

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 4, 2015

Diane M. Fremgen
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. 2014AP2554

Cir. Ct. No. 2014SC430

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

ANESTHESIA SERVICES OF FOX VALLEY,

PLAINTIFF-RESPONDENT,

V.

ELIZABETH A. FISHER,

DEFENDANT,

ALBERT FISHER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: THOMAS J. GRITTON, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Albert Fisher (Fisher) appeals the circuit court’s grant of summary judgment to Anesthesia Services of Fox Valley. For the following reasons, we affirm.

Background

¶2 In May 2012, Anesthesia Services provided anesthesia services to Fisher’s wife, Elizabeth Fisher, at Mercy Medical Center of Oshkosh as part of a surgical procedure. The charge was \$1785.92. Elizabeth Fisher paid \$500, leaving \$1285.92 unpaid. Anesthesia Services filed suit seeking payment. A trial was held before the court commissioner, and the commissioner found for Anesthesia Services. The Fishers requested a trial de novo before the circuit court. Anesthesia Services moved for summary judgment, and the circuit court granted the motion. The Fishers filed a motion to “reopen,” which the court denied. Fisher appeals. Additional facts are included as necessary.

Discussion

¶3 Our review of a decision on summary judgment is de novo. *Behrendt v. Gulf Underwriters Ins. Co.*, 2009 WI 71, ¶11, 318 Wis. 2d 622, 768 N.W.2d 568. Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

¶4 Along with its summary judgment motion, Anesthesia Services submitted an affidavit of its executive director which contained averments explaining the basis for the charge, that the billed services were provided to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Elizabeth Fisher at her request and were reasonable and necessary, that the charge was consistent with industry standards, and that the balance of \$1285.92 remained unpaid despite efforts to collect the same. The Fishers filed a response to Anesthesia Services' summary judgment submissions two days prior to the summary judgment hearing. At the hearing, the circuit court struck the response as untimely. The Fishers have not appealed that ruling and indeed Fisher acknowledges on appeal that the Fishers' response to the summary judgment motion "did not arrive on time according to WIS. [STAT. §] 802.08."

¶5 On appeal, Fisher first points out that the Fishers requested and paid the fee for a jury trial. He complains that the circuit court wrongly denied the Fishers a jury trial, alleging without any factual support that the judge who presided over their case "has a history of denying jury trials and will search for any reason to deny a jury trial." While Fisher makes brief general reference to several provisions of the United States Constitution in support of his position on this jury trial right, he fails to develop any arguments whatsoever in support of his contention that the court violated the Constitution, or any other controlling law, when it granted Anesthesia Services' motion for summary judgment. As a result, we do not address this issue. See *Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("[W]e will not abandon our neutrality to develop arguments" for the parties.).

¶6 Fisher's second point of contention is that the circuit court judge "is biased against educated persons and doctors." This assertion is based on the court's inquiry at the summary judgment hearing as to whether Fisher is a doctor, and, following Fisher's confirmation that he is a doctor, the court's subsequent comment that Fisher is "not the typical person that comes before me unrepresented." After this exchange, the court immediately pointed out in relation

to the Fishers' untimely summary judgment response that they "haven't followed the rules." The court indicated that it is sometimes "more generous" when the rules are not followed in small claims court, but noted that, as a doctor, Fisher is a "highly educated man."

¶7 We interpret the circuit court's statements as commentary that it did not see sufficient justification to relieve the Fishers of the expectation that they be held to the rules of civil litigation. *See Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (pro se litigants are required to abide by the same procedural rules governing attorneys). Significantly, Fisher again fails to cite case law or develop a legal argument in support of his appellate claim that the court was tainted by judicial bias. As stated, we will not abandon our neutrality to develop these arguments for the parties. *See Industrial Risk Insurers*, 318 Wis. 2d 148, ¶25.

¶8 Fisher also complains that the circuit court displayed bias against him during the summary judgment hearing in its response to Fisher's comment that the anesthesia service charges were "unreasonable and outrageous." The record reflects that the circuit court's response, "Why should I believe you?" was immediately followed by the court's observation that the Fishers had provided no submission "telling [the court] what the industry standard is or isn't," while it noted that Anesthesia Services did provide such a submission. Fisher fails to convince us that this exchange "reveals that a [judicial] bias exists," as he contends, as opposed to simply revealing the court's concern that the rules require that the Fishers submit actual admissible evidence that demonstrates a genuine issue of material fact exists with regard to the admissible evidence submitted by Anesthesia Services supporting its entitlement to judgment.

¶9 Lastly, Fisher complains about the circuit court’s statement at the summary judgment hearing that “there is nothing in this file that tells me that you even have appropriately contested” the services charge. Fisher argues that there were documents in the file “which were presented to the Court Commissioner.” However, the Fishers sought de novo review before the circuit court and that is where Anesthesia Services moved for summary judgment. In response to that motion and accompanying affidavit, the Fishers failed to present an admissible submission in opposition. Further, the submissions allegedly presented to the court commissioner were neither pleadings, depositions, answers to interrogatories, admissions, nor affidavits, as required to oppose summary judgment. *See* WIS. STAT. § 802.08(2) (“Judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”).

¶10 It appears the circuit court held the Fishers to the requirement that they follow the rules of civil procedure. On appeal, Fisher does not dispute that the submission in opposition to the summary judgment motion was untimely. As such, the summary judgment record standing before the court at the time of the hearing included no genuine issues of material fact, and Anesthesia Services submitted sufficient evidence demonstrating its entitlement to judgment as a matter of law. Accordingly, the circuit court also appropriately denied the Fishers’ motion to “reopen.”²

² Fisher fails to make any argument on appeal specifically related to how the circuit court may have erred in denying his motion to “reopen.”

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

