COURT OF APPEALS
DECISION
DATED AND FILED

September 24, 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. 2014AP939 **Cir. Ct. No. 2012CV3091**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

BEYONCE ORTEGA DE LA CRUZ,

PLAINTIFF-APPELLANT,

WISCONSIN DEPARTMENT OF HEALTH SERVICES,

INVOLUNTARY-PLAINTIFF-RESPONDENT,

V.

ST. MARY'S HOSPITAL, INC., RANDALL T. BROWN, M.D., CAITLIN D'AGATA, M.D., INJURED PATIENTS AND FAMILIES COMPENSATION FUND AND THE MEDICAL PROTECTIVE COMPANY,

DEFENDANTS-RESPONDENTS,

DEAN HEALTH INSURANCE, INC.,

SUBROGATED DEFENDANT-RESPONDENT.

APPEAL from judgments of the circuit court for Dane County: FRANK D. REMINGTON, Judge. *Affirmed.*

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

¶1 PER CURIAM. In this medical malpractice case, Beyonce Ortega De La Cruz brought suit against St. Mary's Hospital, Inc., Dr. Randall Brown, M.D., Dr. Caitlin D'Agata, M.D., the Injured Patients and Families Compensation Fund (the Fund), and the Medical Protective Company (collectively, the respondents), seeking to recover for injuries she allegedly sustained during delivery. Beyonce was unsuccessful at trial and now appeals summary judgments and judgments of the circuit court entered on jury verdicts. Beyonce's numerous arguments on appeal are set forth in detail below.

BACKGROUND

¶2 The medical and procedural facts of this case are extensive and complex. We provide here only a general background and set forth other relevant facts below in our discussion.

¶3 Beyonce was born at 10:20 a.m. on October 10, 2010, at St. Mary's Hospital in Madison, Wisconsin, with severe and permanent disabilities. Beyonce's mother is Anayeli De La Cruz. During Anayeli's labor and delivery, Anayeli received care and treatment from: registered nurse Olga Quintanilla; Dr. LeRose Dhanoa, medical resident; Dr. Randall Brown, Anayeli's treating physician; and Dr. Jeffrey Denney, the obstetrician who delivered Beyonce. Medical resident Dr. Caitlin D'Agata was on call the morning of Beyonce's birth, but Dr. D'Agata did not provide any care to Anayeli.

¶4 Beyonce was determined to be malpresenting at approximately 3:45 a.m. on October 10. Anayeli continued to labor and at approximately 9:30 a.m., Dr. Brown sought consultation from Dr. Denney, who determined that

Beyonce should be delivered by cesarean section. Following Dr. Denney's determination that a cesarean section was appropriate, Beyonce's fetal heart tracings (FHTs) changed from a Category II (reassuring) to a Category III (fetal distress) and, shortly thereafter, Beyonce was delivered by cesarean section.

¶5 In August 2012, a complaint was filed on behalf of Beyonce against the respondents. Beyonce alleged that the St. Mary's nursing staff, physicians, and medical residents were negligent in the care they provided her and that as a result, she suffered permanent injuries requiring ongoing medical treatment, physical and emotional pain and suffering, a reduced earning capacity, and other noneconomic losses. More specifically, Beyonce theorized that the nursing staff and doctors who assisted with Anayeli's labor and delivery negligently responded to Beyonce's fetal malpresentation and to Beyonce's FHTs until Beyonce was so depleted of oxygen that she went into distress, and that this negligence was the proximate cause of her disabilities. Relevant to the present case, Beyonce alleged that: Dr. D'Agata was negligent in her failure to provide treatment to Anayeli and Beyonce; Dr. Brown was negligent in his treatment of Anayeli and Beyonce; St. Mary's Hospital was liable for the negligence of the individuals who provided care (or failed to provide care in the case of Dr. D'Agata) to Anayeli during her labor and delivery, including Nurse Quintanilla and Dr. Brown; and that St. Mary's Hospital was liable for corporate negligence.

