

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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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.

No. 00-2245

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

RUTH A. RUEGE,

PLAINTIFF-APPELLANT,

MEDICAL BENEFIT ADMINISTRATORS,

PLAINTIFF,

V.

**THOMAS J. DOUGHERTY, M.D. AND WISCONSIN
PATIENTS COMPENSATION FUND,**

DEFENDANTS-RESPONDENTS,

**WAUKESHA MEMORIAL HOSPITAL, OHIO HOSPITAL
INSURANCE COMPANY AND PHYSICIANS INSURANCE
COMPANY,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Waukesha County:

KATHRYN W. FOSTER, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Ruth A. Ruege appeals from the judgment dismissing this action. Ruege argues on appeal that her informed consent cause of action should not have been dismissed by directed verdict and that the court improperly excluded certain testimony. Because we conclude that the court properly granted the motion for a directed verdict and excluded the testimony, we affirm.

¶2 Ruege brought a medical malpractice action against Dr. Thomas J. Dougherty, among others. Dougherty had been Ruege's physician for many years, and was treating her for high blood pressure. He ordered that she undergo a procedure called a captopril renogram. Ruege alleged that Dougherty's secretary told her to discontinue taking her high blood pressure medication for five days prior to undergoing the procedure. After being off the medication for approximately six days, Ruege suffered seizures and a stroke. The complaint alleged negligence and lack of informed consent. After trial began, Dougherty moved for a directed verdict on all claims. The court granted the motion as to the informed consent claim. The case eventually went to the jury on the issue of negligence. The jury returned a verdict finding that Dougherty was not negligent.

¶3 The first issue is the appropriate standard of review.

When reviewing a trial court's decision to direct a verdict, we apply the same standard as the trial court, but also give substantial deference to the trial court's better ability to assess the evidence. The standard is whether, viewing the evidence most favorably to the party against whom the verdict is sought to be directed, there is any evidence to sustain a cause of action. A verdict should be directed only when the evidence gives rise to no dispute as to material issues, or when the evidence is so clear and

convincing as to reasonably permit unbiased and impartial minds to come to but one conclusion.

Tanner v. Shoupe, 228 Wis. 2d 357, 375-76, 596 N.W.2d 805 (Ct. App. 1999) (citations omitted).

¶4 Ruege argues that the circuit court should not have entered a directed verdict on her informed consent claim. An informed consent claim requires a plaintiff to prove that the doctor had a duty to make such disclosures “as appear reasonably necessary under circumstances then existing to enable a reasonable person under the same or similar circumstances confronting the patient at the time of disclosure to intelligently exercise his right to consent or to refuse the treatment or procedure proposed.” **Scaria v. St. Paul Fire & Marine Ins. Co.**, 68 Wis. 2d 1, 13, 227 N.W.2d 647 (1975). In other words, “given the circumstances of the case, what would a reasonable person in the patient’s position want to know in order to make an intelligent decision with respect to the choices of treatment or diagnosis?” **Martin v. Richards**, 192 Wis. 2d 156, 176, 531 N.W.2d 70 (1995).

¶5 We agree with the circuit court that the evidence Ruege offered did not establish the elements of informed consent. First, Ruege’s evidence did not establish that there were any risks associated with telling a patient to suspend blood pressure medications prior to taking a captopril renogram. Ruege’s own expert testified that Dougherty followed the proper procedures, and that there were no risks associated with the procedure. The expert also stated that the hospital procedures require monitoring a patient for blood pressure while the test is being performed. The evidence offered established that the course of action offered by Dougherty was itself completely reasonable. There was no evidence offered whatsoever that a reasonable patient, in Ruege’s circumstances, would have chosen a different course of action. Further, Ruege’s expert testified that in his

opinion, the fact that Ruege stopped taking the medication prior to the procedure was not the cause of her stroke. He testified that Ruege's own life style, including consumption of alcohol, smoking, and failure to diet and exercise, was, in his opinion, the cause of her stroke. The circuit court properly granted a directed verdict on this issue.

¶6 Ruege also argues that the court improperly excluded certain evidence of her experts, Ann Johnson, Dr. Miller, and Dr. Fehling. "A trial court's decision to admit or exclude evidence is a discretionary determination that will not be upset on appeal if it has 'a reasonable basis' and was made 'in accordance with accepted legal standards and in accordance with the facts of record.'" *State v. Jenkins*, 168 Wis. 2d 175, 186, 483 N.W.2d 262 (Ct. App. 1992) (citations omitted).

¶7 Ruege argues that the circuit court improperly excluded the testimony of Ann Johnson, a technologist at the hospital where Ruege was to have the captopril renogram. Ruege argues that Johnson's testimony was relevant to show an alternative method of conducting the procedure. Johnson would have testified about the procedures a different doctor followed when performing this procedure. The circuit court excluded this testimony because it found that this testimony was not relevant to the question of whether Dougherty met the required standard of care as to what information he should have given to Ruege. The court also found that the witness was not a medical doctor and, therefore, was not qualified to testify about the appropriateness of an alternative procedure. We conclude that the circuit court properly excluded this evidence.

¶8 The court also excluded certain evidence offered by two doctors. The court excluded the testimony of the first, Dr. Miller, because Ruege did not

establish that he was qualified to give the evidence she sought. The court excluded the testimony of the second doctor because counsel was simply not asking the right questions. In order to establish a lack of informed consent, the proper legal framework is to establish what a reasonable person would want to know. Counsel in this case continually asked the doctor what Ruege would have wanted to know. The questions simply were not properly framed to elicit testimony on the relevant issue. We conclude that the court properly exercised its discretion in excluding this testimony.

¶9 For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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

