COURT OF APPEALS
DECISION
DATED AND FILED

December 28, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1506 **Cir. Ct. No. 2001GN566**

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

IN THE MATTER OF THE GUARDIANSHIP OF ETHEL K., ALLEGED INCOMPETENT:

GEORGE M.S.,

PETITIONER-APPELLANT,

V.

HEIDI HIDA, GUARDIAN AD LITEM, GARY GLOJEK, ADVERSARY COUNSEL AND WILLIAM DOMINA, CORPORATION COUNSEL,

RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: THOMAS R. COOPER, Judge. *Affirmed.*

Before Wedemeyer, P.J, Fine and Kessler, JJ.

¶1 KESSLER, J. George M. S. ("George") appeals from an order that: (1) rejected George's objections to the appointment of a guardian for his aunt, Ethel K., and his motion to be made his aunt's guardian; (2) granted default judgment against George for $200,000 as a sanction for what the trial court described as George's unjustified, persistent and egregious refusal to cooperate with discovery; and (3) ordered George to pay $2,000 to a special master who was assigned to handle a discovery dispute. George makes numerous arguments with respect to the trial court order, including allegations that the order violates his constitutional right against self-incrimination, his right to privacy, and his and Ethel's due process rights. We reject his arguments and affirm the order.

BACKGROUND

¶2 The background facts and procedural history of this four-year-old case are extensive. On September 6, 2001, Ethel K., then eighty years old, was found wandering the streets of downtown Milwaukee at one o'clock in the morning with one thousand dollars in cash on her person. A referral was made to the Department of Aging. As a result of this referral, a social worker and two of Ethel's relatives filed a three-party petition on or about September 28, 2001, to commit Ethel under WIS. STAT. ch. 51.

¶3 Ethel was admitted to the Mental Health Complex on September 28, 2001, and a probable cause hearing was held on October 2, 2001. At the hearing, a social worker and a doctor testified about Ethel's ability to care for herself. Ethel also testified. Ethel's testimony included her assertion that she only had one hundred dollars in the bank and did not receive a pension based on her employment or her deceased husband's employment.

¶4 The court commissioner found probable cause for the WIS. STAT. ch. 51 petition and also ordered that Ethel be given medication. In addition, the court commissioner ordered that the petition be converted to a WIS. STAT. ch. 55/880 proceeding for guardianship and protective placement. The court commissioner appointed Attorney Heidi Hida to serve as the temporary guardian of the person and estate and as the guardian ad litem.

¶5 The Milwaukee County Corporation Counsel's office filed a petition for permanent guardianship and protective placement on October 11, 2001. A hearing was scheduled for November 5, 2001.

¶6 On October 22, 2001, the guardian ad litem filed an objection to the guardianship and protective placement, based on Ethel's assertions to the guardian ad litem that she wanted to contest the proceeding.

¶7 On October 25, 2001, George filed a petition for guardianship and protective placement. The petition indicated that George, who lived in Cumming, Georgia, was seeking to be appointed guardian. On that same day, the trial court also signed an order prepared by George's counsel appointing Attorney Gregory Rogaczewski guardian ad litem for Ethel. A hearing on George's petition was scheduled for December 13, 2001.

¶8 On October 26, 2001, the trial court signed an order, prepared by guardian ad litem Hida, appointing Attorney Gary A. Glojek as adversary counsel for Ethel. On October 30, 2001, Hida withdrew Ethel's objection to the guardianship and protective placement. Hida and the County stipulated that investigation into Ethel's assets had revealed that various relatives may have converted Ethel's property, and that it was in Ethel's best interest to have Hida take legal action to recover that property. Ethel's right to contest the proceedings

was preserved. The trial court approved the parties' stipulation on October 30, 2001, and Hida was appointed guardian of Ethel's person and estate. Protective placement was also ordered.

¶9 On November 2, 2001, the trial court vacated Rogaczewski's appointment as guardian ad litem. That same day, Hida filed an answer to George's petition for guardianship, indicating that she, as guardian ad litem, and Ethel both objected to George's petition to be appointed Ethel's guardian. Hida also filed a counterclaim seeking return by George of $200,000 in funds that were withdrawn from Ethel's bank on July 24, 2001, and issued as a check payable to Ethel or George. The counterclaim asserted that Hida had, on October 9, 2001, sought return of the funds from George through George's counsel, and had received a letter on October 29 (dated October 12) stating that George considered the $200,000 to be a gift and would not return the funds.