¶6 Various pretrial and trial motions and rulings occurred in this case, including summary judgment rulings against Beyonce on the claims of apparent authority, negligent credentialing, and negligence against Dr. D'Agata, the details of which we need not and do not set forth here. Ultimately, the only questions submitted for the jury's determination following a multi-week trial were whether

Dr. Brown and Nurse Quintanilla were negligent in their care and treatment of Beyonce. The jury found that neither Brown nor Quintanilla were negligent.

¶7 Beyonce moved the court to set aside the jury's verdicts and for a new trial pursuant to WIS. STAT. § 805.15 (2013-14).[1] The court denied Beyonce's motion and entered judgments on the verdicts. Beyonce appeals.

DISCUSSION

¶8 Restated and reorganized from her briefing, Beyonce argues:[2] (1) the circuit court erred in allowing the admission of collateral source evidence at trial; (2) improper references were made to Anayeli's and Beyonce's nationality during closing arguments; (3) the circuit court erroneously determined that certain medical testimony was privileged; (4) the circuit court erroneously exercised its discretion in refusing to amend the pretrial scheduling order to allow one of Beyonce's witnesses to testify on a topic not disclosed within the time limits established by the scheduling order; (5) the court erred in granting summary judgment before trial on the following three claims—apparent authority, negligent credentialing, and negligence on the part of Dr. D'Agata; and (6) the real controversy was not tried and she should be granted a new trial in our discretion. We address Beyonce's arguments in turn.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] We have slightly reworded and renumbered the issues as identified by Beyonce in her brief to better reflect the issues raised.

A. Collateral Source Evidence

¶9 Beyonce contends that the circuit court erroneously exercised its discretion when the court allowed the admission of evidence at trial that Beyonce's medical expenses had been paid, at least in part, by a collateral source. Beyonce's appellate briefs are frustratingly short on the specifics of the evidence at issue here. Beyonce fails to describe exactly what evidence she is complaining about and fails to provide accurate, detailed record cites to the evidence and its admission at trial.[3] We could reject Beyonce's argument on this basis alone. However, we nevertheless choose to address the merits of her argument.

¶10 An appellate court "will not disturb a circuit court's decision to admit or exclude evidence unless the circuit court erroneously exercised its discretion." ***Weborg v. Jenny***, 2012 WI 67, ¶41, 341 Wis. 2d 668, 816 N.W.2d 191. A court erroneously exercises its discretion if it applies an improper legal standard or makes a decision not supported by the facts of record. ***Id.*** To the extent a court's decision to admit or deny evidence is based on the circuit court's interpretation and application of a statute, this court's review is de novo. ***Id.*** Even if a circuit court erroneously exercises its discretion in admitting or denying evidence, a new trial is not warranted if the error was harmless. ***Id.***, ¶43. Application of the harmless error rule presents a question of law, which this court reviews de novo. ***Id.***

[3] For example, Beyonce cites this court to record 710, pages 148-50, for the admission of the collateral source evidence she asserts was erroneously admitted. However, the record 710 before this court on appeal does not contain pages 148-50.

¶11 The collateral source rule is a common law rule that provides that "an injured party's recovery cannot be reduced by payments or benefits from sources collateral to, or aside from, the tortfeasor." ***Id.***, ¶44. Wisconsin's Supreme Court has explained that the collateral source rule "operates as an evidentiary rule, precluding the introduction of evidence pertaining to payments or benefits received by a plaintiff from sources collateral to the tortfeasor." ***Id.***, ¶46.

¶12 With the enactment of WIS. STAT. § 893.55(7), the legislature modified the collateral source rule in Wisconsin. *See* ***id.***, ¶57. Section 893.55(7) provides:

> Evidence of any compensation for bodily injury received from sources other than the defendant to compensate the claimant for the injury is admissible in an action to recover damages for medical malpractice. This section does not limit the substantive or procedural rights of persons who have claims based upon subrogation.

The Wisconsin Supreme Court concluded in ***Lagerstrom v. Myrtle Werth Hosp.-Mayo Health Sys.***, 2005 WI 124, ¶¶5, 70, 285 Wis. 2d 1, 700 N.W.2d 201, that § 893.55(7) modifies the common law collateral source rule in that the statute "explicitly allows evidence of collateral source payments to be introduced in medical malpractice actions." However, the court further concluded that § 893.55(7) does not abrogate the rule that a plaintiff is entitled to recover the reasonable value of medical services without regard to amounts actually paid by collateral sources. ***Id.,*** ¶70.

