Clinic]* to constitute a failure or refusal by Doctor to faithfully and diligently perform her duties under this Agreement. (Emphasis added.)

¶3 Under "Duties," the contract states: "3.(a) Doctor is employed as a [sic] Obstetrician & Gynecologist" and "[t]he precise duties of Doctor shall be specified and may be extended or curtailed from time to time by the [Clinic]; provided, however, that the duties of Doctor shall be commensurate with Doctor's education, training and experience." The contract further provides, "Doctor will diligently perform the duties required of Doctor hereunder …."

¶4 Coke began working at the Clinic on July 1, 2002. Between July 10 and October 7, the Clinic recorded more than twenty complaints, which included patient's concerns about having their questions answered, Coke's insensitive and ineffective bedside manner, and her painful examination technique. Included among the recorded complaints were the following:

> DOS 7-10-02 Pt made appt to discuss perimenopausal sx. States her questions were not answered. Dr. Coke asked

her if her period was regular. Pt stated it is and Dr. Coke stated that she is fine then and perhaps she needs to get a hobby. Pt called in and asked to transfer her records. …

DOS 7/18/02 Pt called next morning after having an appt with Dr. Coke stating that she and her husband were both very upset following the appt. She states that they felt as thought they were in the "principal's office" ….

DOS 7/17/02 Pt called stating that Dr. Coke's visit was very disappointing. She states that her bedside manner is very cold. She seemed to not listen to the pt and her questions went unanswered. Has no intention of seeing her again. …

DOS 8/19/02 Pt called stating she was very unhappy with her appt with Dr. Coke. She states her questions were not answered. … She then broke into tears and stated that she doesn't want to see Dr. Coke again. …

DOS 7/25/02 Pt called to voice her concern over her appt with Dr. Coke. Pt. states that she is not very personable. … She did not give direct eye contact and that she did not perform a gentle exam.

DOS 8/6/02 Pt called to complain that her pelvic exam with Dr. Coke was very painful. States it was so painful that she began to cry. She stated that Dr. Coke's bedside manner is very cold and she didn't even offer a tissue when she cried nor did she even show any concern.

DOS 8-13-02 … Complaint that Dr. Coke's mannerism was frustrating and felt the visit had been a total waste of time. …

DOS 7/31/02 … Pt was scheduled for follow up … as long as she did not have to see Dr. Coke. Pt refused to give detailed reason. …

….

DOS 8/8/02 Pt complained that Dr. Coke was rather cold and has taken a couple of visits to warm up. It was ok, may try her again.

DOS 8/7/02 … Pt states that the communication between providers is obviously poor. She further stated she felt that Dr. Coke has a cold manner and questioned her knowledge. When she introduced herself, she then turned her back as pt

> went to shake her hand. Feels as though she wasn't listening to her. …

¶5 Other patients called and stated that "she felt as though she as [sic] being lectured;" "Dr. Coke did not answer the questions she had;" the patient requested to transfer care to another clinic and didn't feel her questions were answered; a patient "feels as thought she is being lectured by Dr. Coke" and would not like to see her anymore; and "Dr. Coke doesn't explain things."

¶6 One patient complained that she had an extremely painful pelvic exam with Coke and bled for several days following, while another complained that she "felt belittled and ignorant for coming in for a problem." On September 26, a patient stated that Coke was very cold, uncaring and not at all sympathetic with her during her miscarriage. On October 7, 2002, a patient seen by Coke with severe ovarian pain called back after her appointment stating that Coke "didn't seem to be listening to her concerns" and made an appointment with a different doctor.

¶7 Coke met with the Clinic's owner, Donna Schoenfelder, M.D., on August 19, 2002. Schoendfelder told Coke that patients said their questions were not being answered and one had transferred her care because the patient did not agree with her management. Schoenfelder advised Coke her performance must change to include compassion and attentiveness, that Coke must fully answer patient questions, and ensure patients are comfortable and not in pain during pelvic examinations. Additional meetings took place on September 6 and 20, when Schoenfelder again informed Coke that patients were complaining and transferring their care. Coke was advised that her performance needed improvement, similar to the August discussion. At the September 20 meeting,

Coke was advised that if she did not improve in three weeks, she would be terminated.

