COURT OF APPEALS
DECISION
DATED AND FILED

January 12, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP290 **Cir. Ct. No. 2014CV362**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE FINDING OF CONTEMPT IN:

CITY OF WATERTOWN,

PLAINTIFF-RESPONDENT,

V.

HEATHER A. MOORE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Jefferson County: DAVID J. WAMBACH, Judge. *Affirmed.*

¶1 BLANCHARD, J.[1] Heather Moore, representing herself, appeals circuit court orders (1) finding her in contempt for failure to comply with a court

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

order requiring her to reimburse the City of Watertown for costs generated during litigation over an ordinance violation, and (2) imposing remedial sanctions to encourage her compliance with the court order. I affirm for the following reasons.

¶2 The following are pertinent background facts. To the extent that I fail to reference a background fact that Moore considers significant to an argument that she intends to make on appeal, it is because I do not find in her briefing an explanation as to why that fact could support a potentially winning argument that she now clearly advances.

¶3 Moore was cited for a violation of a City ordinance and found guilty in municipal court. She filed a notice of appeal in the circuit court. A dispute arose as to whether Moore properly served the City with the notice of appeal, as required by WIS. STAT. § 800.14(1). In connection with this dispute over service a special prosecutor was appointed to represent the City.

¶4 On September 8, 2014, the circuit court heard evidence and concluded that Moore had failed to properly serve the City with the notice of appeal. On this basis, the court dismissed the appeal, and ordered Moore to pay the $350 in costs for the special prosecutor referenced in the prior paragraph.

¶5 On December 4, 2014, in response to a petition filed by the City, the court ordered Moore to pay the municipal court, within 30 days, $350 as reimbursement for compensation that the City had already paid to the special prosecutor. The order further directed that if Moore failed to timely make this payment, "she shall, upon [m]otion of the City of Watertown, appear before this Court to explain her failure to timely pay and show cause why she should not be held in contempt and subject to further monetary confinement or other sanction[s]."

¶6 On January 26, 2015, the City filed a petition for a hearing "to determine why [Moore] has failed to comply with" the December 4 order, "why she should not be held in contempt, and why she should not be subject to further sanctioning upon any finding of contempt." In response, the court ordered Moore to appear in court on February 25, 2015, to show cause why she should not be held in contempt, or in the alternative to pay $350 to the municipal court. Moore did not appear in court on February 25, and the court adjourned the hearing.

¶7 On August 25, 2015, the City requested, and on August 28, the court issued, an amended order, which recited the contents of the December 4, 2014 order and ordered Moore to: (1) appear in court on November 18, 2015, at 10:00 a.m., to show cause why she should not be held in contempt, identifying the address of the county courthouse as the place of the hearing, or (2) in the alternative, to pay $350 to the municipal court. This order included the following notification:

> A FINDING OF CONTEMPT FOR NONAPPEARANCE OR FAILURE TO COMPLY WITH THE COURT'S ORDER MAY RESULT IN ANY OR ALL OF THE FOLLOWING PENALTIES:
>
> - Imprisonment for up to 6 months.
> - Forfeiture of not more than $2000 per day.
> - Any other order necessary to ensure compliance.

¶8 On September 3, 2015, Moore filed a "Response To Petition and Additional Amended Order For Hearing On, And Finding Of, Contempt." On October 15, Moore filed a written request to appear by telephone for the November 18 hearing. On October 28, the court denied this request, stating that it had "not been presented with reasons that address the statutory criteria for a telephonic appearance." On November 4, Moore submitted a "response" to the

court's denial of her request to appear by phone. The "response" was in the nature of a motion for reconsideration, and also requested, in the alternative, an adjournment of three months. The court promptly denied all relief requested in Moore's "response."

¶9 On November 18, 2015, the case was called at or about the scheduled time of 10:00 a.m. The City was represented, but Moore did not appear in person or by counsel. The City provided evidence that the City had served Moore earlier that same morning with notice of the rule to show cause hearing. As memorialized in a subsequent decision and order, dated December 7, 2015, the court found on November 18 that Moore "had been the subject of service of process (substitute service), had actual notice of the hearing[,] … had intentionally refused to appear," and was in contempt of the court. On this basis, on November 18 the court authorized issuance of a capias for Moore to be taken into custody "as a remedial sanction under WIS. STAT. § 785.04(1)(d) to enforce the original order for payment" to the City for the cost of the special prosecutor.[2]