¶13 In ***Weborg***, the supreme court concluded that although evidence of collateral source payments is no longer per se inadmissible in an action to recover damages for medical malpractice, such evidence is admissible under WIS. STAT. § 893.55(7) only if the evidence is relevant. ***Weborg***, 341 Wis. 2d 668, ¶60. The

court further concluded that § 893.55(7) "does not direct that evidence of collateral source payments is inherently relevant in medical malpractice actions." ***Id.***, ¶64. Accordingly, before evidence of collateral source payments may be admitted at trial under § 893.55(7), a circuit court must exercise its discretionary authority and determine whether the evidence is "probative of any fact that is of consequence to the determination of damages." ***Id.***, ¶¶63-64.

¶14 Beyonce asserts that at trial, counsel for the Fund elicited testimony from Beyonce's "life care planner" that "Medical Assistance" is currently paying for Beyonce's health care. Beyonce contends that the evidence that Medical Assistance was paying Beyonce's medical expenses was not admissible because WIS. STAT. § 893.55(7) only "provides a limited exception to [the collateral source] rule as to benefits *previously* received," and that § 893.55(7) does not provide an exception for evidence of *future* payments or benefits from a collateral source. In support of this position, Beyonce cites to ***Leitinger v. Dbart, Inc.***, 2007 WI 84, 302 Wis. 2d 110, 736 N.W.2d 1, but does not provide this court with a pinpoint reference to that portion of the opinion which she believes supports her argument.[4] We read Beyonce's brief as also arguing that because she "neither sought nor presented to the jury any claim for recovery of past medical expenses," evidence of collateral source payments could not be relevant.

¶15 In ***Leitinger***, a personal injury action, the appellants argued that evidence of collateral source payments was admissible in light of the supreme court's modification of the collateral source rule in ***Lagerstrom***. ***Id.***, ¶63. Our

[4] WIS. STAT. RULE 809.19(1)(e) requires an appellant to support his or her contentions with citations conforming to the Uniform System of Citation and SCR 80.02, which requires appellants to provide citation to the specific portions of an opinion relied upon.

supreme court rejected this argument, stating WIS. STAT. § 893.55(7) modified the collateral source rule only as applied to medical malpractice actions. ***Id.***, ¶¶64-66. Given the limited basis of this holding, there is no apparent support in ***Leitinger*** for Beyonce's assertion that § 893.55(7) allows for the admission of only those collateral source payments already made. Beyonce does not provide any other support for her assertion that the § 893.55(7) exception to the collateral source rule is limited to past payments and, therefore, we do not further address this argument.

B. Reference to Nationality

¶16 Beyonce contends that the Fund's counsel committed reversible error by referencing Beyonce's nationality during closing arguments. As best as we can tell,[5] Beyonce is referring to the following four statements: (1) "Dr. Brown didn't just work at the Wingra Clinic helping Spanish-speaking people"; (2) Dr. Brown "also dedicated his career to helping Spanish-speaking people, so he wanted to come in [for Beyonce's delivery]"; (3) Nurse Quintanilla is "[f]luent in Spanish"; and (4) in reference to the fact that Nurse Quintanilla was born in El Salvador, "it's good that we've got people from other countries that come that are fluent in Spanish to help the Spanish-speaking people that come here."

¶17 The respondents assert that Beyonce has forfeited any challenge to statements referencing Beyonce's nationality that counsel made during closing argument because Beyonce did not challenge those statements before the circuit court. Beyonce does not dispute in her reply brief that she failed to preserve this

[5] Beyonce does not set forth in her brief the statements by St. Mary's counsel during closing argument that she asserts were "out of bounds," but instead cites this court to various portions of the record. Of those record citations, only two are to St. Mary's counsel's closing argument and only one contains any reference to nationality.

challenge below. A proposition asserted by a respondent on appeal and not disputed by the appellant's reply is taken as admitted. ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). Accordingly, we treat Beyonce's failure, in her reply brief, to dispute the respondents' forfeiture argument as a concession and do not further address this issue.

