

371 Wis.2d 759

Unpublished Disposition

See Rules of Appellate Procedure, Rule 809.23(3),
regarding citation of unpublished opinions.

Unpublished opinions issued before July 1, 2009,
are of no precedential value and may not be cited
except in limited instances. Unpublished opinions
issued on or after July 1, 2009 may be cited for
persuasive value.

NOTE: THIS OPINION WILL NOT APPEAR IN A
PRINTED VOLUME. THE DISPOSITION WILL
APPEAR IN A REPORTER.

Court of Appeals of Wisconsin.

Dennis J. MITCHELL, Plaintiff–Appellant,
[Kathleen Sebelius](#), Involuntary–Plaintiff,
v.

AMERICAN FAMILY MUTUAL INSURANCE CO.,
Defendant–Respondent,
Sarah A. Dempsey and Acuity, Defendants.

No. 2015AP824.

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Aug. 30, 2016.

Appeal from an order of the circuit court for Outagamie
County: [Mitchell J. Metropulos](#), Judge. *Affirmed*.

Before [STARK](#), P.J., [HRUZ](#) and [SEIDL](#), JJ.

Opinion

¶ 1 PER CURIAM.

*1 Dennis Mitchell, pro se, appeals an order distributing
settlement proceeds and dismissing Mitchell’s personal
injury action against Sarah Dempsey and her insurer,
American Family Mutual Insurance Company. Mitchell
argues the circuit court erred by enforcing the settlement
agreement. We reject Mitchell’s arguments and affirm the
order.

BACKGROUND

¶ 2 In February 2011, Mitchell sustained injuries in an
automobile crash, while he was driving a Fox Valley Cab.
Mitchell subsequently filed a personal injury suit against
the driver of the other vehicle, Sarah Dempsey, and her
insurer, American Family Mutual Insurance Company.

Because Mitchell had received both Medicare and
worker’s compensation payments, the United States
Secretary for the Department of Health and Human
Services, along with the workers compensation
insurer—Acuity, a Mutual Insurance Company—were
named as subrogated parties in the action.

¶ 3 The matter proceeded to mediation. Mitchell’s counsel
averred that on the morning of mediation, he explained to
Mitchell his case had a value of between \$150,000 and
\$200,000. Counsel further explained they would begin the
negotiation with an opening demand of \$400,000, with
the expectation the parties would go “back and forth”
many times. According to counsel, Mitchell ultimately
asked the mediator if he thought American Family would
pay \$175,000, and counsel informed Mitchell he would
net roughly \$40,000 to \$50,000 from that settlement
amount. Mitchell’s counsel further indicated that because
American Family’s adjuster was not then available, the
mediator “directly asked [Mitchell] for his assurance that
if American Family offered \$175,000, he would accept it.
[Mitchell] gave [the mediator] his authority to accept
\$175,000 if it was offered.” Counsel added: “[A]round
1:30 p.m. that afternoon, I received a call from [the
mediator] advising the case had settled for \$175,000.”
Counsel then called Mitchell to inform him of the
settlement and, according to counsel, Mitchell expressed
no objection to the settlement.

¶ 4 The mediator also submitted an affidavit regarding his
recollection of the negotiations. The mediator averred that
he asked Mitchell if he would settle his case for \$175,000
and Mitchell replied he would. The mediator then asked
counsel for American Family to confer with the claims
representative and confirm whether the matter could be
settled for \$175,000. When the mediator received
confirmation from American Family, the mediator
produced a written settlement agreement that was signed
by counsel for American Family, Mitchell’s counsel, and
the mediator. On the line reserved for Mitchell’s
signature, his counsel wrote “Authority to settle for
\$175,000 given to mediator during session by Dennis
Mitchell.”