¶10 On November 30, Moore filed a "Motion To Object To And Vacate Summary Judgment And Remedial Sanctions, Pursuant To 801.11."[3] Moore argued on a variety of grounds that the court was obligated to "vacate its judgment and remedial sanctions for contempt of court," in part because she "was not

[2] WISCONSIN STAT. ch. 785 addresses contempt of court. WISCONSIN STAT. § 785.04 deals with sanctions, with subsec. (1) devoted to remedial sanctions. In general, a remedial sanction is designed to force a contemnor to comply with a court order for the benefit of a litigant, thus terminating a continuing contempt of the court. *See* WIS. STAT. §§ 785.04(1)(d), 785.01(3); ***Christensen v. Sullivan***, 2009 WI 87, 320 Wis. 2d 76, 768 N.W.2d 798.

[3] WISCONSIN STAT. ch. 801 addresses commencement of action and venue in civil actions. WISCONSIN STAT. § 801.11 deals with proper manners of serving summonses in order to allow courts to exercise personal jurisdiction over persons or entities.

provided [with an] order, summons, notice or subpoena to appear before the court." Moore also argued that the court lacked a basis to have found that she had the ability to pay the special prosecutor fees.

¶11 In its December 7 decision and order the court rejected Moore's November 30 motion on grounds that included the following. "[T]his Court previously found that Ms. Moore had actual notice of the [November 18] hearing. Ms. Moore does not dispute that finding…. [and] actual notice was sufficient to allow the court to proceed." As for the ability to pay issue, the court concluded that, by failing to appear at the November 18 hearing, Moore had forfeited her opportunity to show that she was unable to pay the ordered amount. The court also found, based on "a review of the totality of the record and all pleadings," that Moore "has no intention to abide by the Court's order … because [she] believes the order of the Court was without authority and was in error."

¶12 On December 14, 2015, Moore submitted to the circuit court a money order in the amount of $483.65, which the court ordered the clerk to deposit and disburse to the City.[4] At the same time, the court ordered that, because Moore had "purge[d] her contempt[,] the capias is withdrawn and the action is to be considered closed."

¶13 With that pertinent background, I turn to the issues. I observe at the outset that I could reject all of Moore's arguments for the sole reason that she

[4] The higher-than-$350 amount reflects the fact that, at the City's request, the circuit court added to the special prosecutor costs the City's additional costs of attempted service on Moore. Moore makes a reference to the City having, in some unidentified manner, "engineered its loss," but she does not develop a coherent argument either that the special prosecutor costs were not in themselves legitimate or that it was improper for the court to add the service costs to the special prosecutor costs.

ignores applicable standards of review, which are a critical feature of appellate review. *See* ***Larson v. Burmaster***, 2006 WI App 142, ¶47, 295 Wis. 2d 333, 720 N.W.2d 134 (pro se litigants not excused from applying laws governing procedure). However, in Moore's favor, I attempt to interpret her arguments as if she applied the correct standards of review.

¶14 This court has explained the following:

> We … review a circuit court's use of its contempt power to determine whether the court properly exercised its discretion. Additionally, determining the type of remedial sanctions to impose for contempt is a discretionary determination.

Benn v. Benn, 230 Wis. 2d 301, 308, 602 N.W.2d 65 (Ct. App. 1999) (citations omitted). I uphold the court's pertinent findings of fact unless they are clearly erroneous. ***City of Wisconsin Dells v. Dells Fireworks, Inc.***, 197 Wis. 2d 1, 23, 539 N.W.2d 916 (Ct. App. 1995).

¶15 Moore concedes that she received the City's August 25 petition for a rule to show cause hearing to be held on November 18, providing her with approximately three months' advance notice before a long-delayed and relatively simple hearing regarding her alleged failure to comply with the December 4, 2014 order. Her argument is to the effect that the court could not have properly exercised its discretion in holding her in contempt on November 18 because she later demonstrated to the court that she had not been properly served with the order to show cause in advance of the November 18 hearing.

