

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 19, 2007

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. 2006AP145

Cir. Ct. No. 2000CV111

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ALBERT H. BEAVER,

PLAINTIFF-APPELLANT,

BARBARA BEAVER,

PLAINTIFF,

v.

COUNTY OF DOOR,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Door County:
THOMAS S. WILLIAMS, Judge. *Affirmed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Albert Beaver appeals a summary judgment dismissing his action against Door County, finding it frivolous, and awarding the

County \$33,297.78 attorney's fees. He argues: (1) the trial court erroneously concluded that issue preclusion barred Beaver's claims against the County; (2) summary judgment was inappropriate because there are outstanding issues of material fact and the judgment is based on errors of law; (3) the record does not support the trial court's finding that Beaver continued to pursue claims on behalf of a corporation in addition to his daughter and ward, Emily, after the court ruled that Beaver, a suspended attorney, could not represent any person or entity other than himself; and (4) the court improperly exercised its discretion when it imposed sanctions against Beaver. We reject these arguments, affirm the judgment and remand the cause to amend the judgment to include the reasonable attorney fees the County incurred in this appeal.

BACKGROUND

¶2 This action arises out of the detention, hospitalization and protective placement of Beaver's developmentally disabled adult daughter, Emily. On August 16, 1999, Emily was taken into custody and transported to a hospital after she attacked and bit her stepmother, Barbara, while Barbara was driving a car, and Emily endangered herself and others by walking in traffic. The next day, Beaver asked the Door County Department of Community Programs to research residential options for Emily because she could not come home due to conflicts with Barbara. On August 17, a Brown County judge dismissed the Door County commitment action, reciting that Emily had been discharged from the hospital. On August 18, the Door County court, Judge John Koehn presiding, found probable cause for a WIS. STAT. ch. 55¹ protective placement and placed Emily at

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Cottonwood Center, an inpatient intermediate care facility. Beaver initially refused to consent to her placement there. On August 20, Judge Dennis Luebke, acting as a Door County judge, determined that the initial order dismissing the petition was invalid because the Brown County judge was not assigned to the case and the order was based on the false premise that Emily had been discharged. Emily was placed at Cottonwood Center and eventually failed to return after a home visit. The County decided not to further pursue the matter. By stipulation of all of the parties on January 17, 2000, the protective placement petition was dismissed by Judge Koehn.

¶3 Emily, by her father and guardian, Beaver, then sued Judge Koehn seeking a declaration of his misconduct, injunctive relief and referral to the Judicial Commission. Judge Koehn stipulated that he would not preside over any cases involving Emily or Albert Beaver in return for dismissal of the action. By order dated April 28, 2000, based on the stipulation, the court enjoined Judge Koehn from presiding over any judicial proceedings involving Emily or Albert Beaver and the action was dismissed on the merits with prejudice.

¶4 Beaver then commenced an action in Emily's name against the County's developmental disabilities coordinator and the corporation counsel for their roles in Emily's detention and hospitalization. The trial court determined that Beaver could not represent Emily because his license to practice law had been suspended. Beaver retained attorney Lynne Layber to represent Emily in that action. Layber filed amended complaints adding Albert and Barbara Beaver as plaintiffs and adding the sheriff's deputies who assisted in Emily's detention as defendants. The amended complaint alleged maltreatment of Emily, false imprisonment, malicious prosecution, abuse of process, negligent and intentional infliction of emotional distress and violation of Emily's civil rights. The trial

court determined that the defendants were entitled to immunity for their actions, the complaint failed to state a claim for which relief could be granted, and the action was frivolous.

¶5 While that action was pending, Beaver commenced this lawsuit against Door County seeking a declaratory judgment, a permanent injunction on behalf of Emily and “all program participants,” compensatory and punitive damages for an alleged breach of contract and violation of the standards imposed by the Medical Assistance Waiver Manual. The trial court granted summary judgment dismissing the action, concluding that Beaver’s allegations of “wrongfulness” and “unlawfulness” by the County were decided in his action against the County employees and were therefore barred by issue preclusion. The court further determined that Beaver was not personally a party to the contract with the County and, as a suspended attorney, he was not authorized to represent Beaver Management Corporation, the actual party to the contract. Beaver identified no portion of the Medical Assistance Waiver Manual that provides a right of private enforcement.

¶6 Finally, the court ordered sanctions against Beaver based on his insistence that he has the right to practice law despite his suspension, his choice to ignore the court’s explanation that the stipulation and judgment in the action against Judge Koehn has no precedential or preclusive effect in this case, his role in causing Emily’s continued hospitalization, his repetitious attempts at discovery on issues already ruled on by the court, his failure to respond to the County’s interrogatories and requests for admission and failure to obey court orders. The court concluded that the action was frivolously commenced and continued under either WIS. STAT. § 802.05 or § 814.025 (2003-04).

