COURT OF APPEALS
DECISION
DATED AND RELEASED

June 18, 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. 95-0500

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

T.C. #93-CV-014853
JIMI THORNTON,

Plaintiff-Appellant,

v.

ARCHIBALD PIQUET,

Defendant-Respondent.

T.C. #93-CV-566801
JIMI THORNTON,

Appellant,

v.

WILLIAM E. MARTENS,

Respondent.

T.C. #93-CV-577592
JIMI THORNTON,

Plaintiff-Appellant,

v.

WALTER S. POLACHECK,

Defendant-Respondent.

T.C. #84-CV-640898
JIMI THORNTON,

Appellant,

v.

JAMES CONWAY,

Defendant-Respondent.

T.C. #84-CV-640899
JIMI THORNTON,

Appellant,

v.

ARCHIBALD PIQUET,

Defendant-Respondent.

JIMI THORNTON,

Plaintiff-Appellant,

v.

WALTER S. POLACHECK, M.D.,

Defendant-Respondent.

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

Before Sullivan, Schudson and Cane, JJ.

PER CURIAM. Jimi Thornton appeals from an order dismissing his medical malpractice action for failure to prosecute under § 805.03, STATS. Thornton claims that while his efforts to prosecute the action may not have been sufficient, they do not amount to egregious conduct. Thornton also claims that the dismissal was not a just sanction, considering his position as a *pro se* litigant with no experience in civil litigation. Lastly, Thornton asserts that his failure to comply with court orders was harmless because it did not prejudice the defendants or cause delay. We affirm.

This appeal arises from an order issued November 29, 1994, which consolidated six cases, two of which (93-CV-014851, 93-CV-014853) were commenced in 1993 by Thornton against physicians for alleged medical malpractice. The other four cases were filed by Thornton's father between 1981 and 1984. This appeal of the dismissal raises issues only arising out of the two cases filed by Thornton.[1]

Case 93-CV-014851 was commenced by Thornton on October 20, 1993. After Thornton failed to appear at a scheduling conference on March 14, 1994, the matter was dismissed under § 805.03, STATS. The case was then reopened and Thornton failed to appear at another scheduling conference on October 5, 1994. Thornton also failed to provide the names of expert witnesses and a permanency report within the time frame set by the scheduling order.

Case 93-CV-014853 was also commenced on October 20, 1993. The scheduling order required that the plaintiff provide a witness list on September 1, 1994. The witness list was not filed until November 15, 1994. The scheduling order also required that a medical report substantiating any claim for permanent injury and an itemized statement of special damage claims be submitted by September 1, 1994. These two documents were not provided before the actions were consolidated and dismissed on November 21, 1994.

Thornton first challenges the dismissal by claiming that his conduct was less than egregious, and that the dismissal sanction was too severe. A trial court's decision to dismiss an action is discretionary, and will not be disturbed unless the party claiming to be aggrieved establishes that the trial court has erroneously exercised its discretion. ***Johnson v. Allis Chalmers Corp.***, 162 Wis.2d 261, 273, 470 N.W.2d 859, 863 (1991). We will sustain a discretionary act if "the trial court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Loy v. Bunderson***, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982).

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[1] Thornton filed a notice of appeal to all of the actions, but has raised issues dealing only with 93-CV-014851, and 93-CV-014853. Thornton's father filed a notice of appeal on June 8, 1995, but has filed no appellate brief. This omission violates RULE 809.19(1), STATS.; therefore, we dismiss that appeal. RULE 809.83(2), STATS.

While a dismissal is discretionary, it is "appropriate only in cases of egregious conduct." ***Johnson***, 162 Wis.2d at 275, 470 N.W.2d at 864. The party seeking to establish that a dismissal for a failure to prosecute was an abuse of discretion "must show `a clear and justifiable excuse' for the delay." ***Trispel v. Haefer***, 89 Wis.2d 725, 733, 279 N.W.2d 242, 245 (1979) (citation omitted).

In examining the record in this case, it is clear that the circuit court reached a reasonable conclusion. The trial court looked at the history of cases 93-CV-014851 and 93-CV-014853, and determined that Thornton had not taken the litigation seriously. The court noted that Thornton failed to appear for a scheduling conference, and failed to comply with scheduling orders. The court also noted that one of the scheduling orders contained a warning in capital letters that a failure to comply with the terms of the order would be considered cause for imposing sanctions under §§ 804.12 and 805.03, STATS. Thornton signed the order directly under the warning on April 29, 1994.

In sum, the trial court found Thornton's failure to comply with court orders to be egregious behavior, without any clear or justifiable excuse. The trial court thus applied the proper standard of egregious conduct to the relevant facts, and after a rational process, found that the petitioner failed to prosecute the action. Therefore, after reviewing the record, we conclude that the circuit court's finding of egregious conduct was a proper exercise of discretion.

Thornton next seeks to establish his *pro se* status as a clear and justifiable excuse for his failure to comply with court orders. He also asserts that he did not know that a dismissal could occur if he failed to follow scheduling orders. We are not persuaded that these explanations rise to the level of clear and justifiable excuses for failing to comply with court orders. Thornton's inexperience does not mean that "a trial court nor a reviewing court has a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law." ***Waushara County v. Graf***, 166 Wis.2d 442, 452, 480 N.W.2d 16, 20, *cert. denied*, 506 U.S. 894 (1992). Thornton's assertion that he did not know the consequences of violating a court order is also not persuasive in light of the fact that he signed the order which warned of possible sanctions.

Thornton also challenges the order on the ground that the defendants did not suffer any harm as a result of his delays. This argument fails to recognize that prejudice is not necessary. "We conclude that the circuit court's discretion to dismiss a case should not be restricted by the establishment of a prejudice requirement." ***Johnson***, 162 Wis.2d at 282, 470 N.W.2d at 867. Prejudice to another party is not the main consideration—rather, the dismissal for a failure to prosecute serves "to discourage the protraction of litigation, preserve judicial integrity, and promote the orderly processing of cases." ***Id***.

By the Court.—Order affirmed.

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