

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 20, 2008**

David R. Schanker  
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. 2007AP2496**

**Cir. Ct. No. 2006CV3088**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MARK KYPKE,**

**PLAINTIFF-APPELLANT,**

**TOMMY G. THOMPSON,**

**INVOLUNTARY-PLAINTIFF,**

**v.**

**PREVIANT, GOLDBERG, UELMEN, GRATZ, MILLER, BRUEGGEMAN, S.C.,  
LARRY B. BRUEGGEMAN, RYAN J. HETZEL, AND INSURANCE CARRIER Y,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Dane County:  
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Vergeront, Lundsten and Bridge, JJ.

¶1 PER CURIAM. Mark Kypke appeals from a judgment dismissing his legal malpractice claim. We affirm.

¶2 Kypke's complaint alleged that the defendants committed legal malpractice in pursuing his claim of legal malpractice against attorneys who had pursued his claim of medical malpractice. The circuit court granted the defendants' motions for summary judgment.

¶3 Kypke's arguments are sketchy and not well developed. He first argues that the circuit court erroneously exercised its discretion by preventing him from deposing witnesses. Kypke does not tell us when this decision was made. He appears to be referring to a decision made by the court on March 29, 2007. At that hearing, the court gave Kypke ninety days to obtain reports from legal and medical experts who would testify on his behalf at trial. Kypke asked if he could depose some of the defendant attorneys in the meantime, and the court said he could not until he had obtained experts. On appeal, Kypke does not explain why this was an unreasonable decision by the court, or how it affected his prosecution of the case. We reject the argument.

¶4 Kypke argues that the court erroneously exercised its discretion by denying his motion to extend the time for him to name his legal and medical experts. He appears to be referring to a decision on July 6, 2007, in which the court denied such a motion on the ground that Kypke had been unable to obtain experts within the extended time already granted, and there was no indication that more time would improve his chances of success. However, the court also then set a briefing schedule for summary judgment, during which Kypke would have been able to obtain an expert and oppose any such motion. Again, Kypke does not

explain what he believes was wrong with this conclusion. The court appears to have reached a reasonable decision.

¶5 Kypke argues that the court erred by granting the defendants' motion for a stay of discovery. Kypke appears to be referring to a decision on July 6, 2007. The court appears to have stayed further discovery in light of Kypke's inability to name expert witnesses. Again, Kypke does not explain what he believes was wrong with this conclusion. The court appears to have reached a reasonable decision.

¶6 Kypke argues that the court erred by dismissing his complaint on the ground that he failed to produce legal and medical experts. He does not explain what he believes was wrong with this decision. He does not dispute that expert opinion was required for his case, or that summary judgment is proper if the plaintiff does not name experts. He has not shown a basis to reverse this decision.

¶7 Kypke argues that the court erroneously exercised its discretion when it told defendants' attorneys that they should file a protective order if he tried to depose anyone, and the court would grant the order. Even if this occurred, this was not a ruling by the court, and so there is no decision for us to review.

¶8 Kypke argues that the court erred in denying his request to subpoena one of his treating physicians to trial to testify as his expert. The court held that this was not permitted under *Burnett v. Alt*, 224 Wis. 2d 72, 589 N.W.2d 21 (1999). Kypke appears to argue that *Burnett* was in conflict with general legal principles allowing litigants to obtain evidence from every person. Even if this is true, we have no authority to overrule decisions of the Wisconsin Supreme Court, and so we do not address this issue further.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

