



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

May 14, 2014

To:

Hon. Frank D. Remington
Circuit Court Judge, Br 8
Dane County Courthouse
215 South Hamilton, Rm 4103
Madison, WI 53703

Colleen L. Meloy
David J. Pliner
Corneille Law Group, LLC
7618 Westward Way, Ste. 100
Madison, WI 53717

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
215 South Hamilton, Rm. 1000
Madison, WI 53703

Ollie Dail Carver-Thomas
Gerald Thomas
1505 Vondron Road
Madison, WI 53716

You are hereby notified that the Court has entered the following opinion and order:

2012AP2122

Ollie Dail Carver-Thomas v. David R. Shearer, M.D.
(L.C. # 2011CV2026)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Ollie Carver-Thomas and Gerald Thomas (collectively “the Thomases”), pro se, appeal a summary judgment dismissing their medical malpractice suit against David Shearer, M.D., Joseph Wallner, and Dean Health Systems (collectively, “Shearer”). The Thomases contend that the purported violation of a supreme court rule requires reversal of the judgment “on procedural grounds.” We reject the Thomases’ argument, and summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1) (2011-12).¹

In April 2011, the Thomases, then pro se, filed the underlying medical malpractice action. Attorney Michael P. Erhard later filed a notice of appearance on the Thomases’ behalf.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

At a scheduling conference in January 2012, Erhard advised the court that the Thomases may be retaining different counsel. The conference was adjourned to the following month, when Erhard appeared with Attorney Alexander McH. Memmen. A continuance was granted after the court was advised that Memmen would be substituted for Erhard. Memmen subsequently filed a notice of substitution. At the continued hearing, the court established a scheduling order setting a June 27, 2012 deadline for the Thomases to disclose their lay and expert witnesses with reports.

When the Thomases failed to timely disclose their witnesses by the June 27 deadline, Shearer moved to bar them from naming any expert and also moved for summary judgment. The court granted the motion to bar the Thomases from calling expert witnesses and took the summary judgment motion under advisement. Memmen moved to withdraw as counsel, citing a fundamental disagreement with his clients about how the case should proceed. He also sought additional time to respond to Shearer's motions. Three days later, the Thomases submitted pro se correspondence to the court seeking an opportunity to adequately present their case and claiming that they had "not been *communicated with and reasonably informed by counsel in a timely manner.*" On that same day, the court denied Memmen's motion to withdraw and motion to extend the time for responding to Shearer's motion to bar the Thomases' expert witnesses at trial, as that motion had already been granted. The court, however, gave the Thomases ten days to respond to Shearer's summary judgment motion.

The next day, Memmen filed a motion to vacate the order barring the Thomases' expert witnesses at trial. At the motion hearing, the Thomases appeared personally in court with Memmen. The court ultimately denied the motion to vacate, granted Shearer's summary judgment motion and dismissed the action. This appeal follows.

The Thomases contend that a purported violation of the supreme court rule governing substitution of attorneys requires reversal of the judgment on procedural grounds. We are not persuaded. The subject rule, SCR 11.02(3), provides: “No order for the substitution of an attorney for a party may be made without consent signed by the party and his or her attorney; or for cause shown upon such terms as shall be just, and on such notice as the court or judge shall direct.” The Thomases claim that there is no order for substitution and no written consent by them or Erhard for Memmen’s substitution. According to the Thomases, all proceedings following the “flawed Substitution” should not be recognized by this court and the judgment dismissing their complaint should therefore be reversed.

The Thomases, however, provide no authority for the proposition that this purported violation of SCR 11.02(3) constitutes reversible error. Further, Erhard agreed to the substitution and, at a minimum, the Thomases acquiesced to Memmen’s representation. Even were we to assume that a violation of the rule could constitute grounds for reversal, the Thomases have failed to show that this procedural error affected their substantial rights. *See* WIS. STAT. § 805.18(2) (we will not reverse judgment based on error that did not affect party’s substantial rights).

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals