

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 19, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-0087

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

DENISE BUGGS,

PLAINTIFF-APPELLANT,

WHO INSURANCE Co.,

PLAINTIFF,

V.

**NORTHRIDGE DENTAL CENTER, S.C., JOHN A. FITCH,
D.D.S. AND D. ROZNIK, D.D.S.,**

DEFENDANTS-RESPONDENTS,

**ABC INSURANCE COMPANY, A FICTITIOUS ENTITY AND
DEF INSURANCE COMPANY, A FICTITIOUS ENTITY,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee
County: MICHAEL D. GUOLEE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Denise Buggs appeals from the judgment dismissing her dental malpractice action. The circuit court ruled that it did not have personal jurisdiction over the defendants because Buggs failed to properly serve a copy of the summons and complaint on Northridge Dental Center, S.C., John A. Fitch, D.D.S., and Dale Roznik, D.D.S., and their respective insurers. The circuit court also granted summary judgment to the defendants, concluding that the statute of limitations barred Buggs's claim. We affirm.

On March 29, 1993, Buggs went to Northridge Dental Center complaining of a toothache. She was treated by Dr. Roznik, who surgically extracted three teeth and gave her a prescription for Percodan. On April 1, she returned to the Northridge office and received another prescription for Percodan. On April 2, because Northridge Dental Center was closed, Buggs was referred to Lincoln Dental Center. The dentist there placed medical packing in the number thirty-two tooth extraction site, and prescribed Penicillin and Tylenol No. 3. The dentist also advised Buggs to return to the Northridge Dental Center on Monday to be checked and to have the packing removed. On April 5, Buggs returned to the Northridge Dental Center. Dr. Roznik treated the infected area and scheduled another appointment for April 7. On April 9, because Dr. Roznik was unavailable, Buggs was treated by Dr. Fitch, who prescribed another antibiotic and Vicodin for pain. Due to her continuing problems, Buggs entered St. Joseph's Hospital on April 9, 1993. She filed her summons and complaint on April 15, 1996, alleging dental malpractice.

The circuit court dismissed the complaint, finding that Buggs had failed to properly serve each of the defendants and thus, concluded that the court

had no personal jurisdiction over them. In ruling on the motion to dismiss, the circuit court explained that although the plaintiff may have used reasonable diligence to personally serve the defendants by making three unsuccessful attempts to serve them at their offices, she failed to render proper substitute service under § 801.11, STATS.,¹ which provides that substitution of service must be attempted at the defendant's usual place of abode.

The circuit court then found:

The telephone directory lists clearly Dr. Roznik's home address. In addition, there is no indication from the record that plaintiff made any attempt to effect substituted service according to the statute, at the usual place of abode on either defendant. Therefore, their claim against Dr. Roznik, Dr. Fitch must be dismissed.

And again, the service as to the Northridge Dental Corporation, even if this party was an agent or an officer, an actual copy must be left for the corporation.

¹ Section 801.11, STATS., provides, in pertinent part:

Personal jurisdiction, manner of serving summons for. A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

(1) NATURAL PERSON. Except as provided in sub. (2) upon a natural person:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

....

Now, so I think it's clear under 801.11(5)² as to service on the corporation. So it's clear that they must, all three parties, be dismissed. The action against all three parties must be dismissed because of the facts here.

(Footnote added.) The trial court also granted summary judgment to the defendants because the complaint was filed after the statute of limitations had run.

Buggs first argues that the statute of limitations had not run; therefore, she contends that the circuit court erroneously granted summary judgment in favor of the defendants. We need not address her statute of limitations argument, however, because Buggs fails to offer any argument regarding the service of the defendants. At page one of her brief to this court, Buggs acknowledges that one of the issues presented is whether the circuit court erroneously exercised discretion in holding that the defendants had not been properly served. Nowhere in her brief,³ however, does she discuss the issue. Accordingly, we shall not address it. See *Post v. Schwall*, 157 Wis.2d 652, 657, 460 N.W.2d 794, 796 (Ct. App. 1990) ("Arguments raised but not briefed or argued are deemed abandoned by this court."); see also *Gross v. Hoffman*, 227

² Section 801.11(5), STATS., provides, in pertinent part:

DOMESTIC OR FOREIGN CORPORATIONS OR LIMITED LIABILITY COMPANIES, GENERALLY. Upon a domestic or foreign corporation or domestic or foreign limited liability company:

(a) By personally serving the summon upon an officer, director or managing agent of the corporation or limited liability company either within or without this state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

³ Buggs does address this issue in her reply brief. As a general rule, however, we will not address arguments raised for the first time in a reply brief. See *Schaeffer v. State Personnel Comm'n*, 150 Wis.2d 132, 144, 441 N.W.2d 292, 297 (Ct. App. 1989).

Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed). Thus, the dismissal for lack of service remains unchallenged with respect to Drs. Roznik and Fitch, the Northridge Dental Corporation, and their insurers.

By the Court.—Judgment affirmed.

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

