

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 26, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2616

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

TIM ORMSON D/B/A OFS,

PLAINTIFF,

V.

DONA MERG AND ROYAL BANK OF ELROY,

DEFENDANTS-RESPONDENTS,

JOHN C. WIDULE,

APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed and cause remanded with directions.*

Before Vergeront, Deininger and Zappen, JJ.¹

¶1 PER CURIAM. This dispute has repeatedly been before this court on appeal. Litigation began over six years ago when Tim Ormson filed suit against Dona Merg and the Royal Bank of Elroy. The present appeal is brought by Ormson's former attorney, John Widule, challenging the trial court's judgment requiring him to pay Merg and the Royal Bank of Elroy \$77,000 as a sanction under WIS. STAT. § 814.025 (1999-2000).² We affirm.

¶2 On December 3, 1998, the trial court entered judgment against Widule for \$102,373.75 as a sanction for commencing and continuing a frivolous suit. *See* WIS. STAT. § 814.025. Widule appealed that judgment and we affirmed on April 12, 2000. In the meantime, the trial court held a hearing on whether sanctions should also be allocated against Tim Ormson, Widule's former client. The trial court afforded Widule an opportunity to present argument, explaining that it may allocate sanctions between Ormson and Widule. On August 19, 1999, the trial court entered an amended judgment *nunc pro tunc* to September 10, 1998, reducing the amount of sanctions against Widule to \$77,000.³

¶3 Widule has raised over a dozen issues. We will not consider them all. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). Many of the issues address decisions made by the trial court before

¹ Circuit Judge Edward F. Zappen, Jr. is sitting by special assignment pursuant to the Judicial Exchange Program.

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

³ The trial court divided responsibility for the original sanctions award between Ormson and Widule, requiring them each to pay \$52,000. The trial court then added attorney's fees incurred since that award, allocating \$25,000 to each of them.

Widule's last appeal. The time has lapsed for raising arguments addressing rulings made by the trial court before a prior appeal. WIS. STAT. RULE 809.10(4). Moreover, we have already considered some of those issues and will not do so again. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (a matter once litigated will not be relitigated no matter how artfully it is rephrased).

¶4 The crux of Widule's remaining arguments is that the trial court erred in allocating sanctions between him and Ormson. But Widule does not challenge *the apportionment of the fees between him and Ormson*; he challenges the fact sanctions were imposed upon him at all. He repeatedly contends that all of the sanctions should have been allocated to Ormson. His argument boils down to a claim he made on the previous appeal: that he should not have been sanctioned at all because he relied in good faith upon his client's assertions and did not know that documents his client produced were fraudulent. We have already considered this claim and decided it against Widule. We concluded that sanctions were appropriate under WIS. STAT. § 814.025 because Widule initiated and maintained a suit based on a security interest that reasonable investigation would have revealed never existed, in order to harass an attorney who did not cooperate in another proceeding. We will not revisit that ruling.

¶5 In sum, the trial court's judgment that is the subject of this appeal *reduces* the sanctions imposed on Widule. He attempts to have us again review the trial court's decision to impose sanctions on him by recasting his arguments as centered on the allocation of the sanctions between him and Ormson, but he essentially argues that the trial court should not have imposed sanctions upon him at all. Widule presents no persuasive argument that the trial court erred in

reducing his portion of the sanctions and allocating a portion to Ormson.⁴ Therefore, we affirm the judgment.

¶6 Dona Merg and the Royal Bank of Elroy move for attorney's fees on appeal. We have held that "upon an appeal from a ruling of frivolousness, the reviewing court need not determine whether the appeal itself is frivolous before it can award appellate costs and reasonable attorney's fees." *Riley v. Isaacson*, 156 Wis. 2d 249, 262, 456 N.W.2d 619 (Ct. App. 1990). "Rather, if the claim was correctly adjudged to be frivolous in the trial court, it is frivolous *per se* on appeal [under WIS. STAT. § 802.05]." *Id.* The trial court found that Widule violated WIS. STAT. § 802.05(1). Therefore, we grant the motion for attorney's fees on appeal under *Riley*, and we remand to the trial court to determine and award reasonable attorney's fees for this appeal.

⁴ Widule argues that the trial court should not have imposed \$25,000 as his portion of the attorney's fees incurred since the fall of 1998 because Ormson caused a portion of the fees to be incurred in a separate bankruptcy proceeding. However, the trial court specifically said that it was imposing attorney's fees incurred by Merg and the Royal Bank of Elroy "to address and defend the false claims asserted against them *in this action*." (Emphasis added.) To the extent Widule claims that he is being made to pay for attorney's fees generated in an unrelated proceeding in the federal court, Widule has pointed to no evidence regarding the amount of those fees and has not provided us with adequate information about the nature of the bankruptcy and its relationship to this case.

By the Court.—Judgment affirmed and cause remanded with directions.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