¶8 The Clinic subsequently advised Coke in writing that her conduct must change to comply with her contract. On October 7, Coke received a memo, dated October 4, along with of a list of twenty-eight patient complaints. The memo stated that "[b]ased on Patient Surveys and concerns expressed, the following suggestions must be made *to comply with your contract*. If not, your contract will be terminated." (Emphasis added). The list included the following directives: being responsive to patients' questions, making sure that patients' questions have been completely answered; being pleasant with patients and staff; being responsive to nurse questions to ensure good patient care; conducting gentler pelvic examinations; not ignoring when a patient is upset, being consistent and not indecisive with physician orders and communicating clearly with patients and staff. At that time Coke was not provided with copies of patient surveys that contained positive responses. On October 16, Coke's employment was terminated.[1]

¶9 Coke filed this action against the Clinic alleging that the Clinic breached the employment contract when it terminated her employment without

[1] On page 6 of her "Statement of Facts" section of her brief, Coke states that she was "terminated by oral communication on October 16, 2002 and she was given no reasons for her termination," citing to document "R18:2."

However, this document citation refers to Coke's affidavit, which states: "It was on October 16, 2002 at the 12:00 p.m. meeting that I was terminated with no written explanation for my termination." To be given "no written explanation" is not the same as "no reasons."

cause.[2] Coke moved for partial summary judgment on liability for her claim that the Clinic breached the contract. Coke argued that the reasons given for terminating her employment related to patient care, such as poor bedside manner, questions unanswered and painful pelvic examinations, were not found in the contract. Coke disputed that she performed her duties unsatisfactorily. In support of her motion, Coke appended seventeen copies of patient surveys that the Clinic conducted between September 23 and October 3. Only one survey expressed dissatisfaction with Coke's care or treatment.

¶10 The Clinic moved for summary judgment of dismissal. In support of its summary judgment motion, the Clinic submitted Schoenfelder's affidavit, stating:

> The practice of OB/Gyn involves a particularly sensitive and personal interaction between a patient and her physician as compared to some other health care interactions. Eau Claire Women's Care has built [its] reputation on providing this personal care. Dr. Coke was unable to provide this to our patients.

¶11 Schoenfelder stated that as a result of numerous complaints she received concerning Coke's care and treatment, she met with Coke in August and September on three occasions, advising her "of the necessary changes she must make in the performance of her duties …." Schoenfelder stated that all of the changes that were discussed were commensurate with Coke's education, training and experience in the practice of obstetrics and gynecology. Schoenfelder's affidavit further provided:

[2] Coke's complaint also alleged that the Clinic failed to exercise good faith in carrying out the contract. Because this claim is not argued on appeal, it is deemed abandoned. *See* ***Reiman Assocs., Inc. v. R/A Adver., Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981).

> By mid-October Dr. Coke had not changed the performance of her duties as an OB/Gyn physician at the clinic as discussed in prior meetings.
>
> ….
>
> Dr. Coke was discharged pursuant to the terms of the Employment Agreement … which provided that the clinic had the right to terminate Dr. Coke's employment if the clinic found that Dr. Coke failed or refused to faithfully and diligently perform her duties ….
>
> ….
>
> At the time I discharged Dr. Coke I honestly and reasonably believed … that Dr. Coke had not diligently performed her duties; and that the performance of her duties was contrary to the welfare, interest and benefit of the clinic.

¶12 The court initially denied the Clinic's motion for summary judgment on the ground that there was a dispute of material fact. In so doing, the court made the following observation:

> Thus, the – this matter, while put in writing on October 4th, the shortness of the period of time between October 4th and October 16th alone, a jury could not reasonably infer from those facts alone a pretext, that is a nonstated reason. They could certainly find it to be an unreasonable behavior on the part of the company. However, that is not an area of inquiry; that is, there is no requirement that it meet with the court's or the jury's standard of reasonableness.
>
> So, thus, the potential question, the question of fact is, are these areas so standard as to constitute a duty, given the doctor's training and experience. Common sense would tell you yes, but I have nothing in the record to base that on ….

