

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2009

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. 2008AP1780

Cir. Ct. No. 2007SC2370

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

REEDSBURG AREA MEDICAL CENTER,

PLAINTIFF-RESPONDENT,

V.

ALAN A. HINZE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
PATRICK TAGGART, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Alan Hinze appeals from a small claims judgment in Reedsburg Area Medical Center's action to recover medical fees from Hinze.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

Hinze argues that he does not owe the amount the trial court found he owed to Reedsburg. We conclude that we, an appellate court, have no basis to disturb the trial court's decision. An appellate court does not conduct a second trial. *See Johnson v. Merta*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). Instead, we consider whether the trial court erred, and if so, whether the error requires a new trial. *See* WIS. STAT. § 805.18(2). Because the record in this case does not reveal any errors that require a new trial, we affirm.

Background

¶2 Alan Hinze received medical services at Reedsburg Area Medical Center in 2005. Reedsburg tried unsuccessfully to obtain payment from Hinze to satisfy Hinze's outstanding balance. During this period, Hinze sought an itemized statement from Reedsburg, which he did not receive until December 2006.

¶3 Reedsburg filed a small claims action against Hinze in November 2007. Following trial, the circuit court found that Hinze owed Reedsburg the amount Reedsburg claimed. Hinze appeals.

Discussion

¶4 Ultimately, Hinze is arguing that the trial court was wrong in determining that Hinze did, in fact, owe Reedsburg the amount it claimed. He raises four specific arguments attacking the trial court's decision.² We address each argument in turn.

² Reedsburg does not respond to the specific arguments raised by Hinze. Instead, it reframes Hinze's appeal as presenting the following issue: "Was the evidence sufficient to prove that [Hinze] owed [Reedsburg] for medical services provided?" Hinze did not argue on appeal that the evidence was not sufficient to support the court's decision. However, we understand that

(continued)

¶5 Hinze argues first that Reedsburg violated pretrial conference procedures by failing to provide him with required documents. We will assume that this is true. However, Hinze has not explained why we must reverse the court's decision because the court failed to sanction Reedsburg for violating local trial court rules. We generally leave enforcement of local trial court rules to the trial court. *See Kotecki & Radtke, S.C. v. Johnson*, 192 Wis. 2d 429, 447-48, 531 N.W.2d 606 (Ct. App. 1995). Even if we agree with Hinze that Reedsburg violated local trial court rules by failing to provide Hinze with certain documents, we cannot reverse the trial court's decision declining to dismiss Reedsburg's claim against Hinze as a sanction unless it erroneously exercised its discretion in making that decision. *See id.* at 448. We have no basis to conclude that the trial court's decision not to sanction Reedsburg was an erroneous exercise of its discretion.

¶6 Next, Hinze argues that Reedsburg failed to provide him with the itemized statement he required within the necessary time frame to dispute coverage with his insurance provider, and that Reedsburg violated HIPAA (the Health Insurance Portability and Accountability Act) by improperly disclosing PHI (protected health information) by providing those itemized statements to other parties, including the court, Reedsburg's attorney, and collection agencies. However, assuming that Hinze is right that the trial court should have found that Reedsburg did not provide Hinze with the itemized statement within the required time and that it violated HIPAA by improperly disclosing PHI by providing those

Reedsburg is responding to Hinze's underlying argument: that the trial court was wrong to find he did, in fact, owe Reedsburg the amount it claimed for medical services. It is sufficient for purposes of this appeal that we note that Reedsburg is right that the trial court made findings of fact that support its decision, and that we have no basis to disturb those findings. *See Wis. Stat. § 805.17(2)* ("Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.").

statements to others, this does not establish a basis for us to reverse the trial court's decision that Hinze owes Reedsburg money for unpaid medical bills.

¶7 The problem with Hinze's arguments is that he argues that the court was wrong about issues having nothing to do with whether he owes Reedsburg money. The issue in this case was whether Hinze owed Reedsburg money for unpaid medical bills. Hinze argues that if Reedsburg had provided him with the itemized statement, he could have obtained coverage from his insurance company for the bills Reedsburg is asking him to pay. Whether or not this is true, it does not address the underlying question of whether or not Reedsburg properly billed Hinze for medical services it provided to him. Hinze's arguments about the itemized statements do not go to whether he owed Reedsburg money.³

¶8 Finally, Hinze argues that we should reverse the trial court's decision because a notice of briefing schedule in this case had an incorrect heading that was later corrected. We cannot reverse on that basis. There is a difference between trial court *error* and *reversible error*. Only procedural errors that are *reversible*—that is, errors that affected an appellant's substantial rights—support reversal of a trial court's decision. *See* WIS. STAT. § 805.18(2). In fact, WIS. STAT. § 805.18(2) forbids us from reversing a judgment unless the error complained of affects the substantial rights of the party seeking reversal. The supreme court has explained that an error only affects "substantial rights" when

³ If Hinze is arguing that Reedsburg is liable to him for damages caused by Reedsburg's negligence in failing to provide him with itemized statements, he would have needed to file a counterclaim for those damages. Additionally, he would have to provide evidence to support his claim that Reedsburg failed to provide him with an itemized statement after he requested one and that had he received the statement, he would have obtained coverage from his insurance carrier. We do not have any of that evidence in the record before us.

there is “a reasonable possibility that the error contributed to the outcome of the action or proceeding at issue.” *Evelyn C. R. v. Tykila S.*, 2001 WI 110, ¶28, 246 Wis. 2d 1, 629 N.W.2d 768. Further, the supreme court has explained that “[a] reasonable possibility of a different outcome is a possibility sufficient to undermine confidence in the outcome. If the error at issue is not sufficient to undermine the reviewing court’s confidence in the outcome of the proceeding, the error is harmless.” *Id.* (citation omitted). There is no way to interpret an incorrect heading on a notice of briefing schedule as affecting Hinze’s substantial rights.

¶9 In sum, we have no basis to disturb the trial court’s decision in this case. Accordingly, we affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

