COURT OF APPEALS
DECISION
DATED AND FILED

March 20, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1843 **Cir. Ct. No. 2006SC5190**

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

BELOIT CLINIC, S.C.,

PLAINTIFF-RESPONDENT,

V.

DAVID R. STROCIEK,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, P.J.[1] David R. Strociek appeals pro se the circuit court's order granting summary judgment to Beloit Clinic, SC (the Clinic),

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

in the Clinic's small claims action to collect unpaid medical bills. We conclude that Strociek's admissions resulting from his failure to respond to the Clinic's discovery request left no genuine issues of fact to be tried. Accordingly, we affirm.

¶2 The Clinic sued Strociek in small claims court to collect on a debt for medical services provided during a three-day hospital stay in October 2004. Strociek filed an answer, asserting that the Clinic's claim was fraudulent because he lacked the capacity to give his consent to the provision of medical services because he was heavily medicated. The Clinic moved for summary judgment.

¶3 The Clinic served requests for admission (with interrogatories and a request for production of documents) by mail to Strociek. The Clinic later re-mailed the requests for admission after it was discovered that Strociek had moved. It is undisputed that Strociek did not respond to the admission requests within thirty days as required by WIS. STAT. § 804.11(1)(b), nor did he seek an extension of time to file a response.

¶4 A court commissioner held a hearing on the Clinic's summary judgment motion. The commissioner granted the motion and Strociek sought a de novo hearing before the circuit court.

¶5 Strociek filed an affidavit-brief opposing the motion for summary judgment reasserting his allegations that he did not consent to the provision of services. He avers that he had an inner ear infection, and suggests that this was not serious enough to warrant his hospital stay. The circuit court held a hearing and granted the Clinic's motion for summary judgment. The circuit court's summary judgment order states that the court deemed the requests for admission

admitted by Stociek's failure to reply as required by WIS. STAT. § 804.11(1)(b), and, as a result, no disputed issues of fact existed for trial. Strociek appeals.

¶6 Whether the circuit court properly granted summary judgment is a question of law that an appellate court reviews de novo. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08. Summary judgment may be based upon a party's failure to respond to a request for admission, even where the substance of the admissions has been denied in the pleadings. *See* ***Bank of Two Rivers v. Zimmer***, 112 Wis. 2d 624, 630-31, 334 N.W.2d 230 (1983).

¶7 The Clinic contends that it is entitled to summary judgment because Strociek's admissions that resulted from his failure to respond to the Clinic's discovery requests left no material issues of fact for a jury to resolve. Based on our review of the record on summary judgment, we agree.

¶8 The Clinic has submitted copies of invoices for services rendered to Strociek, a copy of an agreement of admission signed by Strociek's wife, and a form signed by Strociek consenting to have his physicians perform a procedure on him and refusing to consent to a blood transfusion. The record includes the Clinic's requests for admission, to which Strociek failed to respond. The requests asked Strociek to admit that, among other things, he had no facts upon which to dispute that he had received the services indicated in the unpaid medical bills, and that he consented to the provision of these services.

¶9 Strociek's affidavit reasserts that he did not consent to the provision of services. He avers that the person who signed the admission agreement could

not have been his wife because he is not married. He asserts: "Defendant has no wife and not married …. Who signed admission? Staff. Defendant was incapacitated." He avers that he had an inner ear infection, and suggests that this was not serious enough to warrant his hospital stay. He states: "The only thing wrong was that I had an inner ear infection!"

¶10 On the affidavits and pleadings alone, it would appear that an issue of fact exists as to whether Strociek consented to the provision of services. However, we conclude that the unanswered and thereby admitted requests for admission are dispositive. In general, an admission defeats other contrary assertions of a party on summary judgment. "[T]he mandatory language of section 804.11(2)[2] can foreclose all pertinent issues of fact on a motion for summary judgment." ***Bank of Two Rivers***, 112 Wis. 2d at 631. Therefore, we conclude that the admission that Strociek consented to the provision of services defeats Strociek's claims in his affidavit that he did not consent to the provision of services.

¶11 As for Strociek's suggestion that his inner ear infection did not warrant the medical services provided to him, this statement fails to raise a material issue of fact because it is conclusory and unsupported by expert medical opinion. To be a material fact, statements regarding the necessity for medical treatment and the reasonableness of charges for such treatment must be supported by the opinion of a physician or other professional with relevant expertise. *See*

[2] WISCONSIN STAT. § 804.11(1)(b) states in pertinent part: "The [request for admission] is admitted unless, within 30 days after service of the request … the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party."

Dean Med. Ctr., SC v. Frye, 149 Wis. 2d 727, 733, 439 N.W.2d 633 (Ct. App. 1989). This is because "medical necessity and reasonableness of medical charges are beyond the ken of lay persons." ***Id.*** A statement about such matters by a lay person is merely an opinion, and is usually insufficient to raise a question of fact on summary judgment.[3] *See* ***id.***

¶12 Our review of the summary judgment submissions and other materials discloses no other material issues of fact that would preclude summary judgment in favor of the Clinic. We therefore affirm the circuit court's order granting the Clinic's motion for summary judgment.

By the Court.—Judgment and order affirmed.

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

[3] The Clinic submitted an affidavit from Strociek's attending physician who avers that the treatment provided was medically necessary and consistent with recognized professional standards. 25:1 Strociek provides no expert evidence to counter this affidavit.