¶13 The Clinic pointed out that Schoenfelder's affidavit spoke to the issue of duty as "a major point that we wanted to convey to the court." The court indicated it would take up the issue on a motion for reconsideration. The Clinic submitted a letter brief in support of its motion for reconsideration, pointing out

Schoenfelder's affidavit that Coke's duties were "commensurate with Dr. Coke's education, training and experience …."

¶14 Coke's attorney responded by letter, stating: "This is to advise you that plaintiff is of the opinion that it would be better to not contest the motion of the defendant and have judgment entered dismissing the case so that plaintiff can appeal."[3] The trial court entered summary judgment dismissing Coke's complaint; her appeal follows.

DISCUSSION

1. Erroneous Legal Standard

¶15 Coke argues that because the trial court erroneously interpreted the employment contract, it applied the wrong legal standard. She contends that the correct interpretation of the contract would lead to the conclusion that Coke can only be terminated for failing to perform the duties specifically enumerated in contract paragraphs 3(a) to (e). According to Coke, these duties relate to her dedicating all of her professional time to the services of the Clinic; the hours she is to work; to making her best effort; not working for others; receivables belonging to the clinic; not violating ethical requirements or other government regulations and maintaining certain staff privileges.

¶16 Coke contends that it is undisputed that she did not breach these specifically enumerated duties and, therefore, no cause exists for her termination. She claims "[t]here is nothing in the employment contract [that] can be defined as

[3] The Clinic does not argue that this response constitutes waiver. Therefore, we do not address the waiver implications of Coke's letter.

a duty that is encompassed in the reasons given by the Clinic for termination." She argues "the characterizations of 'improve verbal communication'; 'poor bedside manner'; 'impersonal'; 'questions unanswered'; 'poor eye contact' and 'painful examinations' are personal characteristics which are nowhere to be found in the duties enumerated under the terms of her contract." Coke further contends that because the Clinic characterized its direction that Coke improve in these areas as a "request," it essentially admitted that these directives were not "duties" under the terms of the employment agreement.

¶17 We are unpersuaded. We review a summary judgment applying the same methodology as the trial court, ***M&I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.,*** 195 Wis. 2d 485, 496-97, 536 N.W.2d 175 (Ct. App. 1995), and owing no deference to the trial court's determination. ***Waters v. United States Fid. & Guar. Co***., 124 Wis. 2d 275, 278, 369 N.W.2d 755 (Ct. App. 1985). We will reverse a summary judgment if the trial court incorrectly decided a legal issue or if material facts were in dispute. ***Coopman v. State Farm Fire & Cas. Co.***, 179 Wis. 2d 548, 555, 508 N.W.2d 610 (Ct. App. 1993).[4]

¶18 The interpretation of a contract is a legal matter we decide independently of the circuit court. ***Town of Neenah San. Dist. No. 2 v. Town of***

[4] Coke's motion for partial summary judgment sought summary judgment on liability against the Clinic in terminating her contract, not summary judgment on the issue of damages. Coke states that both parties moved for summary judgment: "Dr. Coke moved for partial summary judgment and the Clinic moved for dismissal. As such, the material substantive evidence must be presumed to be undisputed."

Although the trial court made "Findings of Fact" on summary judgment, Coke does not claim that doing so was erroneous, apparently because the "Findings" were undisputed. Accordingly, we proceed from Coke's statement that the record contains no dispute of material facts. *See* ***State v. Michels***, 141 Wis. 2d 81, 97-98, 414 N.W.2d 311 (Ct. App. 1987) (An inconsistent legal strategy is subject to judicial estoppel.).

