



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

October 4, 2017

To:

Hon. Shelley J. Gaylord
Circuit Court Judge
215 South Hamilton, Br 6, Rm 5105
Madison, WI 53703

Kevin Michael Fetherston
Peterson, Johnson & Murray, S.C.
788 N. Jefferson Street, Suite 500
Milwaukee, WI 53202-4792

Carlo Esqueda
Clerk of Circuit Court
215 S. Hamilton, Rm. 1000
Madison, WI 53703

Colleen A. Foley
Milwaukee County Corporation Counsel
901 N. 9th St. #303
Milwaukee, WI 53233-1425

Thomas M. Devine
Devine Hahn S.C.
840 Lake Ave., Ste. 300
Racine, WI 53403-1566

David C. Rice
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Anthony P. Hahn
Devine Hahn S.C.
840 Lake Ave., Ste. 300
Racine, WI 53403-1566

Andre Wingo
P.O. Box 080174
Milwaukee, WI 53208

Terry E. Johnson
Peterson, Johnson & Murray, S.C.
788 N. Jefferson Street, Suite 500
Milwaukee, WI 53202-4792

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

2016AP1606

Andre Wingo v. Progressive Insurance, Rick E. Hills, Karen Scasny, Hills Legal Group, LTD, Milwaukee County, and William Sosnay (L.C. # 2016CV549)

Before Lundsten, P.J., Sherman and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Andre Wingo, pro se, appeals a summary judgment dismissing Wingo's action for damages and injunctive relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We summarily affirm.

On February 29, 2016, Wingo filed this action against Progressive Insurance, Attorney Rick Hills and Hills Legal Group, Milwaukee County Clerk Karen Scasny, the Honorable William Sosnay, and Milwaukee County. Wingo alleged the following facts in his complaint:

- Wingo filed a lawsuit against Progressive in Milwaukee County Circuit Court;
- The files in that case included Wingo's health care records;
- Progressive retained Hills and Hills Legal Group to defend the lawsuit;
- Progressive released Wingo's health care records to Hills;
- Hills and Hills Legal Group received and reviewed Wingo's health care records;
- Hills and Hills Legal Group released Wingo's health care records to the Milwaukee County Circuit Court;
- Scasny, as a clerk for Milwaukee County, received and reviewed Wingo's health care records;
- Scasny released Wingo's health care records to Judge Sosnay;

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

- Judge Sosnay reviewed Wingo's health care records; and
- All of the above disclosures and reviews were without Wingo's consent.

Wingo's complaint also alleges that the defendants conspired to violate Wingo's rights under the protected health care rights law and to use Wingo's health care records for pecuniary gain, violating state law.

Wingo sought injunctive relief to prevent Progressive from releasing Wingo's health care records and to require Hills Legal Group and Milwaukee County to return the health care records to Wingo. He also sought damages under state law and 42 U.S.C. § 1983.

On March 14, 2016, Wingo moved for a temporary injunction to prevent Progressive from releasing Wingo's health care records and to require Hills Legal Group and Milwaukee County to return the health care records to Wingo.

Judge Sosnay, Scasny, and Milwaukee County moved to dismiss Wingo's claims for improper service, failure to file notice of the claim, and failure to state a claim. Scasny and Milwaukee County submitted supporting affidavits.

Hills, Hills Legal Group, and Progressive moved for summary judgment on grounds that they were entitled to disclose the health care records for purposes of defending against Wingo's claims and that they had not violated the protected health care law. They submitted supporting affidavits.

On June 30, 2016, the circuit court granted summary judgment to all of the defendants and dismissed Wingo's claims. The court determined that Wingo had not alleged any

constitutional violations to support a claim under 42 U.S.C. § 1983; that service as to Judge Sosnay, Scasny, and Milwaukee County was improper and that Wingo failed to file the required notice of claim as to the state claims, *see* WIS. STAT. §§ 801.11(1) and (4)(a) and 893.82(3); and that Progressive, Hills, and Hills Legal Group had not violated state protected health care records laws by disclosing the health care records for purposes of defending against Wingo's lawsuit, *see* WIS. STAT. §§ 146.82(5)(c)3. and 610.70(5)(L). The court explained that, because it dismissed all of Wingo's claims, it did not need to address any of Wingo's other requests for relief.