C. Expert Testimony Privilege

¶18 Beyonce contends that the circuit court erroneously exercised its discretion when the court determined that under ***Burnett v. Alt***, 224 Wis. 2d 72, 589 N.W.2d 21 (1999), Dr. Denney, who delivered Beyonce, was not required to testify as to whether he would have delivered Beyonce earlier had he been consulted sooner.

¶19 As a general matter, the public has a right to every person's evidence at trial, ***Alt***, 224 Wis. 2d at 85, and a person may not refuse to be a witness except where allowed by the constitution, statute, or supreme court rule. *See* WIS. STAT. § 905.01.

¶20 In ***Alt***, our supreme court determined that pursuant to WIS. STAT. § 907.06, which addresses the court-appointment of experts, a witness has the implied privilege to refuse to give expert testimony if he or she is called by a litigant. ***Alt***, 224 Wis. 2d 85-86. The supreme court held in ***Alt*** that in order for the witness to be compelled to give expert testimony, the party seeking the testimony must: (1) make a showing of compelling circumstances; and (2) present a plan of reasonable compensation. ***Id.*** at 89. And even then, the expert can only be compelled to give existing opinions. ***Id.*** In ***Glenn v. Plante***, 2004 WI 24, ¶¶2, 28, 269 Wis. 2d 575, 676 N.W.2d 413, our supreme court clarified that the privilege established in ***Alt*** applies when a question calls for an expert opinion, but

not when a witness is asked to testify as to his or her personal observations, *i.e.*, the facts. Whether a witness has a legal privilege to refuse to provide expert opinion testimony is a question of law which we review de novo. ***Alt***, 224 Wis. 2d at 84.

¶21 Beyonce asserts that the circuit court "clearly failed to make the distinction between fact-based observational testimony sought from Dr. Denney, and standard of care testimony." We read Beyonce's brief as arguing that testimony as to whether Dr. Denney would have delivered Beyonce at an earlier time, had he been called sooner, would not have constituted expert testimony. Beyonce does not, however, present this court with a developed argument explaining why the circuit court erred in concluding that the testimony was expert in nature, and we decline to address further Beyonce's conclusory assertion that it was not. *See* ***Associates Fin. Servs. Co. of Wis., Inc. v. Brown***, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56 (generally, this court does not consider conclusory assertions and undeveloped arguments).

D. Circuit Court's Refusal to Amend the Scheduling Order

¶22 We read Beyonce's brief as arguing that the circuit court erroneously exercised its discretion by denying her pretrial motion to amend the scheduling order to allow Nurse Horkan to offer an opinion as to the training, competence and staffing of St. Mary's nurses, which was essential to Beyonce's corporate negligence claim, and that as a result of the denial of her pretrial motion, the corporate negligence claim was dismissed on summary judgment.

¶23 The original scheduling order established by the circuit court required Beyonce to disclose her expert witnesses and their reports by April 2, 2013. Beyonce's expert witness disclosure indicated that Nurse Horkan was

"expected to testify regarding deviations in the standard of care from the perspective of an [obstetrics] [n]urse" and causation, and Beyonce submitted to the court a ten-page report prepared by Horkan, wherein Horkan set forth her opinion as to causal negligence with respect to the nursing care provided to Beyonce and Anayeli. Neither that disclosure, nor two revised witness disclosures filed in May and June 2013, contained opinions about St. Mary's nurses training, competence or staffing. However, in October 2013, approximately four months prior to trial, Beyonce moved the court for an amendment of the scheduling order to permit Horkan to provide expert testimony as to the "training, competence and staffing" of St. Mary's nurses.

