

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 7, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP580**

**Cir. Ct. No. 2010CV2126**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**RUSSELL ADAMS,**

**PLAINTIFF-APPELLANT,**

**V.**

**NORTHLAND EQUIPMENT COMPANY, INC., CINCINNATI INSURANCE  
COMPANY AND THE LEAGUE OF WISCONSIN MUNICIPALITIES MUTUAL  
INSURANCE COMPANY,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Rock County:  
JAMES WELKER, Judge. *Affirmed.*

Before Lundsten, P.J., Higginbotham and Blanchard, JJ.

¶1 PER CURIAM. Russell Adams appeals an order compelling him to accept a settlement of his personal injury claim against Northland Equipment

Company, Inc., at the behest of his employer's worker's compensation insurer, The League of Wisconsin Municipalities Mutual Insurance Company (LWMMIC). He argues that: (1) the order violates his right to a jury trial; (2) the circuit court was required to conduct an evidentiary hearing prior to compelling him to accept the settlement; and (3) the circuit court erroneously exercised its discretion in determining the settlement was fair. The first issue is controlled by *Dalka v. American Family Mut. Ins. Co.*, 2011 WI App 90, 334 Wis. 2d 686, 799 N.W.2d 923, and we reject Adams' other arguments. We affirm the circuit court's order.

¶2 Adams commenced this action against Northland to recover damages for a spinal cord injury he sustained while plowing snow for his employer, the Village of Fontana. The plow had been sold to the village by Northland and Northland had repaired the plow prior to use by Adams. LWMMIC was joined as a party to the action because it had paid worker's compensation benefits to Adams on behalf of the village. Just before the scheduled jury trial, LWMMIC moved the circuit court pursuant to WIS. STAT. § 102.29(1) (2011-12),<sup>1</sup> to compel settlement of the case on Northland's \$200,000 offer. In response, Adams filed a written objection to the settlement as grossly inadequate and requested a confidential evidentiary hearing with the burden placed on LWMMIC to prove that the settlement is in Adams' best interest. The circuit court held a

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<sup>1</sup> WISCONSIN STAT. § 102.29(1)(a) provides that an employer or worker's compensation carrier has the same right as the injured employee to make a claim or maintain an action in tort against a third-party for the employee's injury. Section 102.29(1)(b) provides in relevant part: "Each shall have an equal voice in the prosecution of the claim, and any disputes arising shall be passed upon by the court before whom the case is pending ...."

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

hearing on the motion and heard the parties' arguments in advance of the trial date. Referring to the parties' submissions on a previously decided motion for summary judgment,<sup>2</sup> the circuit court found that Adams had a difficult case on the questions of liability and cause and that the risk of a no liability jury verdict exceeded the possibility of recovering more than \$200,000. The motion to compel the settlement was granted.

¶3 Adams first questions the circuit court's authority to compel him to agree to a settlement and take away his right to a jury trial. However, *Bergren v. Staples*, 263 Wis. 477, 483, 57 N.W.2d 714 (1953), holds that under the provision now found in WIS. STAT. § 102.29(1)(b), the circuit court, without a jury trial, can pass upon a dispute where claimants under the statute cannot agree as to the proper prosecution of a claim against a third-party tortfeasor. *Bergren* determined that an injured employee could compel his employer and worker's compensation insurer to join in the acceptance of an offer of settlement. *Id.* at 481. In *Dalka*, an employee was compelled to accept the settlement on the motion of the worker's compensation insurer. *Dalka*, 334 Wis. 2d 686, ¶12. *Dalka* holds that the constitutional right to a jury trial is waived by the employee's acceptance of worker's compensation benefits and presents no impediment to the circuit court's authority to compel acceptance of a settlement. *Id.*, ¶10.

¶4 Adams argues that *Dalka* is wrongly decided and that we should correct the erroneous holding. In the alternative, Adams argues that we should certify this case to the Wisconsin Supreme Court. We reject both arguments.

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<sup>2</sup> Less than one month before the motion to compel the settlement was filed, the circuit court heard and denied Northland's motion for summary judgment.

First, we may not overrule, modify, or withdraw language from a published opinion of the court of appeals. *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). We are bound to adhere to the holding in *Dalka* that the circuit court has authority to compel the settlement. Second, this case does not satisfy the criteria for certification.

¶5 Adams next argues that the circuit court wrongly denied him an evidentiary hearing. According to Adams, in making this discretionary determination whether to compel acceptance of an offer of settlement, the circuit court, as a matter of due process, must hold an evidentiary hearing at which the burden is on the worker's compensation insurer to demonstrate that the settlement is in the employee's best interest. We disagree. Adams proposes a mini-trial of his personal injury claim that would exclude the third-party tortfeasor.

¶6 Due process is flexible and calls for such procedural protections as the particular situation demands. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Here, the circuit court was not called upon to adjudicate the disputed issues of fact that had precluded summary judgment. Rather, the court was asked to resolve the dispute between Adams and LWMMIC over the offer of settlement.

¶7 In *Bergren*, the circuit court heard the parties' respective positions on the proposed settlement after jury selection and ordered the insurer to accept the settlement. *Bergren*, 263 Wis. at 480-81. The circuit court's decision was determined to be a proper exercise of discretion. *Id.* at 485. Adams was afforded the same opportunity as the opposing party in *Bergren*. He was given notice of the motion to compel settlement and a hearing at which he had an opportunity to advance his argument against the settlement. As in *Bergren*, the absence of an evidentiary hearing did not violate Adams' right to due process.

¶8 Finally, Adams argues the circuit court erroneously exercised its discretion in compelling him to accept the settlement. In reviewing a discretionary determination, we examine the record to determine whether the circuit court “logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach.”<sup>3</sup> *Nettesheim v. S.G. New Age Prods., Inc.*, 2005 WI App 169, ¶9, 285 Wis. 2d 663, 702 N.W.2d 449.

¶9 *Dalka* suggests that inquiring into the nature and strength of the case is appropriate in deciding whether to compel acceptance of a settlement. *Dalka*, 334 Wis. 2d 686, ¶4. The circuit court made that very assessment, and did so on the basis of the summary judgment record it had recently reviewed. It concluded that even though his claim survived summary judgment, Adams had some proof problems on the issues of liability and causation because of a seat belt defense. Well aware that the case was valued differently by Adams and LWMMIC, the circuit court found the settlement offer to be at the upper level of what the case was worth. Then, applying the risk of a no liability jury verdict, it determined that the settlement was fair. The circuit court’s decision reflected a logical interpretation of the facts surrounding the settlement offer and consideration of the appropriate factors bearing on the decision. We conclude that it was a proper exercise of discretion.

*By the Court.*—Order affirmed.

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<sup>3</sup> Much of Adams’ argument is that the circuit court did not fully explain its decision. We are not persuaded that the circuit court needed to say more. But even if we were, when a circuit court fails to set forth reasons for a discretionary decision, this court may examine the record to determine whether facts exist which support the decision. *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982).

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

