

No. 96-1148

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

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**ROBERT B. CIARPAGLINI,**

**Plaintiff-Appellant,**

v.

**ERRATA SHEET**

**KELLY FLURY and BELOIT DAILY NEWS,**

**Defendants-Respondents.**

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PLEASE TAKE NOTICE that the attached pages 1, 5, 10 and 12 are to be substituted for pages 1, 5, 10 and 12 in the above-captioned opinion which was released on February 20, 1997.

Dated this 27th day of December, 2006.

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

February 20, 1997

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.

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

Before Eich, C.J., Vergeront and Roggensack, JJ.

ROGGENSACK, J. Robert B. Ciarpaglini appeals from an order which dismissed his defamation action, as a sanction for failing to obey a court order, and required him to pay attorney fees, for filing a frivolous lawsuit. Ciarpaglini

to award costs, alleging the action was frivolous. Ciarpaglini requested the substitution of Judge Deininger and the case was again assigned to Judge Welker in Rock County.

On April 3, 1996, Judge Welker issued an order requiring Ciarpaglini to file affidavits explaining his basis for believing that Flury resided in Delavan or in Monroe, and listing all funds he had received and dispersed since the December 1993 stipulation. It also ordered that no further motions or other pleadings be filed pending Ciarpaglini's compliance with its order.

On April 8, 1996, Ciarpaglini filed a motion, which he dated April 3, 1996, requesting that Judge Welker recuse himself because Ciarpaglini planned to name him as a codefendant in an amended complaint. The motion set forth no facts to explain any possible connection between the judge and the defamation action. The court dismissed the action two days later, stating:

The filing of [the recusal] motion is a disobedience of the prior order of the court. Based upon [Ciarpaglini's] conduct in this case and his history of flagrant disregard of court orders, it is apparent to this court that the plaintiff will not comply with the orders of this court.

In addition, the court awarded the defendants \$1,221 in attorney fees, reasoning that Ciarpaglini should have known that the lawsuit was frivolous after his petitions to proceed *in forma pauperis* were twice denied for failure to state a claim upon which

The trial court's order in this case does not mention which subsection of the statute it was applying. This court could infer that the trial court intended to apply § 814.025(3)(b), STATS., since it found that "the plaintiff knew or should have known based upon two prior times when he filed this same lawsuit that there was no reasonable basis upon which he could have prevailed and that this action is frivolous." However, the original denial of Ciarpaglini's indigency fee waiver did not constitute judgment on the merits of his defamation action. Had Ciarpaglini paid the filing fees within thirty days, his action could have proceeded. Or, had Ciarpaglini sought review of the Rock County order through the proper channels instead of playing venue games, this court could have directly addressed the sufficiency of his complaint.

The order awarding attorney fees made no analysis of the actual merit of the defamation action. The only discussion of the merits of the complaint occurred in the prior orders denying the plaintiff's motions to waive filing fees, but these orders are insufficient to sustain the trial court's award of attorney fees based on § 814.025(1) and (3)(b), STATS.

However, our conclusion on the § 814.025, STATS., issue does not end our analysis of whether the award of attorney fees was proper. This court "may affirm a lower court's decision on different grounds than those relied upon by the

We conclude that the undisputed facts of record demonstrate Ciarpaglini's pleadings were not well-grounded in knowledge formed after a reasonable inquiry. They alleged that Flury resided in Monroe and in Delavan, while her affidavit establishes that she resided in Janesville. Ciarpaglini has provided no basis for the inconsistent allegations he made in the three filings of his defamation action. Instead, Ciarpaglini attempted to rid himself of the judge who was calling him to account. The record provides sufficient evidence to conclude that Ciarpaglini knew the allegations he made in his complaints, in regard to Flury's residence, were not well-grounded in fact. We are satisfied that the result reached by the trial court—an award of attorney fees—was supported by uncontradicted evidence in the record; and therefore, we affirm the award.

### CONCLUSION

The circuit court's discretionary determination that Ciarpaglini's conduct merited dismissal was rational and based on appropriate law and facts of record. However, the court's finding that Ciarpaglini should have known that his defamation action was without a reasonable basis in law because the court had previously issued an unappealed order denying a fee waiver on that basis, was insufficient to support the conclusion that the lawsuit was frivolous. Nonetheless, we conclude that the award of attorney fees was a proper sanction under § 802.05(1)(a), STATS., because