

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 9, 2003**

Cornelia G. Clark  
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. 03-0042-FT**

**Cir. Ct. No. 01-CV-607**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**TODD M. SPOEHR,**

**PLAINTIFF-RESPONDENT,**

**HERITAGE MUTUAL INSURANCE COMPANY AND IBC  
BENEFIT ADMINISTRATORS, INC.,**

**INVOLUNTARY-PLAINTIFFS,**

**v.**

**REGINA R. WORONIECKI AND FARMERS INSURANCE  
EXCHANGE,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Regina Woroniecki and Farmers Insurance Exchange (Woroniecki) appeal a judgment awarding Todd Spoehr attorney fees totaling \$2,989.66 for Woroniecki's failure to admit a discovery request, pursuant to WIS. STAT. § 804.12(3).<sup>1</sup> Woroniecki argues that the court erred for two reasons. First, she contends an independent medical examination provided reasonable grounds for her to deny medical expenses beyond six weeks of the date of the injury and, second, that the amount of attorney fees awarded was unreasonable. We conclude the record supports the court's attorney fee award and, therefore, we affirm the judgment.

¶2 In July 1998, Woroniecki caused injuries to Spoehr when the vehicle she was driving collided with Spoehr's car. Spoehr served Woroniecki a "Request for Admissions" dated March 6, 2002, which included a request to admit certain medical expenses. In her April 5, 2002, response Woroniecki admitted her negligence caused the accident and that Spoehr was entitled to medical expenses up to six weeks from the date of the accident, but denied medical expenses beyond six weeks. Woroniecki stated that she "will rely on the defense medical examination report which you shall receive."

¶3 At trial, Spoehr introduced expert medical testimony regarding the nature of his injuries and the amount of his medical expenses. The jury awarded \$9,325.59 in medical expenses. This sum included medical expenses beyond six weeks of the accident. The jury also awarded sums for future medical expenses and past and future pain, suffering and disability, for a total judgment of \$17,825.59.

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶4 Following trial, Spoehr requested attorney fees pursuant to WIS. STAT. § 804.12(3) for proving his medical expenses beyond the six weeks that Woroniecki admitted.<sup>2</sup> At the hearing on his motion, Woroniecki's counsel stated, "I just can't stipulate to them because my client, Farmers, isn't going to let me, to the extent they were incurred outside of six weeks, which is what our IME guy says was reasonable." Woroniecki's counsel pointed out that Spoehr had introduced evidence of the defense examination in his own case.

¶5 The court awarded Spoehr \$2,989.66. The court based the award on the amount counsel was due according to Spoehr's contingency fee agreement.

¶6 Woroniecki moved the court to reconsider the attorney fee award. At the reconsideration hearing, Woroniecki for the first time offered, and the court received, the defense medical examination report dated May 6, 2002. Her counsel explained that although it had not been offered at trial, Spoehr's counsel referred to it during direct examination of his expert witness.

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<sup>2</sup> WISCONSIN STAT. § 804.12(3) provides:

EXPENSES ON FAILURE TO ADMIT. If a party fails to admit the genuineness of any document or the truth of any matter as requested under s. 804.11, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in the making of that proof, including reasonable attorney fees. The court shall make the order unless it finds that (a) the request was held objectionable pursuant to sub. (1), or (b) the admission sought was of no substantial importance, or (c) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or (d) there was other good reason for the failure to admit.

¶7 The report stated that Kenneth Edington, D.C., M.A., examined Spoehr on April 20, 2002, and concluded that under certain guidelines, seven weeks of care are indicated for Spoehr's injuries. Edington's report further stated that "12 visits of Chiropractic manipulation could be reasonable" and "the literature does not support a great deal of rehabilitation in the office as this can be done at home." Edington concluded that "maximum therapeutic benefit from Chiropractic care was attained by 02/15/99 and no further Chiropractic care was necessary after that time." The trial court reaffirmed its ruling. Woroniecki appeals the attorney fee award.

