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DISTRICT II

March 2, 2016

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

2015AP386

The Estate of Delores E. Wiersum v. Thedacare, Inc.
(L.C. #2013CV824)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

The Estate of Delores E. Wiersum, et al., (the Estate) appeal from a non-final order enforcing an earlier stipulation between the Estate and Thedacare, Inc. d/b/a Heritage Assisted Living, et al. (Thedacare).¹ The Estate contends that the circuit court erred in interpreting the stipulation. Based upon our review of the briefs and record, we conclude at conference that this

¹ This court granted leave to appeal the order. See WIS. STAT. RULE 809.50(3) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version.

case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We reverse the order of the circuit court and remand for further proceedings.

Shortly after midnight on January 17, 2013, Delores E. Wiersum wandered outside the Heritage Assisted Living apartment complex where she lived.² She remained outside without adequate clothes for over four hours, despite the fact that the apartment's staff was required to check on her every two hours. Wiersum died from exposure to the cold shortly after being discovered. She was eighty-five years old at the time.

In July 2013, Wiersum's estate and adult children filed a complaint against Thedacare, alleging claims based primarily on ordinary negligence, custodial negligence, and the safe place statute. Before any discovery had taken place, Thedacare moved to dismiss on the ground that some of the complaint's allegations³ sounded in medical malpractice under WIS. STAT. ch. 655, which requires the filing of a request for mediation prior to commencement of a lawsuit. Alternatively, Thedacare sought partial dismissal of the claims that are not allowed under Chapter 655, including punitive damages claims and wrongful death claims brought by adult children.

In an attempt to clarify the scope of the action, the parties entered into a stipulation on December 12, 2013, which provides as follows:

² The Heritage Assisted Living apartment complex is licensed to operate as a "Residential Care Apartment Complex" as defined in Wisconsin Administrative Code DHS Chapter 89. It is staffed by Thedacare employees.

³ For example, the complaint alleged that Thedacare failed to properly assess Wiersum and prepare an appropriate plan of care for her.

1. Both the Plaintiffs and the Defendants agree that they shall not claim, argue or imply that any of the Defendants or their employees or agents improperly or negligently assessed Delores Wiersum's care needs or that any individual care service plan created for Ms. Wiersum by any of the Defendants or their employees or agents was inappropriate or inadequate to address Ms. Wiersum's needs.
2. Both the Plaintiffs and the Defendants agree that they shall not claim, argue or imply that Ms. Wiersum was not an appropriate candidate for residency at the Heritage Assisted Living Residential Care Apartment Complex or that her residency at the Heritage Assisted Living Residential Care Apartment Complex was inappropriate.
3. Any allegation set forth in the Plaintiffs' Complaint which is inconsistent with or contradicts the terms of this Stipulation is hereby withdrawn by the Plaintiffs and cannot be used as the basis for a claim or cause of action against the Defendants in this lawsuit. Likewise, any defense set forth in the Defendants' Answer which is inconsistent with or contradicts the terms of this Stipulation is hereby withdrawn by the Defendants and cannot be used as a basis for a defense in this lawsuit.
4. The Defendants hereby withdraw their Motion to Dismiss Complaint, and agree that they shall hereafter be precluded from asserting that the Plaintiffs' remaining claims constitute medical malpractice claims and/or are governed by Chapter 655 of the Wisconsin Statutes.

Once discovery began, it became apparent that the parties had a fundamental disagreement over the claims that remained to be litigated and the scope of discovery permissible on those claims. The Estate filed a motion to compel discovery and for sanctions. Thedacare responded with a motion for a protective order. In these motions, both parties raised the stipulation and presented arguments as to how it affected the litigation.

Ultimately, the circuit court addressed the parties' motions and ruled as to the meaning of the stipulation. The court determined that the stipulation barred most of the Estate's non-medical malpractice claims based on ordinary negligence, custodial negligence, and the safe place statute. In particular, it concluded that the Estate would only be "permitted to continue pursuing

negligence claims against [Thedacare] for the failure of its employees to perform a two-hour check on Delores Wiersum or locate her after it was determined that she was missing.” The court limited discovery accordingly. After it entered its order, the Estate filed a petition for leave to appeal, which this court granted.

In this case, we are asked to determine whether the circuit court properly interpreted the parties’ stipulation. The interpretation of a stipulation presents a question of law that we review de novo. *Stone v. Acuity*, 2008 WI 30, ¶21, 308 Wis. 2d 558, 747 N.W.2d 149. In determining the parties’ intentions, the terms of a stipulation “should be given their plain or ordinary meaning.” *Huml v. Vlazny*, 2006 WI 87, ¶52, 293 Wis. 2d 169, 716 N.W.2d 807. If the agreement is not ambiguous, ascertaining the parties’ intent “ends with the four corners of the contract, without consideration of extrinsic evidence.” *Id.*

Reviewing the stipulation at issue here, we conclude that it is unambiguous. We also conclude that the circuit court erred in reading it too broadly. By its plain terms, the stipulation deals with claims sounding in medical malpractice under WIS. STAT. Ch. 655. It does not contain phrases such as “ordinary negligence,” “custodial negligence,” or “safe place.” If the parties wanted the stipulation to reach such claims, they could have drafted the stipulation to say so. Because they did not, the circuit court erred in interpreting the stipulation to bar most of the Estate’s non-medical malpractice claims. Likewise, it erred in limiting discovery accordingly. Therefore, we reverse its order and remand for further proceedings.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and the cause remanded, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals