

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 16, 2004

Cornelia G. Clark
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. 04-1454
STATE OF WISCONSIN**

Cir. Ct. No. 03SC015099

**IN COURT OF APPEALS
DISTRICT I**

**RICHARD I. WANG, M.D.,
PLAINTIFF-RESPONDENT,**

v.

**DRAGAN IVANKOVIC,
DEFENDANT-APPELLANT.**

APPEAL from a judgment of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Dragan Ivankovic, *pro se*, appeals from a judgment granted in favor of Richard I. Wang, M.D. in a collection action. Ivankovic claims the trial court erred in granting judgment to Wang because Wang failed to show that any valid contract existed, Wang had allegedly fraudulent

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

billing practices, and Ivankovic's civil rights were violated during the proceedings. Because the trial court did not erroneously exercise its discretion in ordering judgment in favor of Dr. Wang, this court affirms.

BACKGROUND

¶2 This case arises from a small claims collection action in which Dr. Wang sued Ivankovic, alleging that he failed to pay \$2587.50 due for services and treatment Dr. Wang provided to Ivankovic. Ivankovic's defense is that he believed that all of the services provided by Dr. Wang would be free of charge as they were a part of a medical study. Ivankovic responded to an advertisement seeking participants for a bipolar research study. Ivankovic was treated by Dr. Wang from December 9, 1999, until January 23, 2003, when Dr. Wang demanded payment.

¶3 Ivankovic claims he never would have treated with Dr. Wang if he was considered a private-paying patient instead of a free, study participant because Dr. Wang was not within his insurance network. Ivankovic claims that no one at Dr. Wang's office advised him that he would be charged or asked him for his insurance card. Ivankovic assumed that all the services would be provided free of charge.

¶4 Dr. Wang responds that Ivankovic was not charged for the visits that occurred during the time the research study took place, but that he was considered a private-paying patient during treatment periods when the research study was not occurring. Dr. Wang claims that Ivankovic was advised of the study time periods, and that Ivankovic's insurance carrier was billed and paid for portions of the charges during the time Ivankovic was a private-paying patient.

¶5 The case was heard by a court commissioner, who ruled in favor of Dr. Wang. Ivankovic appealed that decision to the circuit court and discovery requests were exchanged. When Ivankovic did not comply with Dr. Wang's discovery request, Dr. Wang filed a motion seeking to compel discovery. During a hearing, the trial court advised Ivankovic to comply with the discovery demand and that failure to do so would result in sanctions. The court set a trial date.

¶6 On the date set for trial, Dr. Wang renewed his motion for sanctions for failure to comply with discovery demands. Ivankovic admitted his failure to comply with the discovery demands and explained his concerns about signing releases for the documents requested. The trial court granted Dr. Wang's motion and imposed the sanctions of dismissing Ivankovic's counterclaim and granting judgment in favor of Dr. Wang. Ivankovic now appeals to this court.

DISCUSSION

¶7 It is clear from the record in this case that the facts are hotly disputed. Dr. Wang claims that Ivankovic was informed of the time periods of the research study and understood that it was only during this timeframe that all treatment would be provided free of charge. Ivankovic claims that he was never informed that he would be charged for Dr. Wang's treatment. He claims that he never received a bill or submitted an insurance card and if he would have known that Dr. Wang was charging him, he would not have seen Dr. Wang because Dr. Wang was not a covered network provider under his insurance. Ivankovic contends that it was not until Ivankovic's last scheduled office visit in January 2003 that Ivankovic was informed by Dr. Wang that he owed over \$2500 for treatment provided by Dr. Wang.

¶8 As noted, this case clearly has two very different versions of the facts. The factual disputes, however, will not be addressed on the merits because the case was resolved on a discovery violation. No one will know whether the merits would have resulted in a different outcome. However, the issue for this court's review is simple. Did the trial court erroneously exercise its discretion when it imposed the discovery sanction?

¶9 This court's review is limited to whether the trial court considered the pertinent facts, applied the correct law and reached a reasonable result. *Smith v. Golde*, 224 Wis. 2d 518, 525, 592 N.W.2d 289 (Ct. App. 1999). Here, the record reflects that the trial court's determination was reasonable.

¶10 WISCONSIN STAT. § 804.12 (2)(a)3, provides:

If a party ... fails to obey an order to provide or permit discovery ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

....

3. An order ... dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

¶11 The trial court dismissed Ivankovic's counterclaim and granted judgment in favor of Dr. Wang because Ivankovic failed to obey a discovery order. The trial court ordered Ivankovic to comply with Dr. Wang's discovery request and advised him that failure to do so would result in severe sanction. At the time of trial, Ivankovic still had not obeyed the trial court's order. He intentionally ignored the order without just cause or good reason. The discovery request would have produced documents only Ivankovic had legal access to, which Dr. Wang contended would show that Ivankovic knew or should have

known that the treatment provided in between the research study periods was not going to be complimentary. Ivankovic refused to provide the requested documents in spite of the court's order. When asked by the court to offer a response, Ivankovic's wife, who was acting on his behalf, offered irrelevant excuses, including referring to a newspaper article that reported that Dr. Wang was being investigated by Medicare for his billing practices. The trial court ruled:

... I am still confronted with this obstinate behavior and failing to comply with the discovery demand by simply signing the medical release so that they could get all the records, the whole bunch. This discovery process is to get all the information before the Court, once that information is obtained it could be that the plaintiff may agree with you. But because you failed to do that makes me unable to really explore all facts in the case.

¶12 The trial court's decision was reasonable and based on the pertinent facts available. Therefore, pursuant to WIS. STAT. § 804.12(2)(a)3, the trial court had the authority to dismiss Ivankovic's counterclaim and grant judgment in favor of Dr. Wang. Ivankovic could have avoided this sanction by complying with the discovery demand. He "obstinately" refused to comply, which left the trial court with really no alternative but to enter judgment on the collection action in favor of Dr. Wang. There was no erroneous exercise of discretion.²

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

² Dr. Wang's motion for frivolous appeal costs is denied.