¶8 Appellate courts will uphold trial court determinations of the amount of reasonable attorney fees for services rendered unless the trial court erroneously exercised its discretion. *Standard Theatres, Inc. v. DOT*, 118 Wis. 2d 730, 747, 349 N.W.2d 661 (1984). Underlying the court's discretionary decision are questions of fact and issues of law. See *Michael A.P. v. Solsrud*, 178 Wis. 2d 137, 153-54, 502 N.W.2d 918 (Ct. App. 1993). "A trial court properly exercises its discretion if it employs a logical rationale based on the appropriate legal principles and facts of record." *Chmill v. Friendly Ford-Mercury*, 154 Wis. 2d 407, 412, 453 N.W.2d 197 (Ct. App. 1990). We may search the record for reasons to support a discretionary decision. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968).

¶9 Parties may obtain discovery regarding any unprivileged matter relevant to the pending action. WIS. STAT. § 804.01(2). Failure to comply with discovery may result in sanctions, including attorney fees. See WIS. STAT. § 804.12. However, when a party refuses to admit a matter requested because "the party failing to admit had reasonable ground to believe that he or she might

prevail on the matter,” no costs or attorney fees are awarded. WIS. STAT. § 804.12(3).

¶10 Woroniecki advances two arguments in support of her assertion that the court erroneously awarded attorney fees of \$2,989.66. First, she argues that the independent medical examination provided reasonable grounds for her to deny medical expenses beyond six weeks and, second, that the amount of attorney fees awarded was “obscene” and “perverse.” We reject her arguments.

¶11 The record fails to support Woroniecki’s contention that the defense’s independent medical examination provided reasonable grounds for her refusal to admit the reasonableness of Spoehr’s medical expenses beyond six weeks after the accident. The record establishes that at the time Woroniecki denied the request for admission, the defense’s medical examination had not yet been performed. Woroniecki’s counsel conceded that the reason he did not stipulate to medical expenses beyond six weeks was because his client “isn’t going to let me.”

¶12 Also, the record shows that Woroniecki did not meaningfully litigate the reasonableness of the post six-week medical treatments. The only reference to Edington’s opinions was during Spoehr’s expert witness’s direct exam during which Spoehr’s expert witness criticized Edington’s conclusions. This unrefuted critique fails to support Woroniecki’s claim that her reliance on Edington’s report was reasonable. The court was entitled to reject Woroniecki’s claim that she refused to admit the reasonableness of Spoehr’s medical expenses beyond six weeks because she had “reasonable ground to believe she might prevail on the matter” under WIS. STAT. § 804.12(3).

¶13 Next, the record fails to support Woroniecki's argument that attorney fees of \$2,989.66 are "obscene" and "perverse." Woroniecki argues that the amount of time and effort expended by Spoehr's counsel to prove the medical expenses was minimal and that he merely asked "five questions" in order to prove them. We are unpersuaded. Pointing to the number of questions asked of the expert witness on direct examination is not a sufficient analysis of the trial court's discretionary exercise.

¶14 Woroniecki's analysis neglects that in proving "reasonable expenses incurred" under WIS. STAT. § 804.12(3), the trial court may consider time spent preparing for trial of issues not admitted. It also includes being prepared for both direct and cross-examination of the expert witness, listening to information revealed by other counsel that may affect those issues, along with listening to opening and closing statements to learn strategy of other counsel and how that strategy may affect those issues. Counsel must also prepare verdicts and jury instructions, attend conferences at which instructions and verdict questions that go to the jury's resolution of those issues are discussed. *See Solsrud*, 178 Wis. 2d at 155. Here, the trial court had the advantage of presiding over the trial and observing counsel at work. It considered that Spoehr had entered into a contingency fee agreement with his attorney and found that the agreement provided a reasonable basis upon which to determine attorney fees. The record supports the trial court's discretionary decision.

*By the Court.*—Judgment affirmed.

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



