COURT OF APPEALS
DECISION
DATED AND RELEASED

March 26, 1996

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2992

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

OTILA TREVINO,

Plaintiff-Appellant,

PRIMECARE,

Plaintiff,

v.

CITY OF MILWAUKEE,

Defendant-Respondent.

APPEAL from an order of the circuit court for Milwaukee County: WILLIAM J. HAESE, Judge. *Affirmed*.

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Otila Trevino appeals from an order of the circuit court dismissing her personal-injury action against the City of Milwaukee. On appeal, Trevino argues that her acceptance of the City's settlement offer was not

binding on her as it did not meet the requirements of § 807.05, STATS.[1] She also argues that the trial court erred in denying her motion to re-open the case. We affirm.[2]

Trevino's suit against the City was scheduled for trial on February 3, 1994. Trevino agreed to settle the matter. On January 31, 1994, the trial court was advised of the settlement, dismissed the case and removed the action from its calendar. No order of dismissal was entered. On August 2, 1994, after changing her mind about settling, Trevino brought a motion for a jury trial and an order nullifying the oral settlement agreement, contending that the trial court could not enforce the settlement because it did not meet the requirements of § 807.05, STATS. The trial court denied Trevino's motion.

The appellate record is sparse. In the course of its oral decision denying Trevino's motion, the trial court recited:

> According to court records this action was set for trial by jury on February 3, 1994. On January 31, 1994, the preceding Friday, this court was advised by [the attorneys for the plaintiff and defendant] during a telephone conference that this action was settled. The court then removed the action from the calendar and dismissed the case.
>
> On March 10, 1994, [the plaintiff's attorney] contacted this court by letter to state that the plaintiff had reconsidered her settlement with the City of

[1] Section 807.05, STATS., provides:

> **Stipulations.** No agreement, stipulation, or consent between the parties or their attorneys, in respect to the proceedings in an action or special proceeding shall be binding unless made in court or during a proceeding conducted under s. 807.13 or 967.08 and entered in the minutes or recorded by the reporter, or made in writing and subscribed by the party to be bound thereby or the party's attorney.

[2] Primecare did not participate in this appeal.

> Milwaukee. [The plaintiff's attorney] advised this court that the plaintiff had not signed a stipulation for dismissal or a release with the City. [The plaintiff's attorney] requested this matter be put back on the calendar for a jury trial.
>
> On August 2, 1994, plaintiff brought this motion for an order for jury trial, and an order nullifying the oral settlement agreement ....
>
> ....
>
> At no time was the scheduling order modified. In accordance with the scheduling order, trial by jury was to be held on February 3, 1994. Neither party appeared on February 3, 1994. This court dismissed the case on January 31, 1994, and the parties consented to the dismissal when they did not appear in court on the day of the trial. So the court, therefore, is not enforcing the settlement agreement, which would mean that I would force the City to pay the $500, which I would not, but rather this court is enforcing the scheduling order, and was prepared to try the case on February 3, 1994 with a jury....

Neither party controverts the trial court's recitation.

Trevino's first argument misses the mark. The trial court did not enforce the settlement agreement. Rather, it enforced the scheduling order.

Trevino's second argument is a rehash of her first argument. She contends that the trial court erred when it denied her motion to re-open and set a new trial date because there was no enforceable settlement agreement between the parties. This argument does not address the real issue: namely, whether the scheduling order survived the earlier "dismissal," which was not reduced to a written order.[3] Accordingly, we decline to consider it. *See* ***State v.***

[3] A trial court may enforce a scheduling order, RULE 802.10(3)(b), STATS., and may dismiss a

Gulrud, 140 Wis.2d 721, 730, 412 N.W.2d 139, 142–143 (Ct. App. 1987) (A reviewing court will not consider undeveloped arguments.).

By the Court.—Order affirmed.

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

(..continued)
case for lack of prosecution, RULE 805.03, STATS.