COURT OF APPEALS
DECISION
DATED AND FILED

November 20, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-0412 **Cir. Ct. No. 98-CV-462**

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

GARY WISTROM,

PLAINTIFF-APPELLANT,

V.

EMPLOYERS INSURANCE OF WAUSAU AND MARGERY A. DERBY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Marathon County: VINCENT K. HOWARD, Judge. *Affirmed.*

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

¶1 PER CURIAM. Gary Wistrom appeals a summary judgment dismissing his claims for wrongful disclosure of medical records against

Employers Insurance of Wausau and its employee, Margery Derby. We conclude that, under WIS. STAT. § 102.13(2)(a),[1] an employee waives the physician-patient privilege with regard to any condition reasonably related to the condition for which the employee claims worker's compensation. We affirm the summary judgment.

BACKGROUND

¶2 The material facts are not disputed. Gary Wistrom sustained injuries in a work-related accident while he was employed by the Town of Weston and the Weston Sanitary District in the 1980s. Employers provided worker's compensation insurance to those entities and, accordingly, paid worker's compensation benefits to Wistrom.

¶3 In 1998, Employers received information from physicians treating Wistrom that he had become addicted to his pain medication. Wistrom's physicians recommended that he end his prescription regimen and begin a new treatment program. Employers determined that Wistrom's current treatment was no longer appropriate and began to take the necessary steps to dispute its continued responsibility to pay for the treatment. Derby, the claim examiner for Wistrom's claim, sent a letter to Wistrom's pharmacist informing him that Employers disputed its responsibility to continue paying for Wistrom's prescription. Derby attached to the letter the medical documentation supporting Employers' position. Employers also sent this letter to Wistrom, his attorney and his employer.

[1] All references to the Wisconsin Statutes are to the 1997-1998 version, unless otherwise noted.

¶4 Wistrom indicated to Employers in two letters that he believed its conduct constituted bad faith. Nevertheless, the parties executed a compromise agreement shortly after. The agreement confirmed that the parties had agreed to a "complete settlement" of all of Wistrom's claims under WIS. STAT. ch. 102 against his employer, Employers, its agents and employees.

¶5 After the compromise agreement was executed, Wistrom filed suit against Employers and Derby alleging wrongful disclosure of medical records, invasion of privacy and intentional infliction of emotional distress. The trial court stayed the matter while Wistrom submitted the dispute to the Division of Worker's Compensation Claims. The division's administrative law judge decided not to reopen the parties' compromise agreement and refused to decide whether the agreement barred Wistrom's trial court claims. The matter returned to the trial court, and Employers moved for summary judgment. The trial court held that WIS. STAT. ch. 102 provides the exclusive remedy for those claims and that Wistrom waived any bad faith claim under worker's compensation in the agreement. It therefore granted Employers' motion for summary judgment and dismissed Wistrom's claims. Wistrom appeals.

STANDARD OF REVIEW

¶6 We review summary judgments de novo, using the same methodology as the trial court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Because this methodology is well known, we do not repeat it here, except to note that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶7 Resolution of this case requires statutory interpretation, which presents a question of law that we review de novo. ***State v. Setagord***, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997). The purpose of statutory interpretation is to discern the intent of the legislature. ***Id.*** at 406. We first consider the language of the statute. If the language of the statute clearly and unambiguously sets forth the legislative intent, we apply that to the case at hand and do not look beyond the statutory language to ascertain its meaning. ***Id.***

DISCUSSION

¶8 Wistrom's principal contention is that WIS. STAT. § 146.82 prohibited Employers from disclosing his medical records. Wistrom argues that the worker's compensation exclusive remedy doctrine does not bar his claims because wrongful disclosure of medical records falls outside the Worker's Compensation Act, and strong public policy reasons favor rights of privacy and confidentiality of medical records.[2] He further contends that summary judgment was not appropriate because discovery had been prohibited and differing inferences could be drawn from the available facts. Employers maintains that (1) summary judgment was appropriate because there were no issues of material fact; (2) Wistrom's claim is one for bad faith in the handling of his worker's

