

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 27, 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.

No. 96-2632

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

DONALD LINDQUIST,

PETITIONER-APPELLANT,

V.

DEBORAH LINDQUIST,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Washington County:
LAWRENCE F. WADDICK, Judge. *Affirmed.*

Before Brown, Nettesheim, and Anderson, JJ.

PER CURIAM. Donald Lindquist appeals from an order denying his motion to reconsider a decision modifying maintenance payable to his former wife, Deborah Lindquist, and finding him in contempt. The issues on appeal are

whether maintenance could be modified in the absence of Deborah's request for a modification and whether the contempt purge condition constituted an illegal punitive sanction.¹ We conclude that Deborah's contempt motion was sufficient to raise the issue of maintenance modification and that the sanction was not punitive. We affirm the order denying reconsideration.

After nineteen years of marriage, Donald and Deborah were divorced in 1991. Donald was ordered to pay maintenance for four years of the greater of either 15% of his gross income or \$70 per week whenever he was employed for more than twenty hours a week. In December 1992, Donald was injured at work and he stopped working. Over the next several years he received a combination of worker's and unemployment compensation, union disability payments, veteran's disability payments, a settlement award, and social security disability benefits. He paid no maintenance during this time. In March 1995, Deborah filed a contempt motion. Donald countered with a motion to reduce maintenance due to his disabling back injury.

By an order entered December 28, 1995, the circuit court modified maintenance to \$300 per month maintenance for an indefinite term. It also found Donald in contempt and ordered Donald to pay \$5000 to purge his contempt. Donald filed a motion for reconsideration which was denied by an order entered on June 17, 1996.

¹ An order of December 17, 1996, determined that no appellate jurisdiction existed over the issues determined in the order entered on December 28, 1995. We concluded that in this appeal from the order denying reconsideration, Donald could only raise limited issues. See *Harris v. Reivitz*, 142 Wis.2d 82, 88-90, 417 N.W.2d 50, 52-53 (Ct. App. 1987).

Donald first argues that it was error to revise maintenance upward when Deborah did not ask for a modification in her pleading and her pleading made no showing of a change of circumstances. Wisconsin is a notice pleading state. See *Studelska v. Avercamp*, 178 Wis.2d 457, 463, 504 N.W.2d 125, 127 (Ct. App. 1993). The order to show cause served on Donald sought an order “[f]or contempt for failure to make court-ordered maintenance payments, *and/or modifications or maintenance to an amount necessary to meet the respondent’s need for maintenance*” as well as an “income assignment for future maintenance payments.” (Emphasis added.) Deborah’s affidavit in support of her motion for contempt stated that “in the alternative, the order for maintenance be modified to include a set amount of maintenance for an extended period of time.” The language in the order and the affidavit was sufficient to alert Donald that one of the issues would be Deborah’s request for continued and modified maintenance.² See *Norwest Bank Wis. Eau Claire v. Plourde*, 185 Wis.2d 377, 388, 518 N.W.2d 265, 268 (Ct. App. 1994) (the pleading need only notify the opposing party of the pleader’s position in the case and need not include “magic words”). It was not error for the circuit court to consider modification of maintenance.

Donald argues that without following the proper procedure under § 785.03(1)(b), STATS., the circuit court imposed a punitive rather than a remedial

² Because the motion filed in March 1995 was sufficient to raise and preserve a request for the modification of maintenance, we reject Donald’s claim that Deborah’s oral motion in open court on November 9, 1995, to modify maintenance was not timely because it was made after the term of limited maintenance expired in October 1995.

contempt sanction.³ He contends that the \$5000 purge condition renders the sanction punitive because it exceeds the actual amount of maintenance arrears.

The subtle distinction between remedial and punitive contempt is that the former is imposed to ensure compliance with court orders and serves only to enforce the rights of a litigant, while the latter is geared towards preserving the general authority of the court and is used to discipline a party for its contemptuous conduct. *Walworth County Child Support Agency v. James J.*, 196 Wis.2d 964, 968-69, 539 N.W.2d 703, 705 (Ct. App. 1995). Only remedial contempt requires that the sanction be purgeable through compliance with the original court order or the satisfaction of some other purge condition. *See id.* at 969, 539 N.W.2d at 705. Here the circuit court imposed a purge condition and it is clear the sanction was remedial.

Donald's claim that the sanction was punitive really seeks to force review of the circuit court's refusal to give Donald credit for \$3026 he paid Deborah directly. Donald was not entitled to credit for payments not made in the manner specifically ordered. *See Hirschfield v. Hirschfield*, 118 Wis.2d 468, 470-71, 347 N.W.2d 627, 628 (Ct. App. 1984). However, in its discretion the circuit court may grant credit for direct payments of support. *See Douglas County Child Support Enforcement Unit v. Fisher*, 185 Wis.2d 662, 671, 517 N.W.2d 700, 704 (Ct. App. 1994).

³ Donald also contends that the finding of contempt is error because there was no evidence that his failure to make maintenance payments was willful. This issue is not preserved for appellate review and we do not address it. *See supra* note 1. However, we note that the circuit court acknowledged Donald's belief that no payments were due because he was not employed. The court reviewed the reasons why Donald's maintenance obligation was conditioned on twenty hours of employment and that the provision was to reduce the burden on Donald but not to provide him a "loophole." Donald was found in contempt for failing to make payments through the clerk of the circuit court as required by the divorce judgment.

Deborah testified that the \$3026 she listed on her 1992 income tax return as maintenance was a figure Donald told her to use and that she did not know if she had actually received that sum. The circuit court found Donald in contempt for not paying maintenance through the clerk of the circuit court. It was disturbed that by not doing so Donald had foreclosed a meaningful accounting of what he actually paid Deborah. The court also commented that by Donald not reporting his income to Deborah, she was unable to know whether he was making maintenance payments according to the divorce judgment.

In consideration of the circumstances, the circuit court properly exercised its discretion in denying credit for the direct payments. Denying Donald credit for direct payments to Deborah was directly linked to the consequences of the contemptuous conduct of not paying through the clerk of the circuit court. The purge condition is supported in the record and is not indicative that an illegal punitive sanction was imposed.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

