

**COURT OF APPEALS
DECISION
DATED AND FILED**

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 § 808.10 and RULE 809.62, STATS.

OCTOBER 5, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. **98-3459-FT**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

MARY KASAR,

PLAINTIFF-APPELLANT,

v.

**PETER PALY, MILWAUKEE COUNTY, A MUNICIPAL
CORPORATION AND CONTINENTAL CASUALTY
INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
LEE E. WELLS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Mary Kasar appeals from the trial court's order granting summary judgment which resulted in the dismissal of her case. The issue is whether the trial court properly dismissed the case because Kasar had not

presented testimony from an expert substantiating her medical malpractice claim. We affirm.¹

¶2 Kasar brought this action against Peter Paly, a nurse, Milwaukee County, and Continental Casualty Insurance Corporation. She claimed that Paly negligently injected her with Demerol, causing serious and permanent injuries to her leg. Kasar named Dr. Neil Pollack, who had treated Kasar for her leg injury, as an expert testifying on the issue of liability. After Pollack's deposition, Paly moved for summary judgment because Pollack had not testified that Paly was negligent. The trial court granted summary judgment in favor of Paly dismissing the case.

¶3 In reviewing a grant or denial of summary judgment, we apply the same standard as the trial court. *Pierce v. Colwell*, 209 Wis.2d 355, 361, 563 N.W.2d 166, 168 (Ct. App. 1997). "A motion for summary judgment should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

¶4 Kasar argues that summary judgment should not have been granted because Pollack "never said he was incapable of rendering an opinion as to whether or not Paly acted negligently" and Paly has not established that Kasar "is unable to prove ... liability in this case."

¶5 Kasar's argument misses the point. Kasar had an obligation to present expert testimony substantiating her claim that Paly acted negligently. *See Kasbaum v. Lucia*, 127 Wis.2d 15, 20, 377 N.W.2d 183, 185 (Ct. App. 1985) (A

¹ Pursuant to this court's order dated February 5, 1999, this case was submitted to the court on the expedited appeals calendar. *See* RULE 809.17, STATS.

medical malpractice claim must be substantiated by expert testimony.). Kasar informed the trial court that Pollack would testify as an expert on the issue of liability, but this witness offered no opinion on Paly's alleged negligence during his deposition. Kasar did not, even by offer of proof, indicate that she had an expert who was able to opine that Paly acted negligently in administering the shot to Kasar. Because Kasar had not found an expert willing to testify on her behalf, Paly was entitled to judgment as a matter of law.

By the Court.—Order affirmed.

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

