

SUPREME COURT OF WISCONSIN

Filppula-McArthur v. Halloin

Filppula-McArthur, 2001 WI 8 (Wis. 2001) · No. Nos. 99-0895, 99-1103 · Decided February 13, 2001

SUMMARY

The Supreme Court of Wisconsin affirmed orders revoking Attorney James T. Ball's pro hac vice admission in two consolidated medical malpractice actions and assessing costs and fees against him. The court held that revocation under SCR 10.03(4) is within the circuit court's discretion and may be based on incompetence, unwillingness to follow professional-conduct rules, or unwillingness to follow courtroom-decorum rules. The court also held that a judge may consider the attorney's conduct in another Wisconsin courtroom when deciding whether to revoke pro hac vice admission.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Ann Walsh Bradley, J.; Jon P. Wilcox, J. (did not participate)
JURISDICTION	Wisconsin
DECIDED	February 13, 2001
DOCKET	Nos. 99-0895, 99-1103
DISPOSITION	affirmed
PROCEDURAL POSTURE	Attorney James T. Ball sought review of two published Wisconsin Court of Appeals decisions affirming circuit-court orders revoking his pro hac vice admissions and an order assessing costs and attorney fees against him personally after a mistrial.
STANDARD OF REVIEW	A circuit court's revocation of pro hac vice admission and assessment of costs are reviewed for an erroneous exercise of discretion. The decision is upheld when the record shows a reasonable conclusion reached after application of the law to the relevant facts. Interpretation of SCR 10.03(4) is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential
PARTIES	Noah Filppula-McArthur, a minor, by his guardian ad litem Janet S. Angus, Lori McArthur, James T. Ball v. Thomas Halloin, M.D., Bellin Memorial Hospital, Wisconsin Patients Compensation Fund, The Medical Protective Company, St. Paul Fire and Marine Insurance Company, Physicians Insurance of Wisconsin, Green Bay Area Public

Schools, Thomas J. Gallagher, M.D., Medical Center Ob-Gyn Associates, Wisconsin Physician Services, Unknown Insurance Company ABC, Unknown Insurance Company DEF, Unknown Insurance Company HIJ

TOPICS

civil procedure appellate procedure standard of review costs sanctions

PRACTICE AREAS

civil procedure legal ethics and professional responsibility appellate procedure medical malpractice

QUESTIONS PRESENTED

1. Whether a circuit court has discretion under SCR 10.03(4) to revoke an attorney's pro hac vice admission for incompetency or unwillingness to abide by professional-conduct and courtroom-decorum rules.
2. Whether a circuit court may consider the attorney's conduct before a different Wisconsin court when deciding whether to revoke pro hac vice admission.
3. Whether the circuit courts properly exercised their discretion in revoking Ball's pro hac vice admissions.
4. Whether the assessment of mistrial-related costs and attorney fees against Ball personally was an erroneous exercise of discretion.
5. Whether SCR 10.03(4) requires an egregiousness standard, likely future prejudice, or mandatory consideration of the client's choice of counsel before revocation.

HOLDINGS

1. Under SCR 10.03(4), a circuit court may revoke pro hac vice admission when the attorney manifests incompetency to represent a client in a Wisconsin court, is unwilling to abide by the rules of professional conduct for attorneys, or is unwilling to abide by the rules of courtroom decorum.
2. Revocation of pro hac vice admission is reviewed for an erroneous exercise of discretion; no erroneous exercise exists when the circuit court reaches a reasonable conclusion after applying the law to the relevant facts.
3. A circuit court may consider an attorney's conduct in another Wisconsin courtroom when determining whether the attorney manifests incompetency to represent a client in a Wisconsin court.
4. The circuit courts properly exercised their discretion in revoking Ball's pro hac vice admissions because the record supported findings that he was incompetent to represent a client in a Wisconsin court and unwilling to abide by professional-conduct and courtroom rules.
5. SCR 10.03(4) does not require revocation only for egregious conduct likely to infect future proceedings, and it does not make consideration of the client's interest in counsel of choice mandatory.