¶ 5 Mitchell subsequently filed a “Motion Regarding
Non–Settlement of Claim,” seeking to vacate the
settlement agreement. In an affidavit in support of the
motion, Mitchell averred that he did not agree to settle his
claim at the mediation. During the hearing on Mitchell’s
motion, the parties did not offer sworn testimony but,
rather, made arguments consistent with submitted
affidavits. Mitchell also submitted a phone call log from
the day of the mediation to establish a timeline of events

that day. The circuit court denied the motion to vacate the settlement agreement and entered an order consistent with the agreement's terms. This appeal follows.

DISCUSSION

*2 ¶ 6 Mitchell argues the circuit court erred by enforcing the settlement agreement because Mitchell never approved the settlement terms nor signed the written agreement. Pursuant to [WIS. STAT. § 807.05](#),¹ however, a settlement agreement is binding where, as here, the agreement is signed by a party's attorney. The statute provides:

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 ss. 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*.

[Section 807.05](#) (emphasis added).

¶ 7 Mitchell nevertheless contends he never authorized his attorney to enter into the agreement on his behalf. After considering the parties' affidavits and the arguments made at the motion hearing, the circuit court found otherwise, concluding "there was an agreement, that [Mitchell] did give authority to [his counsel] to settle the claim, and that he did indicate to [the mediator] that he did wish to settle the claim for \$175,000."² On appeal, Mitchell, in effect, asks this court to reject the circuit court's findings by making a credibility determination in Mitchell's favor. Credibility determinations, however, are made by the trier of fact. See [Christensen v. Economy Fire & Cas. Co.](#), 77 Wis.2d 50, 62, 252 N.W.2d 81 (1977). An appellate court will substitute its judgment for that of the trier of fact only when the fact-finder relied on evidence that was incredible as a matter of law—the kind of evidence that conflicts with the uniform course of nature or with fully-established or conceded facts. [Chapman v. State](#), 69 Wis.2d 581, 583, 230 N.W.2d 824 (1975). Here, the sworn affidavits of Mitchell's counsel

and the mediator were not incredible as a matter of law; therefore, the circuit court's findings of fact based on this evidence will not be set aside, and we will affirm the order enforcing the settlement agreement.

¶ 8 To the extent Mitchell alternatively argues the circuit court permitted hearsay at the motion hearing, the argument is conclusory and undeveloped as it fails to even identify the alleged hearsay. We need not address undeveloped arguments. See [State v. Flynn](#), 190 Wis.2d 31, 39 n. 2, 527 N.W.2d 343 (Ct.App.1994).

¶ 9 Likewise, we need not address Mitchell's undeveloped claim that the circuit court did not allow him to finish presenting his case. See *id.* Even on its merits, the record shows Mitchell was given ample opportunity to present his arguments and any exhibits. The court prevented Mitchell from interjecting additional argument after the court began its oral pronouncement. Mitchell contends on appeal that he had two witnesses prepared to testify regarding his physical recovery since the crash. Mitchell, however, failed to make an offer of proof in the circuit court as required under [WIS. STAT. § 901.03\(1\)\(b\)](#). Moreover, Mitchell fails to establish that his additional witnesses would have altered the outcome, as testimony regarding Mitchell's "recovery" has questionable relevancy to determining the validity and enforceability of the settlement agreement.³ See [Martindale v. Ripp](#), 2001 WI 113, ¶ 32, 246 Wis.2d 67, 629 N.W.2d 698 (improper admission or exclusion of evidence not grounds for reversal unless there is reasonable possibility error contributed to outcome).

*3 Order affirmed.

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

All Citations

371 Wis.2d 759, 886 N.W.2d 592 (Table), 2016 WL 4519356, 2016 WI App 75

Footnotes

¹ All references to the Wisconsin Statutes are to the 2013–14 version unless otherwise noted.

² Mitchell did not object to the circuit court's procedure of weighing credibility based on affidavits and argument. Because he did not object in the circuit court nor raise the issue on appeal, we do not review the propriety of deciding the case in this manner.

- 3 We note that many of Mitchell's arguments on appeal relate to grievances with his attorney's conduct, most of which are not relevant to the issue on appeal regarding the validity and enforceability of the settlement agreement.