¶24 As justification for her October 2013 request to revise the scheduling order, Beyonce argued that at the time Horkan prepared her March 29 report, St. Mary's had not yet disclosed certain information which was necessary for Horkan to offer an opinion as to the training, competence and staffing of St. Mary's nurses, and that St. Mary's should have been on notice that such testimony might arise. The circuit court denied Beyonce's motion. In denying the motion, the court rejected Beyonce's assertion that her failure to disclose expert opinion as to the training, competence and staffing of St. Mary's nurses stemmed from St. Mary's failure to disclose at an earlier time certain information, and the court rejected her assertion that St. Mary's would not be prejudiced by a revision of the order because St. Mary's should have anticipated that Horkan's report might possibly be amended at a later date to add additional opinions. In addition, the court observed that a four-week trial in this matter was scheduled to take place in January 2014, but that if Beyonce's motion were granted, the earliest the trial could be rescheduled was September 2014.

¶25 A circuit court's decision to amend or not amend a scheduling order is discretionary. ***Schneller v. St. Mary's Hosp. Med. Center***, 162 Wis. 2d 296, 305, 470 N.W.2d 873 (1991). We will uphold a discretionary decision if the court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Id.*** at 306.

¶26 Beyonce's sole support for her argument that the circuit court erroneously exercised its discretion in denying her motion to amend the scheduling order is her allegation that the circuit court was wrong to find that the respondents would not have anticipated that Beyonce might seek to amend Horkan's report at some point to add expert opinion on St. Mary's training. Beyonce asserts that the respondents "were not surprised at all by the opinion of Beyonce's experts," pointing out that "discovery continued long after" the April 2, 2013 expert disclosure deadline, that the expert disclosure deadline had been expanded in early September to allow her to supplement her expert reports, including that of Horkan, and that Horkan had been "deposed several times." However, that the respondents would not have anticipated that Beyonce would seek to amend Horkan's report was just one of multiple reasons the court gave for denying Beyonce's motion. Beyonce has not argued, or made a showing, that the court was clearly erroneous in finding that her failure to seek an earlier amendment to Horkan's expert report was not the result of the respondents' failure to disclose certain documents earlier in time, nor has she made a showing that the court erred in relying on the substantial trial delay that would result if her motion had been granted. We conclude that Beyonce has failed to establish that the circuit court's decision was an erroneous exercise of the court's discretion.

E. Summary Judgment

¶27 Beyonce contends that the circuit court erred in entering summary judgment in favor of the respondents on the following claims: (1) apparent authority; (2) negligent credentialing of Dr. Brown; and (3) negligence against medical resident Dr. D'Agata.

¶28 We review summary judgments de novo. ***Hardy v. Hoefferle***, 2007 WI App 264, ¶6, 306 Wis. 2d 513, 743 N.W.2d 843. A party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no material fact in dispute and the movant is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). The party that has the burden of proof at trial in connection with a claim has the burden on summary judgment to show that there are no disputed issues of material fact that require a trial. ***Transportation Ins. Co. v. Hunzinger Constr. Co.,*** 179 Wis. 2d 281, 290, 507 N.W.2d 136 (Ct. App. 1993).

¶29 The respondents argue that Beyonce's summary judgment arguments as to apparent authority and negligent credentialing are moot in light of the jury's verdict that Dr. Brown was not negligent in his care and treatment of Beyonce. Beyonce does not respond to this argument in her reply brief and, therefore, the argument is taken as conceded. *See* ***Schlieper***, 188 Wis. 2d at 322 (a proposition asserted by a respondent on appeal and not disputed by the appellant's reply is taken as admitted).

¶30 The remaining issue is whether the circuit court erred in dismissing on summary judgment Beyonce's negligence claim against Dr. D'Agata.

¶31 In order to maintain a cause of action for negligence, a plaintiff must establish: (1) the existence of a duty of care on the part of the defendant; (2) a breach of that duty; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury. ***Coffey v. City of Milwaukee***, 74 Wis. 2d 526, 531, 247 N.W.2d 132 (1976).

¶32 It is undisputed that Dr. D'Agata's shift at St. Mary's began at 7:00 a.m. on October 10, 2010, but she did not provide care to Anayeli. Beyonce contends that because Dr. D'Agata was on call, she had a duty to provide care to Anayeli between the hours of 6:30 a.m.[6] and 9:30 a.m., that Dr. D'Agata breached her duty to Anayeli by not providing care to her, and that Dr. D'Agata's failure to provide care to Anayeli is causally connected to Beyonce's injuries.