[2] Although we do not decide this claim based upon WIS. STAT. ch. 146, our review of the chapter leads us to question whether, even if Wistrom had not waived his privilege by submitting his injury claims to worker's compensation, he might not have had a claim against Employers because ch. 146 appears to apply only to health care providers.

compensation claims and his sole remedy lies within WIS. STAT. ch. 102; and (3) Wistrom has no claim outside ch. 102.[3]

¶9 We sustain summary judgment in favor of Employers on different grounds from the trial court. We conclude that, under WIS. STAT. § 102.13(2)(a), Wistrom waived any privilege attached to the medical records because the condition they related to was part of a worker's compensation claim.

¶10 WISCONSIN STAT. § 102.13(2)(a) provides:

> An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, dentist, podiatrist, hospital or health care provider shall, within a reasonably time after written request by the employee, employer, worker's compensation insurer or department or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation.

Wistrom argues that "The limited waiver of the confidentiality of medical records provided for in Section 102.13(2)(a), Stats., does not authorize casual redisclosure." He also argues "Health care providers typically advise authorized recipients of medical records against redisclosure."

[3] Employers devotes a great amount of its brief to a broad interpretation of the WIS. STAT. ch. 102 exclusive remedy provisions and the characterization of Wistrom's claim as one for bad faith under ch. 102. While we decide this case based on another section of ch. 102, we are not convinced that ch. 102 should be so broadly interpreted.

¶11 The only citation for either of these arguments is to an affidavit, document 37. Document 37 is an affidavit from Wistrom's attorney, the brief writer, with a copy of an ambiguous document attached. Entitled "Redisclosure Notice," the document says, "Redisclosure of the confidential information which is being provided to you is prohibited as specified below." It then notes that WIS. STAT. ch. 146 protects the confidentiality of medical records and warns, "the recipient shall keep this information confidential and may not disclose identifying information about the patient whose records are being released." Wistrom seems to argue that because this form accompanied Wistrom's medical records when his attorney received a copy from the health care providers, Employers would have received the same form with their copy of the medical records. He asserts that Employers, having received this form, was prohibited from redisclosing Wistrom's medical records.

¶12 Wistrom again addresses WIS. STAT. § 102.13(2)(a) in his reply brief. There, he argues that:

> In fact, the waiver of privilege in that statute is designed to expedite the handling of worker's compensation cases and also protects the healthcare provider furnishing such records. Nothing in that statute permits redisclosure. In fact, redisclosure of medical records by an authorized recipient is specifically prohibited.

Wistrom contends that § 102.13(2)(a) authorizes waiver only upon a request made by the carrier or employer.

¶13 Wistrom cites no authority for the proposition that WIS. STAT. § 102.13(2)(a) is limited as a waiver of the physician-patient privilege, except that it waives the privilege only for records relating to worker's compensation claims. Nor does Wistrom cite authority to support his claims that the purposes of the

statute are to expedite the handling of worker's compensation cases and to protect the health care providers who furnish the medical records. Finally, Wistrom's attorney again offers only his own affidavit to substantiate the claim that redisclosure of medical records by an authorized recipient is specifically prohibited. No statute or administrative code section support Wistrom's claims.

¶14 Rather, the plain language of WIS. STAT. § 102.13(2)(a) sets forth a specific statutory exception to the general statutory policy that "All patient health care records shall remain confidential." WIS. STAT. § 146.82(1). Section 102.13(2)(a) is a broad waiver of physician-patient privilege that encompasses any records relating to a worker's compensation claim. The legislature specifically mentions the ch. 146 privilege concerning medical records. It sets forth § 102.13(2)(a) as an exception to that privilege. Wistrom may not raise a claim for illegal disclosure of confidential medical records under WIS. STAT. §§ 146.82-146.84 because the physician-patient privilege is statutorily waived for medical records relating to his worker's compensation claim.

By the Court.—Judgment affirmed.

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