Neenah, 2002 WI App 155, ¶9, 256 Wis. 2d 296, 647 N.W.2d 913.[5] The standard of rules of contract interpretation provide that the primary goal is to determine and give effect to the parties' intention at the time the contract was made. ***Farm Credit Servs. v. Wysocki***, 2001 WI 51, ¶12, 243 Wis. 2d 305, 627 N.W.2d 444. "When the language is unambiguous, we apply its literal meaning." ***Id.***

¶19 Coke misinterprets the plain meaning of her employment contract.[6] While her contract provided that she was "to diligently perform the duties required of Doctor," specifically, those of an obstetrician/gynecologist, her contract did not purport to set out the precise procedures or techniques an obstetrician/gynecologist must employ to fulfill her role. It did not, for example, detail the procedures to be used to communicate with patients, perform gynecological examinations, prescribe medications, provide prenatal care, and perform Cesarean sections or hysterectomies. Nonetheless, Coke certainly does not suggest that because these procedures were not specifically spelled out, they were not encompassed within her duties as an obstetrician/gynecologist.

¶20 Coke does not attempt to rebut Schoenfelder's affidavit to the extent it establishes that an obstetrical/gynecological practice involves a particularly sensitive and personal interaction between the patient and the physician and that the duties include attentiveness to the patient, taking care to answer questions and ensuring patients are comfortable, not in pain, during pelvic examinations, which were commensurate with Coke's education, training and experience. Thus, the

[5] We must affirm the trial court when it reaches the right result, even when that result is reached for the wrong reason. ***State v. Holt,*** 128 Wis. 2d 110, 124, 382 N.W.2d 679 (Ct. App. 1985).

[6] There is no argument that the contract here is ambiguous or violates public policy.

record establishes that the Clinic's expectations of an appropriate "bedside manner" were encompassed within the duties of an obstetrician/gynecologist. We conclude that the trial court did not misinterpret the plain meaning of the parties' contract. Thus, Coke does not demonstrate the court applied an erroneous legal standard.

2. Clinic's Breach of Contract

¶21 Next, Coke argues that "[s]ince there were no disputed issues of material fact, the appellant [sic] court may, as a matter of law, find that the Clinic breached the contract by terminating Coke without cause." We disagree. The contract broadly defines "cause" as including, but not limited to "Conduct *found by the [Clinic]* to constitute a failure or refusal by Doctor to faithfully and diligently perform her duties under this Agreement." (Emphasis added). Here, Schoenfelder's affidavit is unrebutted to the extent that it states the Clinic found that Coke's conduct constituted a failure to perform her duties under the Agreement.

¶22 We must interpret contracts to give reasonable meaning to each provision of the document, avoiding a construction that renders any portion meaningless. ***Wilke v. First Fed. Sav. & Loan***, 108 Wis. 2d 650, 657, 323 N.W.2d 179 (Ct. App. 1982). There is no dispute over the meaning of the words, "Conduct *found by the [Clinic]*." (Emhasis added). While limiting the Clinic's power to terminate for cause, this phrase also limits inquiry to whether the employer found that cause existed in the form of a failure to diligently perform duties, without permitting inquiry into the soundness of the Clinic's belief.

¶23 The parties dispute the applicability of the holding in ***Hale v. Stoughton***, 126 Wis. 2d 267, 376 N.W.2d 89 (Ct. App 1985). In ***Hale***, our

supreme court interpreted a hospital bylaw providing that a hospital president/administrator could be removed by vote of six or more board members "whenever in [the board's] judgment the best interests of the hospital would be served thereby." ***Id.*** at 276. The court explained:

> The bylaw requires an honest belief that termination is in the best interests of the hospital. The board's belief may not be feigned or a pretext for action that they believe is not in the hospital's best interest. Nothing more is required. The board is the sole judge of the hospital's best interests and the court or jury may not inquire into the reasonableness of their decision or whether the board's reasons exist in fact. … We will not inquire into the board's decision-making process to determine whether its decision is correct. Inquiry is limited to whether the board really believed Hale's termination was in the hospital's best interests.

Id. (footnote omitted).