6. A circuit court may impose costs on an attorney whose actions result in a mistrial, and the assessment against Ball was not an erroneous exercise of discretion.

KEY QUOTATIONS

“Under the plain language of SCR 10.03(4), there are three bases for revocation of an attorney's pro hac vice status: (1) manifestation of incompetency to represent a client in a Wisconsin court; (2) unwillingness to abide by the rules of professional conduct for attorneys; and (3) unwillingness to abide by the rules of decorum.” (¶ 37)

“Revocation of pro hac vice admission is not a function of attorney discipline.” (¶ 47)

“Accordingly, we affirm both decisions of the court of appeals.” (¶ 63)

FACTUAL BACKGROUND

Ball, an Illinois attorney not licensed in Wisconsin, represented plaintiffs in two Brown County medical-malpractice actions after being admitted pro hac vice. In *Filppula-McArthur*, he repeatedly failed to comply with scheduling and discovery orders and, despite multiple rulings limiting a treating physician's testimony, elicited prohibited causation testimony, resulting in a mistrial. The circuit court revoked his pro hac vice privilege and assessed mistrial-related costs and fees against him personally; a second circuit court later revoked his admission in the related *Obey* action based in substantial part on that conduct.

PROCEDURAL HISTORY

Ball was admitted pro hac vice in two Brown County medical-malpractice actions. In the *Filppula-McArthur* action, the circuit court revoked his admission and assessed costs and reasonable attorney fees after his repeated violations of scheduling and evidentiary orders led to a mistrial. In the *Obey* action, another circuit judge revoked his admission based substantially on the conduct in *Filppula-McArthur*. The court of appeals affirmed both decisions, and the Wisconsin Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *Filppula-McArthur v. Halloin*, 2000 WI App 79, 234 Wis. 2d 245, 610 N.W.2d 201
- *Obey v. Halloin*, 2000 WI App 99, 235 Wis. 2d 118, 612 N.W.2d 361
- *State v. Lehman*, 137 Wis. 2d 65, 81-82, 403 N.W.2d 438 (1987)
- *State v. Mosley*, 201 Wis. 2d 36, 49, 547 N.W.2d 806 (Ct. App. 1996)
- *Ness v. Digital Dial Communications, Inc.*, 227 Wis. 2d 592, 600, 596 N.W.2d 365 (1999)
- *City of West Allis v. Sheedy*, 211 Wis. 2d 92, 96, 564 N.W.2d 708 (1997)
- *In re Mosness*, 39 Wis. 509, 510 (1876)
- *State v. Russell*, 83 Wis. 330, 53 N.W. 441 (1892)

- In re Pierce, 189 Wis. 441, 450, 207 N.W. 966 (1926)
- In re Disciplinary Proceedings Against Beaver, 181 Wis. 2d 12, 22, 510 N.W.2d 129 (1994)
- In re Disciplinary Proceedings Against Pangman, 216 Wis. 2d 440, 442-43, 574 N.W.2d 232 (1998)
- Schultz v. Darlington Mut. Ins. Co., 181 Wis. 2d 646, 656-58, 511 N.W.2d 879 (1994)
- Koller v. Richardson-Merrell, Inc., 737 F.2d 1038 (D.C. Cir. 1984), rev'd on other grounds, 472 U.S. 424 (1985)
- Speer v. Donfeld, 969 P.2d 193, 200 (Ariz. Ct. App. 1998)
- United States v. Collins, 920 F.2d 619, 626 (10th Cir. 1990)
- Mruz v. Caring, Inc., 107 F. Supp. 2d 596, 604 (D.N.J. 2000)
- Jensen v. Wisconsin Patients Comp. Fund, 2001 WI 9, 241 Wis. 2d 142, 621 N.W.2d 142