Wingo contends that the circuit court erroneously exercised its discretion by failing to issue findings of facts and conclusions of law as to Wingo's motion for temporary injunctive relief. Wingo asserts that the affidavit he submitted in connection with his motion for temporary injunctive relief was undisputed and, thus, he was entitled to relief. Wingo contends that the circuit court failed to address the motion, and thus erroneously exercised its discretion by failing to exercise that discretion. *See Oostburg State Bank v. United Sav. & Loan Ass'n*, 130 Wis. 2d 4, 11-12, 386 N.W.2d 53 (1986) (circuit court erroneously exercises its discretion if it fails to exercise discretion). We reject Wingo's arguments.

First, contrary to Wingo's assertion, the circuit court did address Wingo's pending motion for temporary relief. The circuit court recognized in its summary judgment decision that Wingo had sought various remedies in his pleadings and subsequent filings, including injunctive relief. The court explained, however, that it need not address Wingo's request for other forms of relief following the court's decision to grant summary judgment dismissing all claims. Furthermore, the court was correct. Because the court determined that Wingo was not entitled to the injunctive relief he sought in the complaint, the court correctly and necessarily found that Wingo was not entitled to temporary injunctive relief. *See School Dist. of Slinger v. Wisconsin*

Interscholastic Athletic Ass’n, 210 Wis. 2d 365, 370-71, 563 N.W.2d 585 (Ct. App. 1997) (in exercising its discretion to grant or deny a temporary injunction, a circuit court must consider that “[a] temporary injunction is not to be issued unless the movant has shown a reasonable probability of ultimate success on the merits”) (quoted source and emphasis omitted)).

We also reject Wingo’s claim that the affidavit he submitted with his motion for a temporary injunction entitled him to relief. Wingo asserted in the affidavit that Wingo had not consented to any of the defendants releasing or receiving his health care records. However, the circuit court determined that the defendants were entitled to summary judgment regardless of whether Wingo consented to release, receipt, or review of the records. Thus, the court properly exercised its discretion by denying Wingo’s motion for temporary injunctive relief.

Wingo also contends that the circuit court applied the wrong legal standard in granting summary judgment by recognizing exceptions to Wisconsin’s confidential health care records law under WIS. STAT. § 146.82. Wingo argues that, because he asserted damages under 42 U.S.C. § 1983, the circuit court was required to follow federal law rather than state law and that, under *Ortiz v. Aurora Health Care, Inc.*, 665 F.3d 906, 909 (7th Cir. 2011), federal law holds that there are no exceptions to Wisconsin’s confidential health care records law. However, contrary to Wingo’s assertion, *Ortiz* does not state that there are no exceptions to Wisconsin’s confidential health care records law. To the contrary, *Ortiz* recognizes that “Wisconsin Statute section 146.82(1) mandates that ‘[a]ll patient health care records shall remain confidential’ *with certain exceptions* in section 146.82(2).” *Id.* (emphasis added). Because Wingo has not provided any authority that supports his proposition that federal law holds there are no exceptions to Wisconsin’s confidential health care records law, we reject Wingo’s contention

that the circuit court erred by recognizing the exceptions in Wisconsin's confidential health care records statutes.

Wingo contends that he was denied due process when the circuit court granted summary judgment as to Judge Sosnay, Scasny, and Milwaukee County because they moved to dismiss rather than for summary judgment. He contends that he was not given the opportunity to provide affidavits under WIS. STAT. § 802.08(2). Again, we disagree. The circuit court determined that it lacked personal jurisdiction over Judge Sosnay, Scasny, and Milwaukee County because Wingo failed to properly serve those defendants. Wingo does not dispute that he failed to properly serve those defendants under WIS. STAT. § 801.11(1) and (4)(a). Moreover, the circuit court set a scheduling order allowing Wingo the opportunity to respond to the defendants' dispositive motions. Wingo filed responses to the motions to dismiss in which he did not dispute that he failed to personally serve the defendants. *See* § 801.11(1) and (4)(a). We reject Wingo's contention that the circuit court erred by dismissing his claims against Judge Sosnay, Scasny, and Milwaukee County.

Wingo also contends that the circuit court erred by granting summary judgment to Progressive, Hills, and Hills Legal Group because Wingo responded to the motions for summary judgment and submitted his own affidavits. He contends that, by submitting affidavits opposing summary judgment, he placed material facts in dispute. However, Wingo does not explain what material facts remain in dispute. Moreover, our review of the affidavits Wingo submitted to oppose summary judgment indicates that Wingo did not aver any facts creating a dispute as to whether Progressive, Hills, and Hills Legal Group received and disclosed Wingo's health care records for the purpose of defending against Wingo's lawsuit. *See* WIS. STAT. §§ 146.82(5)(c)3. and 610.70(5)(L). Accordingly, we are not persuaded that any material facts are in dispute.

Therefore,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals