

FILED
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Clerk of Circuit Court
Outagamie County
2023CV000345

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

SCOTT SCHARA, et al,

Plaintiffs,

Case No.: 23-CV-345

v.

ASCENSION HEALTH, et al,

Defendants.

**DEFENDANTS' JOINT BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR
RECONSIDERATION AND A NEW TRIAL**

INTRODUCTION

This case was tried before a 12-person jury from June 2, 2025, through June 19, 2025. On June 19, the jury rendered a verdict in favor of the Defendants, finding that the Defendants, Ascension Medical Group-Fox Valley Wisconsin, Inc., Ascension NE Wisconsin, Inc. d/b/a Ascension NE Wisconsin – St. Elizabeth Campus, and Gavin Shokar, M.D., were not negligent with regard to the care and treatment of Grace Schara. Neither Scott Schara or his attorneys elected to file any motions after verdict, including a motion for a new trial, within the statutory deadline set forth in Wis. Stat. § 805.16. Further, the Plaintiffs failed to file any type of appeal within the statutory deadline set forth in Wis. Stat. § 808.04.

The Plaintiffs have now filed a motion for reconsideration and a new trial based on what Scott Schara claims to be newly discovered evidence. It is the Defendants' position that the motion filed by Mr. Schara is untimely; that the so-called "newly discovered evidence" is not actually newly discovered evidence; and that Mr. Schara's allegations of bias against the Plaintiffs on the part of the Court are unfounded.

ARGUMENT

I. THERE IS NO EVIDENCE IN THE COURT RECORD ESTABLISHING THAT THE COURT WAS BIASED AGAINST MR. SCHARA.

Initially, it must be noted that Scott Schara (hereinafter “Mr. Schara”) has elected to file a motion for reconsideration and new trial as a pro se litigant. As a pro se litigant, Mr. Schara may not represent the interests of the Estate of Grace Schara, and attempting to do so is considered the unauthorized practice of law and prohibited under *Ditech Fin., LLC v. Estate of Stacey*, 2018 WI App 18, 380 Wis. 2d 447, 909 N.W.2d 180¹. As such, the Court may only consider this motion as it applies to Scott Schara personally and not regarding the interests of the Estate of Grace Schara.

On June 19, 2025, the jury in this case rendered a verdict in favor of the Defendants. Wis. Stat. § 805.16 sets forth the procedure for filing motions after verdict. The statute specifically requires that a party seeking relief via motions after verdict file their motions within 20 days of a verdict being rendered. That deadline can be extended at the Court’s discretion. Wis. Stat. § 801.15(2)(a) requires that a motion to extend be filed prior to the expiration of the deadline. No such motion was filed in this case, and Mr. Schara failed to file any motions after verdict prior to the expiration of the 20-day deadline.

In his motion, Mr. Schara alleges that the Court exhibited bias towards the Plaintiff based on comments made by the Court after learning that Mr. Schara and one or more of his attorneys had granted an interview with the *Appleton Post-Crescent*. The Court’s comments upon learning of this interview exhibits no bias against Mr. Schara; rather, they reflect frustration with Mr. Schara and his counsel for acquiescing to an interview with a local newspaper, knowing full well that

¹ Wis. Stat. § 757.30 Penalty for practicing without license.

(1) Every person, who without having first obtained a license to practice law as an attorney of a court of record in this state, as provided by law, practices law within the meaning of sub. (2), or purports to be licensed to practice law as an attorney within the meaning of sub. (3), shall be fined not less than \$50 nor more than \$500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt.

there were concerns by the Court and the Defendants regarding pretrial publicity and the ability to select jurors who were objective and not tainted by any pretrial publicity or Mr. Schara's ongoing social media campaign which was clearly intended to influence public opinion about this case. The Court was obviously concerned that an article published by the *Appleton Post-Crescent* on the eve of trial would give the Defendants a basis to request an adjournment of the trial based on pretrial publicity affecting the juror pool. An adjournment would have negated hundreds of hours of work put in by all parties and the Court in preparing this matter for trial.

While it is true that the Court denied Mr. Schara's motions in limine without argument regarding each specific motion, it is evident in the transcript from the pretrial conference that the Court stated a basis in the law for the Court's denial of Mr. Schara's motions in limine *in toto*. Moreover, the pretrial conference transcript is devoid of any evidence that the Court's denial of the Plaintiffs' motions in limine was a consequence levied by this Court for participating in the interview with the *Appleton Post-Crescent*.

Almost two weeks elapsed between the pretrial conference and the actual start of trial. Mr. Schara's counsel could have, but did not, file a motion for reconsideration prior to the commencement of trial, nor did counsel seek reconsideration of the Court's ruling before Mr. Schara or any member of his family testified at trial. Finally, neither Mr. Schara nor his counsel filed motions after verdict to allow the Court the opportunity to address this issue properly and consistent with Wis. Stat. § 805.17(3).

To the extent that the Court's comments at the pretrial conference on May 20, 2025, reflect any bias, it was a bias directed at the *Appleton Post-Crescent*, a non-party to this case. There is nothing in the record that demonstrates the Court was biased against Mr. Schara in any way. Thus, Mr. Schara's argument is based only on his perception that the Court was biased against him viewed through the lens of his own bias.

II. MR. SCHARA'S CLAIM OF "NEWLY DISCOVERED EVIDENCE" IS BASELESS.

Mr. Schara attempts to argue that the alleged bias of the Court is "newly discovered evidence." However, in his own affidavit, Mr. Schara implies that his attorneys had knowledge of the investigation that was being conducted regarding the Court and failed to inform him of such. (Dkt. 911, ¶ 4)

First, it is well-settled law that the knowledge that attorneys possess is imputed to the principal, which, in this case, would be Mr. Schara. *Wauwatosa Realty Co. v. Bishop*, 6 Wis. 2d 230, 236-37, 94 N.W.2d 562, 565 (1959). Thus, if Mr. Schara's attorneys had knowledge of an ongoing investigation or of any *Appleton Post-Crescent* articles discussing the ongoing investigation, that is also knowledge that would be deemed to be knowledge in the possession of Mr. Schara. *Id.*; see also *Lake Beulah Mgmt. Dist. v. State Dep't of Nat. Res.*, 2010 WI App 85, ¶36, 327 Wis. 2d 222, 787 N.W.2d 926 (reversed in part on other grounds).

Second, and related to the above, Mr. Schara's brief references an article published by the *Appleton Post-Crescent* on January 24, 2024². This article was published almost 18 months before trial in this matter commenced. A simple Google search would have revealed this article. Mr. Schara has made no secret of the fact that he was actively participating in working up this case in preparation for trial and the testimony at trial established that he is very adept at conducting research, all of which makes it very difficult to fathom that Mr. Schara himself was unaware of the *Appleton Post-Crescent* articles.

Finally, to the extent that Mr. Schara or his attorneys were concerned about the remarks made by the Court at the pretrial conference on May 20, 2025, those concerns should have been

² <https://www.postcrescent.com/story/news/local/2024/01/24/outagamie-county-judge-faces-scrutiny-over-decision-to-jail-man/72322214007/>

raised well before now. They could have been raised at the pretrial conference, in the weeks before the trial either by a motion for recusal or reconsideration of the court's ruling on Mr. Schara's motions in limine, a motion for reconsideration prior to calling members of the Schara family at trial, or in motions after verdict. Raising the issue now is an attempt to cloak arguments based on evidentiary decisions by the Court that should have been raised within the statutory timeframe for motions after verdict, and not by way of a motion for reconsideration. Mr. Schara's alleged recent revelation of the Court's alleged bias certainly does not rise to the level of "newly discovered evidence" that would warrant a new trial in this matter.

Mr. Schara relies on the case of *State v. Gudgeon*, 2006 WI App 143, 295 Wis. 2d 189, 720 N.W.2d 114, to support his argument that the *Appleton Post-Crescent* article constitutes "newly discovered evidence" for purposes of Wis. Stat. § 805.15(3). Such an argument, however, plainly ignores the easily distinguishable facts of the *Gudgeon* case. In *State v. Gudgeon*, Justin Gudgeon's probation agent sent a letter to the court prior to his probation extension hearing requesting that the court convert/stay his mandatory supervision in lieu of a civil judgment. *State v. Gudgeon*, *supra*, at ¶ 3. In reply, Judge Michael S. Gibbs handwrote a note at the bottom of the agent's letter stating, "No-**I want** his probation extended." *Id.* (emphasis added). Judge Gibbs' handwritten reply was sent to the probation agent, district attorney, and Justin Gudgeon's last attorney of record prior to the hearing on probation extension. *Id.*

There is a clear factual distinction between a handwritten note received prior to a hearing that outwardly expressed a judge's personal desire for a particular outcome (*i.e.*, "I want") and the allegations made here. There is no "newly discovered evidence" offered by Mr. Schara that is akin to the recorded evidence of personal bias against Mr. Gudgeon displayed by the court in *Gudgeon*. Any alleged bias dispensed from the tribunal to Mr. Schara based on the existence of an 18-month-

old news article that, in the exercise of due diligence was easily discoverable, is entirely speculative, unfounded, and insufficient to equate to “newly discovered evidence.”

Moreover, assuming *arguendo* that the *Appleton Post-Crescent* article does somehow constitute “newly discovered evidence,” Mr. Schara has still failed to establish the requisite elements of Wis. Stat. § 805.15(3) to necessitate a new trial. At the very least, he has failed to satisfy Wis. Stat. § 805.15(3)(d), which requires a finding that “[t]he new evidence would probably change the result.” “The correct legal standard when applying the 'reasonable probability of a different outcome' criteria is whether there is a reasonable probability that a jury, looking at both the old and the new evidence, would have a reasonable doubt as to the defendant's guilt.” *State v. Edmunds*, 2008 WI App 33, ¶22, 308 Wis. 2d 374, 746 N.W.2d 590, quoting *State v. McCallum*, 208 Wis. 2d 463, 474, 561 N.W.2d 707, 710-11 (1997). No reasonable argument can be made that the *Appleton Post-Crescent* article, which was wholly unrelated to the case at bar, would have changed the jury’s verdicts in this case based on the simple fact that the jury would have never been presented with this alleged “newly found evidence”. Moreover, Mr. Schara cannot reasonably establish that the jury’s verdict would have been different had one or more of Mr. Schara’s motions in limine been granted by the Court. Any argument to the contrary is absurd.

CONCLUSION

Mr. Schara’s motion for reconsideration and new trial should be summarily denied, as the motion should have been presented as a motion after verdict within the timeframe specified in Wis. Stat. § 805.16. Mr. Schara’s failure to file any motions within the twenty days as required by § 805.16 requires this Court to deny Mr. Schara’s motion as untimely.

For the foregoing reasons, the Defendants respectfully request that the court deny Mr. Schara's motion.³

Dated this 3rd day of November, 2025.

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³ As it is the Defendants' position that Mr. Schara's motion is time-barred, the Defendants have elected not to address the substance of Mr. Schara's arguments pertaining to the Court's evidentiary rulings. Should the Court desire a more detailed response from the Defendants, the Defendants would request that the Court set a briefing schedule. Further, the Defendants take the position that because Mr. Schara's motion is untimely and time-barred by the relevant statutes, the Court may render a decision without the need for a hearing.