¶16 I assume without deciding that the City did not execute personal service on Moore. However, this does not matter so long as she received actual notice in advance of hearing. *See* ***Joint School Dist. No. 1, Wisconsin Rapids v.***

Wisconsin Rapids Educ. Ass'n, 70 Wis. 2d 292, 317-20, 234 N.W.2d 289 (1975) (actual notice of contempt proceedings is required, but personal service of the order to show cause is not); *see also* WIS. STAT. § 785.03(1)(a) (aggrieved person "may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, *after notice and hearing*, may impose a remedial sanction authorized by this chapter.") (emphasis added). Actual notice satisfies due process requirements because the "primary reason for the requirement [of notice] is that the contemnor have an opportunity to appear and present whatever defense he might have to that charge." ***Joint School Dist. No. 1***, 70 Wis. 2d at 317. For this reason, I need not attempt to address Moore's fragmentary arguments about why I should conclude that she demonstrated to the circuit court that the City failed to properly personally serve her, including her argument that police submitted a false affidavit to support issuance of the capias.

¶17 Moore makes a difficult-to-track argument to the apparent effect that the circuit court clearly erred in finding that she had adequate notice of the November 18 hearing, or perhaps clearly erred in making the implied finding that she understood in advance what the nature of the hearing would be. In making this argument, Moore appears to place significance on the fact that the City's petition for the hearing, which included a *proposed* order, was not signed by the court. She argues, "Moore's mere receipt and reference of the City's asking [for the November 18 hearing] is not sufficient as actual notice of a set proceeding." However, Moore fails to provide a basis for me to conclude that the circuit court clearly erred in finding that she was aware in advance of the scheduled November 18 hearing that the court had granted the City's request to schedule a hearing, or that the court clearly erred in implicitly finding that the nature of the

hearing was plain to Moore. Moreover, any such argument would appear to fly in the face of the record, notably Moore's own statements, contained in her October 15 and November 4 submissions to the court referenced above, signaling that she was fully aware of the hearing and expressing no confusion about its nature.

¶18 Moore briefly appears to argue that the court did not properly exercise its discretion because it failed to cite evidence to support a finding that her allegedly contemptuous conduct did not arise from her inability to pay the amount ordered by the court. However, as the City points out, in a contempt proceeding, the burden of proof is on the person against whom the contempt is alleged to show that his or her conduct was not contemptuous. *See* ***Balaam v. Balaam***, 52 Wis. 2d 20, 30, 187 N.W.2d 867 (1971) (citation omitted). Thus, Moore had the burden to prove inability to pay at the rule to show cause hearing. Stepping back, lack of ability to pay was just one of a number of conceivable reasons that might, at least in theory, have justified Moore's allegedly contemptuous conduct. In failing to appear at the November 18 hearing, she forfeited her opportunity to carry her burden by persuading the court that she had a legitimate reason for her alleged failure to comply with the December 4, 2014 order.

¶19 Moore argues that the court "erred in its inconsideration and unreasonableness [in not] reschedul[ing]" the hearing from November 18 to a later date after she requested to appear by telephone. It is Moore's argument that is unreasonable. Neither Moore's October 15 request to appear by telephone, nor her November 4 "response" to the court's denial of the October 15 request, explained to the court that it was impossible, or for that matter even a significant hardship, for her to appear in person on November 18. In the later submission, Moore

merely renewed her request to be allowed to appear by phone, and added a new request: "Should the court deny this request (again), then [Moore] requests an adjournment until or after February 2016, at such time the Plaintiff may appear before the court." This alternative request for a *substantial* adjournment—in a matter already long delayed, involving alleged contempt of a straightforward court order involving litigation over an ordinance violation—gave the circuit court no explanation as to why such a delay was necessary. Courts are obligated to manage crowded dockets, and need not grant unsupported requests for delays, least of all for lengthy delays. *See* ***Hefty v. Strickhouser***, 2008 WI 96, ¶82, 312 Wis. 2d 530, 752 N.W.2d 820 (circuit court judges manage "busy docket[s], and they need the discretion to render justice. Circuit court judges are responsible for an enormous volume of cases. In order to fairly, effectively, and efficiently administer justice, the judge needs the ability to set meaningful deadlines.") (Zeigler, J., dissenting).

¶20 Moore makes passing reference to her conduct not being sufficiently "wicked" to justify remedial sanctions that included the capias, but fails to develop a coherent wickedness-related argument based on legal authority.

¶21 Moore makes unclear references to an alleged lack of court "jurisdiction." This may be merely a reformulation of concepts rejected above. But if it is not, it would seem that any separate jurisdictional argument would fail, at a minimum, because Moore does not attempt to account for the fact that it was she who invoked the authority of the circuit court to preside over the appeal from municipal court, setting in motion events that included the contempt finding and imposition of remedial sanctions.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.