

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 1, 2004

Cornelia G. Clark
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. 02-3361
STATE OF WISCONSIN**

Cir. Ct. No. 99-CV-914

**IN COURT OF APPEALS
DISTRICT IV**

STEVEN A. BOETCHER AND HARRIET BOETCHER,

PLAINTIFFS-APPELLANTS,

**WISCONSIN PHYSICIANS SERVICE CORPORATION,
MIDWEST SECURITY INSURANCE COMPANY, AND
JEFFERSON COUNTY HUMAN SERVICES & HEALTH
DEPARTMENT,**

INVOLUNTARY-PLAINTIFFS,

V.

**WISCONSIN PATIENTS COMPENSATION FUND, PETER
LEONOVICZ, M.D., ARTHUR BENZSCHAWEL, C.R.N.A.,
AND DEAN MEDICAL CENTER,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dane County:
JOHN C. ALBERT, Judge. *Affirmed.*

Before Dykman, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Steven and Harriet Boetcher appeal the circuit court's judgment in favor of Wisconsin Patients Compensation Fund, Peter Leonovicz, M.D., Arthur Benzschawel, C.R.N.A., and Dean Medical Center. They argue that the circuit court should have granted their motion for a new trial based on jury misconduct.¹ We affirm.

¶2 A party seeking a new trial on the grounds that jurors were prejudiced by extraneous information must first show that the information was improperly brought to the jury's attention. *State v. Eison*, 194 Wis. 2d 160, 172, 533 N.W.2d 738 (1995). Juror testimony may be introduced to establish this point, as provided by WIS. STAT. § 906.06(2) (2001-02).² That statute governs the admissibility of statements made by a juror or matters occurring during the jury's deliberation and provides for broad prohibition against allowing such testimony, "except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror." *Id.* If the circuit court finds that extraneous information was brought before the jury, it must then determine, as a matter of law, whether "the extraneous information constituted prejudicial error requiring reversal of the verdict." *Eison*, 194 Wis. 2d at 177.

¹ The circuit court did not enter an order on the motion for a new trial within the prescribed time limit. Therefore, the motion is considered denied. *See* WIS. STAT. § 805.16(3) (2001-02).

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶3 The Boetchers introduced the affidavit of juror Marsha Furry in support of their motion. Furry’s affidavit stated that during the course of deliberations, juror Andrew Bouwma told the group of jurors that one of the alternate jurors, Mike Rawlings, “was against the plaintiffs’ winning the case and that he did not believe the plaintiffs should be compensated in any way.” The affidavit also stated that Rawlings “was well-liked and well-respected by the jurors, and the fact that he was against the plaintiffs’ winning the case had an influence on the jurors.”

¶4 The respondents argue that Furry’s affidavit should not be admitted for a number of reasons. We do not address these arguments because we conclude that, even if the allegations in Furry’s affidavit were admissible, Boettcher is not entitled to a new trial based on the information Furry provided. The jurors heard six days of testimony and other evidence. The jurors then deliberated for nearly nine hours. Under these circumstances, it is not reasonable to believe that jurors would have been affected by the unexplained opinion of one alternate juror that the plaintiffs should not be compensated. We conclude as a matter of law that the single comment by the alternate juror about his opinion of the case did not prejudice the jury.

By the Court.—Judgment affirmed.

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

