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DISTRICT II

April 17, 2013

To:

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

2012AP835

Peter J. Long v. David J. Winkel (L.C. #2011CV1889)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

This appeal arises from the dismissal of Peter J. Long's malpractice suit against his lawyer, Attorney David J. Winkel. Based on our review of the briefs and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm the order denying Long's motion to vacate the order and reopen the lawsuit.

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

While Long was incarcerated on another matter, his father, Alvin Long, signed a Stipulation and Order to Dismiss and a General Release and accepted \$10,000 on Long's behalf to settle the malpractice claim and deposited the money into Long's account. Long moved to reconsider the dismissal on grounds that his father was not a party to the lawsuit and that Winkel fraudulently pressured the eighty-year-old Alvin to sign pursuant to a written Power of Attorney (POA) Winkel allegedly knew was limited to handling the affairs of rental properties Long owned. The circuit court denied the motion without a hearing. Long then filed a motion to vacate the order and to reopen the lawsuit. That motion, too, was denied, again without a hearing.

On appeal, Long, pro se, contends he "should be allowed his day in court and/or a settlement agreement acceptable to him." As he earlier had told Winkel he would settle for \$10,000 plus costs, his apparent goal was only to recoup his court costs, an amount he represents is \$387.50. At conference, this court considered whether to remand the matter for an evidentiary hearing. It came to light, however, that, after commencing the appeal, Long filed an amended summons and complaint and an affidavit of his father. The circuit court construed the filings as another motion for reconsideration and/or to vacate and held an evidentiary hearing ("the May 11 hearing"), of which we take judicial notice. The circuit court denied the motion. This court ordered Long to supplement the record with the transcript of that hearing.

We conclude Long's appeal is moot. He got the airing in court that he wanted. As no appeal was taken from the May 11 hearing and the time for appeal is long past, there is no appellate issue before us relating to it. To avoid the further expenditure of scarce judicial resources, however, we make a few observations.

At the May 11 hearing, Long produced for the first time the POA document that was the subject of his claim.² We have reviewed the POA, entitled “Wisconsin Basic Power of Attorney for Finances and Property,” and the hearing transcript. We are well satisfied that the broadly drafted document authorized Alvin to sign the stipulation and order and to authorize the dismissal of Long’s claim against Winkel. So even if there were a claim before us as to the May 11 hearing, which there is not, we conclude that there was no error. There is no basis on which to grant the relief Long seeks in his March 22, 2013 letter to this court.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

² Among other powers, the POA document granted Alvin the power to:

appear for [Long] in all [legal] actions and proceedings to which [Long] may be a party; commence actions and proceedings in [Long’s] name; and sign in [Long’s] name all documents or pleadings of every description.

....

[and to] do any act or thing that [Long] could do in [his] own proper person if personally present, including [specifically enumerated powers]. The specifically enumerated powers of the basic power of attorney for finances and property are not a limitation of this intended broad general power except [for seven specific actions not applicable here].