¶24 The Clinic seeks to draw an analogy between the terms of its contract with the bylaw in ***Hale***. Because the language of Coke's contract differs from that of the bylaw, ***Hale***'s applicability is limited. Nonetheless, ***Hale*** provides authority for the proposition that an employment contract may limit inquiry to whether the employer honestly believed that cause existed, without permitting inquiry into the soundness of the employer's belief.

¶25 Coke contends, nonetheless, that the duties she allegedly violated as set out in the memo were only "suggestions." Coke's argument ignores the plain words of the memo she received, which stated that "[b]ased on Patient Surveys and concerns expressed, the following suggestions must be made *to comply with your contract*. If not, your contract will be terminated." (Emphasis added). The tactful language the Clinic employed does not alter the only reasonable interpretation of the memo; that the "suggestions" must be followed in order to

comply with her contract. The record fails to support Coke's claim that the duties of an appropriate "bedside manner" were not encompassed within her contract.

¶26 Coke further claims that the Clinic breached the contract because it specifically states that all communication and changes in duties had to be specified in writing. The written memo, however, communicated how Coke was found not to be performing her duties. To the extent that some communications occurred orally, Coke fails to explain how the oral communication caused her any damage.[7]

¶27 Coke further argues that because the Clinic presented no facts setting out the specific and precise duties Coke did not allegedly perform, the Clinic terminated her employment without cause, in violation of the contract. Coke's reply brief belies her contention, in which she acknowledges that the "suggestions" can be summarized as requiring her to be responsive to patient's questions, pleasant to patient and staff, to conduct gentler pelvic exams, to respond when the patient is upset and to be consistent with orders.[8] Because there is no dispute with regard to the ways that the Clinic determined Coke failed to fulfill her duties, Coke's premise fails.

3. Pretext

¶28 Schoenfelder's affidavit states:

> At the time I discharged Dr. Coke I honestly and reasonably believed that her termination was in the best interest of the clinic and the clinic's patients; that Dr. Coke

[7] For example, Coke complains that she was not given a written termination notice. She fails to explain, however, how the oral versus written nature of her termination notice caused her damage.

[8] The list is derived from Coke's reply brief.

> had not diligently performed her duties; and that the performance of her duties was contrary to the welfare, interest and benefit of the clinic.

¶29 Coke argues that her termination was a pretext to avoid paying under contract.[9] As legal authority, Coke cites a number of dictionary definitions to the effect that pretext is defined as hiding one's true motive by giving a false rationale.[10] She claims that while the trial court determined there was no pretext, its determination was inconsistent with its conclusion that a trier of fact could find that the termination was unreasonable. She contends "the trial court's conclusion that the termination would be found to be unreasonable is also evidence supporting the reason for termination was a pretext."

¶30 We disagree. As the trial court indicated, the reasonableness of the Clinic's actions was not an inquiry with respect to the issue of pretext. Coke does not take issue with the Clinic's reliance on a Seventh Circuit Court of Appeals' decision describing pretext:

> Pretext means more than a mistake on the part of the employer; pretext "means a lie, specifically a phony reason for some action." … The pretext inquiry focuses on the honesty—not the accuracy—of the employer's stated reason for the termination. … Thus, when the stated reason for termination is not the actual reason, it is pretexual. … The mere fact that the employer acted incorrectly or undesirably, however, cannot adequately demonstrate pretext; rather, the employee must prove that the employer did not honestly believe the reasons it gave

[9] Coke contends that "[t]he trial court's conclusion that there is no pretext is a question of law which again is not binding on an appellate court."

[10] Coke relies on dictionary definitions for "unreasonable" to mean "not reasonable, beyond the bounds of reason" and "irrational, foolish; unwise, absurd, silly, preposterous, senseless, stupid … capricious, arbitrary, confiscatory." Coke cites WEBSTER'S DICTIONARY (1989); BLACK'S LAW DICTIONARY (4th ed.); and WEBSTER'S NEW COLLEGIATE DICTIONARY (1981).

