

2004 WI 129

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 00-0072
(L.C. No. 98CV000229)

STATE OF WISCONSIN

:

IN SUPREME COURT

Yvette M. Maurin, as Personal
Representative of the Estate of Shay
Leigh Maurin, deceased,

Plaintiff-Respondent-Cross-
Appellant,

Yvette M. Maurin,, Individually and as
Personal Representative of the Estate of
Shay Leigh Maurin, and Joseph Maurin,

Plaintiff-Respondent,

Quad/Graphics, Inc.,

Plaintiff,

v.

Gordon Hall, M.D., Physicians Insurance
Company of Wisconsin, Inc., and Patients
Compensation Fund,

Defendants-Appellants-Cross-
Respondents.

FILED

OCT 29, 2004

Cornelia G. Clark
Clerk of Supreme Court

MOTION for reconsideration. *Reconsideration denied.*

¶1 PER CURIAM. The motion for reconsideration is denied, with \$50.00 costs.

¶2 The motion filed by the Litigation Section of the State Bar to file an amicus memorandum brief and statement in support of the motion for reconsideration is granted.

¶3 LOUIS B. BUTLER, JR., J., did not participate.

¶4 SHIRLEY S. ABRAHAMSON, C.J. (*dissenting*). I continue my dissent because in my opinion the court has not acted fairly or wisely.

¶5 The court's procedure in the present case goes directly to its institutional integrity. As was stated in the concurrence to the majority opinion, the majority decided the case on an issue not raised, briefed or argued by the parties.

¶6 The motion for reconsideration is based on the public good derived from an appellate process that ensures a full hearing of adversarial perspectives. The fair way to conduct judicial business is to allow the parties (and any amicus) an opportunity to dispute a rationale initiated and relied upon by the court.

¶7 If the adversarial appellate process is defective, and I think it was in the instant case, the process not only poses a threat to the adversarial system and to institutional integrity but also substantially increases the likelihood the court will reach a wrong decision on the merits. The motion for reconsideration raises important considerations not contemplated in the majority opinion.

¶8 For the reasons set forth, I would set this case for re-argument. I dissent from the denial of a motion for reconsideration.

¶9 I am authorized to state that Justice N. PATRICK CROOKS joins this dissent.