¶33 Dr. D'Agata submitted an affidavit wherein she averred "I did not provide any care and treatment to … Anayeli …. on 10/10/10, because I had been informed that another resident, Dr. David Beckmann, who had provided prenatal care to [Anayeli] was coming to the hospital to care for [Anayeli]." It is undisputed that Dr. Beckmann did not see Anayeli until approximately 9:30 a.m. on October 10.

¶34 Beyonce asserts that "the resident call schedule and the physician in charge of the resident program" established that Dr. D'Agata "was responsible to care for all obstetrics patients[,] including Anayeli." Beyonce also asserts that she "offered expert testimony" supporting her claim that Dr. D'Agata had not been properly relieved of her duty to provide care to Anayeli and that Dr. D'Agata's

[6] Beyonce does not explain why Dr. D'Agata had a duty to provide care to Anayeli before her shift started at 7:00 a.m.

"failure … to examine Anayeli [between 6:30 a.m. and 9:30 a.m.] was causal negligence."

¶35 Beyonce does not specify the expert testimony that purports to establish: (1) that Dr. D'Agata had not been relieved of her duty to provide care to Anayeli; and (2) that Dr. D'Agata's failure to provide care to Anayeli between when her shift started and when Dr. Beckmann saw Anayeli was causally connected to Beyonce's injuries. Beyonce cites this court to two portions of the record, one of which does not exist,[7] and the other of which provides no apparent support for her assertion. In sum, Beyonce has failed to present this court with any evidence supporting her argument that a genuine issue of material fact exists as to whether Dr. D'Agata had a duty to provide care to Anayeli and that her failure to do so was causally related to Beyonce's injuries. Accordingly, we affirm summary judgment on that issue.

F. Real Controversy

¶36 Beyonce contends that the real controversy was not tried and that we should grant her a new trial in the interest of justice.

¶37 Under WIS. STAT. § 752.35, we have discretionary authority to reverse a judgment or order from which an appeal is taken "if it appears from the record that the real controversy has not been fully tried." We are to exercise this discretionary power of reversal only in exceptional cases. ***State v. Cuyler***, 110

[7] Beyonce cites "R:283-5-7." As best as we can tell, Beyonce means to refer to record 283 at pages 5 thru 7. Record 283 is a motion to join in another party's motion to dismiss a third-party complaint and motion for summary judgment. This record does not contain a page 5, 6, or 7. Furthermore, motions may not be relied upon for purposes of summary judgment. *See* WIS. STAT. § 802.08(2).

Wis. 2d 133, 141, 327 N.W.2d 662 (1983). We decline to do so here for the reasons explained below.

¶38 Beyonce argues that the real controversy was not tried as a result of the court's use of a "bench card system" during trial, which she asserts "fatally impaired [her] ability to present complex expert testimony to the jury." The "bench card[s]" were designed to assist the circuit court with determining what the parties' experts could testify to, and each party was asked to outline their expert's testimony and cite to the location of that testimony on the expert's reports and deposition transcripts. However, Beyonce has not shown how or why the court's use of the bench cards prevented her from presenting admissible expert testimony that would have assisted the jury in determining whether Dr. Brown and/or Nurse Quintanilla were negligent in their care and treatment of Beyonce.

¶39 Beyonce argues that the real controversy was not tried because of "countless lengthy side-bars and arguments over what the expert witnesses could testify to and what words they could use to express their opinions." The suggestion seems to be that these interruptions so interrupted the presentation of evidence that reasonable jurors could not understand and evaluate the evidence. However, Beyonce's argument in this regard really amounts to little more than a generalized assertion. Obviously, while far from ideal, many complex trials involving complex evidence involve numerous interruptions from arguments. We cannot conclude that such interruptions here were so numerous and time consuming that the jury was unable to understand or evaluate the evidence.

¶40 Beyonce also argues that the real controversy was not tried because various pretrial rulings in favor of the respondents "impaired Beyonce's ability to succeed on the claims left standing." However, that is the nature of litigation and,

as we have explained above, Beyonce has not demonstrated that any such rulings were erroneous.

CONCLUSION

¶41 For the reasons discussed above, we affirm.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.