> for the firing. A plaintiff can prove the incredibility of the employer's proffered reasons are (1) factually baseless, (2) not the actual motivation for the discharge, or (3) insufficient to motivate the discharge. Moreover, the fact-finder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by suspicion of mendacity) may, together with the elements of a prima facie case, suffice to show intentional discrimination.

Tincher v. Wal-Mart Stores, Inc., 118 F.3d 1125, 1130 (7th Cir. 1997) (citations omitted). Here, Schoenfelder's belief that she reasonably determined that Coke failed to diligently perform her duties under the contract went unrebutted. We conclude that the trial court correctly determined that the record failed to support a prima facie finding of pretext.

¶31 Coke argues, nonetheless, that the Clinic was dishonest because (1) it failed to disclose the results of patient surveys until pretrial discovery and (2) the "chronology of events" demonstrates the termination was a pretext. We are unpersuaded that the failure to disclose the results of patient surveys until discovery is material to Schoenfelder's belief that Coke failed to diligently perform her duties under the contract. It is undisputed that Schoenfelder's decision to conduct the survey followed her meetings with Coke in which Schoenfelder shared her concerns with patient dissatisfaction regarding Coke's performance of her duties. Thus, Schoenfelder expressed the Clinic's belief that Coke was failing to diligently perform her duties as obstetrician/gynecologist well before the survey took place.

¶32 We further agree with the trial court that the chronology of events fails to demonstrate pretext. Coke complains she was told on September 20 that she had three weeks to improve or her contract would be terminated. She points out that she was at a medical conference from September 27 to October 7 and,

therefore, she had only eight working days to comply with the list of "suggestions." She points to evidence that her medical instruments were removed while she was at the conference as proof that the Clinic had already decided to terminate her employment.

¶33 However, the employment contract states that the Clinic may terminate at "any time" for cause. Schoenfelder's affidavit that she received numerous patient complaints leading to her belief that Coke failed to perform her duties diligently under the contract stands unrefuted. Thus, the Clinic demonstrated "cause" within the meaning of the contract. Coke's complaints regarding the chronology of the events leading to her termination fail to demonstrate that the Clinic did not honestly believe that Coke did not diligently perform her duties under the contract.

¶34 In her reply brief, Coke argues that Schoenfelder's affidavit demonstrates the Clinic's dishonesty, because it appended the only negative survey response and stated, "A representative example of the patient satisfaction survey is attached hereto as Exhibit B." We are unpersuaded. Schoenfelder's affidavit stated that the attached exhibit was representative of the survey, not of the survey responses. Therefore, the affidavit was not inaccurate. Further, to the extent Coke argues that Schoenfelder's statement of her belief is contradicted by other proofs of record, Coke raises an issue of fact. *See* ***Caulfield v. Caulfield***, 183 Wis. 2d 83, 94 n.4, 515 N.W. 2d 278 (Ct. App. 1994). Because Coke has proceeded from the premise that the record is devoid of disputes of material fact, *see* n. 4*, supra,* we decline to entertain her contention. *See* ***State v. Michels***, 141 Wis. 2d 81, 97-98, 414 N.W.2d 311 (Ct. App. 1987) (An inconsistent legal strategy is subject to judicial estoppel.).

¶35 Also in her reply brief, Coke argues that the Clinic ignored its promises to Coke and therefore lacked "good cause" to terminate Coke's employment. She claims that because the Clinic ignored her improvement in performing her duties as evidenced by the patient surveys, the Clinic lacked cause to terminate her employment. We disagree. Coke identifies no contractual obligation on the part of the Clinic to provide any amount of time to correct her performance. This argument essentially reiterates Coke's previous contention that her termination was pretextual and attempts to resurrect her abandoned claim that the Clinic failed to act in good faith. *See* n.2 *supra*. As a result, we reject it.

¶36 In conclusion, Coke premised her arguments on her claim that "the material substantive evidence must be presumed to be undisputed." Our independent review of the summary judgment proceeding uncovers no error of law. Therefore, Coke identifies no basis upon which to overturn the trial court's summary judgment of dismissal.

By the Court.—Judgment affirmed.

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