ANALYSIS

¶7 The trial court correctly concluded that the “wrongfulness” and “unlawfulness” of the County’s agents and employees was decided in Emily’s action against them, and the doctrine of issue preclusion applies. Although the heading in Beaver’s brief on appeal challenges that conclusion, the text of his brief offers no reason for overturning it. Issue preclusion bars relitigation of issues actually litigated. *See Lindas v. Cady*, 183 Wis. 2d 547, 558, 575 N.W.2d 458 (1994). The court in the action against the County’s agents and employees reviewed each of the claims against each of the defendants and concluded that the complaint failed to state a claim for which relief could be granted. The conclusion that Beaver failed to allege any actionable wrongdoing by the County’s agents and employees applies equally to the County itself.

¶8 Beaver argues that the trial court ignored the doctrine of *stare decisis* in deciding this case because the result is inconsistent with the decision in Emily’s lawsuit against Judge Koehn. *Stare decisis* relates to an appellate court’s fidelity to precedent and has no application in this case. To the extent Beaver argues issue or claim preclusion, the argument fails because no issues were actually litigated in Emily’s action against Judge Koehn. *Id.* No evidence was taken and no findings of fact were made. The matter was settled by stipulation. Claims preclusion does not apply because the two cases involve different parties and entirely different claims. *See Kruckenberg v. Harvey*, 2005 WI 43, ¶21, 279 Wis. 2d 520, 594 N.W.2d 879.

¶9 The trial court appropriately granted summary judgment because there are no outstanding issues of material fact and the County was entitled to judgment as a matter of law. *See WIS. STAT. § 802.08(2)*. Beaver argues that a

question of fact exists regarding who is a party to the contract. The contract is between the Door County Department of Community Programs and Beaver Management Corporation. The signature page, which Beaver failed to attach to the complaint, was included in the County's supporting papers. The contract was signed by Albert and Barbara Beaver in their corporate capacities. Albert, Barbara and Emily Beaver are not personally parties to the contract.

¶10 Beaver Management Corporation, the true party to the contract, cannot be represented by Beaver because his license to practice law is suspended. *See Jadair Inc. v. United States Fire Ins. Co.*, 209 Wis. 2d 187, 202-03, 562 N.W.2d 401 (1997). Therefore, Beaver's contract claims were not properly commenced. Beaver argues that he has the capacity to contract for and on behalf of Emily as her guardian because she is incompetent. However, Emily is also not a party to the contract. Beaver's signature on the contract does not indicate that he is signing on behalf of Emily, but only in his capacity as a corporate officer. Beaver offers no authority for the proposition that a private right of action was created under chapter IX of the Medical Assistance Waiver Manual.

¶11 Beaver also argues that the summary judgment was based on errors of law, arguing that the ultimate stipulated dismissal of the protective placement petition and the stipulated resolution of the action against Judge Koehn made Emily the "prevailing party" in those actions. Beaver argues that the court's decision in this case is inconsistent with the results in the previous cases. He provides no authority for the proposition that an order entered solely on the basis of the parties' stipulation and in the absence of any findings of fact or conclusions of law is the equivalent of a judgment in favor of either party. The cases Beaver cites are inapposite. More significantly, Beaver fails to demonstrate any inconsistency in the trial court's decisions.

¶12 Beaver next argues that the trial court’s finding that he continued to pursue claims on behalf of Emily and other program participants is clearly erroneous. He notes that he hired attorney Lynne Layber. The record in this case does not establish that Layber prosecuted this action. Her activities were limited to the action against the County’s agents and employees. She made no appearances and filed no pleadings in this action. The record shows that Beaver continued to pursue discovery in this matter on behalf of Emily and the corporation after he was warned that these activities constitute an unauthorized practice of law. The trial court’s finding that Beaver persisted in the unauthorized practice of law is not clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶13 Beaver argues that the trial court erroneously exercised its discretion by finding the action frivolous and awarding the County its attorney fees. WISCONSIN STAT. § 814.025 (2003-04) was in effect at all material times during this action. Beaver does not argue that the court misapplied the factors set out in § 814.025(3)(b). Rather, he attempts to apply principles from negligence actions such as foreseeability, and argues that it was “objectively reasonable” for him to proceed because the court provided no notice that his conduct violated any rule. The law regarding the elements of legal malpractice do not apply to the question of whether Beaver knew or should have known his claims were meritless. Beaver knew the facts relating to Emily’s detention and hospitalization and knew that he signed the contract in his corporate capacity. He was repeatedly advised that the claims of *stare decisis* had no merit, but persisted in attempting to relitigate that issue.

¶14 Finally, the respondents have filed a motion in this court to find the appeal frivolous. Beaver has not filed a response to that motion. When a claim was correctly adjudged to be frivolous in the trial court, it is frivolous per se on

appeal. *See Riley v. Isaacson*, 156 Wis. 2d 249, 262, 456 N.W.2d 619 (Ct. App. 1990). To be made whole, the County is entitled to the reasonable attorney fees it incurred in this appeal. Therefore, we affirm the judgment and remand the matter with directions to amend the judgment to include the County's reasonable attorney fees incurred in this appeal.

By the Court.—Judgment affirmed and cause remanded.

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