¶10 The counterclaim also sought the return of $102,244.32 that the guardian ad litem alleged George acquired after having Ethel's bank send him a check payable to "George [], Power of Attorney, for benefit of Ethel[.]" The counterclaim alleged that George claimed through counsel that he was holding this money in trust for Ethel's benefit until her present assets were exhausted. Hida also filed interrogatories and a request for production of documents from George, some of which sought information about George's personal finances.

¶11 On December 4, 2001, George filed a motion to dismiss the counterclaim and to strike Hida's answer. George alleged that Hida had not been properly appointed. George also argued that the court lacked jurisdiction because there had been no adjudication as to competency. George moved the trial court for an order suspending discovery on grounds that information about his personal

finances was not relevant, and that he was protected by the privilege against self-incrimination. Finally, George filed a reply to the counterclaim and raised numerous affirmative defenses, including that the $200,000 was a gift Ethel made to George.

¶12 The trial court signed a second order on December 4, 2001, appointing Attorney Gary A. Glojek as adversary counsel for Ethel.[1] On January 8, 2002, Hida moved the court for an order compelling George to answer the interrogatories and produce documents as previously requested on November 2, 2001. A hearing on George's motions and Hida's motion was scheduled.

¶13 Prior to the hearing, a competency evaluation and a comprehensive evaluation were completed for purposes of the WIS. STAT. ch. 55/880 proceeding. The examiner opined that Ethel was suffering from significant dementia and, as a result, she was no longer able to make informed decisions regarding her person and finances. The examiner recommended that Ethel have a guardian for her person and her finances, and that the trial court order protective placement in an unlocked setting.

¶14 On March 1, 2002, the trial court held a hearing on George's motions and Hida's motion. At the outset, the trial court and the parties discussed the fact that there had been two petitions filed and acknowledged that this caused confusion. George's counsel argued that Ethel should have had a hearing on the guardianship petition, and that Hida was not properly appointed. Ethel's

[1] It appears this was necessary because the first appointment was not pursued after guardian ad litem Hida and the County entered into the stipulation.

adversary counsel stated his position that the trial court went through the appropriate procedures to put a guardian in place, and that Hida was an appropriate guardian.

¶15 The trial court said that the first issue to be addressed was whether there was a valid guardianship in place. Although the trial court questioned George's authority to assert Ethel's rights, the trial court said that it would conduct the fact finding needed to redetermine whether the guardianship was necessary. The trial court noted that there was a psychological evaluation indicating that Ethel needed a guardian. The trial court offered to order a second evaluation if George wanted it; it was ultimately ordered.

¶16 Hida also provided additional information about the stipulation that led to the withdrawal of Ethel's objection to the guardianship. She told the trial court:

> I did consult with her on that, and she did confirm that she wanted me to be her guardian, was not objecting, and was objecting to George [M. S.]. So I asked her if she objected to my withdrawing that objection [to the guardianship]. She did not. We preserved her right on the stipulation to object later and have advocate counsel. She now has advocate counsel.

¶17 Next, the trial court addressed George's motion with respect to discovery. Counsel for George noted that because the counterclaim alleged that George had committed fraud, he had recommended that George exercise his Fifth Amendment right against self-incrimination. The trial court stated that it would suspend discovery pending the determination as to guardianship and would decide at a later date whether it would require George to comply with the discovery demands.

¶18 The trial court and the parties also discussed whether George was facing criminal charges in connection with the $200,000 transfer of funds. Hida represented that she had not referred the case to the district attorney. Also, the trial court ordered George to turn over the $102,244.32 he was holding in trust for Ethel.[2] The trial court did not rule on the parties' motions, instead setting a date for a status conference.

¶19 On March 27, 2002, George filed a motion for summary judgment on the counterclaim, arguing that his affidavit established that the $200,000 was given as a gift. Hida objected to the motion, arguing that the lack of completed discovery made summary judgment inappropriate, and that an affidavit from Ethel indicating that she did not give George a $200,000 gift likewise created a genuine issue of material fact.[3] Ethel's adversary counsel also opposed George's motion, asserting that genuine issues of material fact precluded summary judgment.

¶20 On May 3, 2002, the parties appeared before the trial court. It appears this was the only hearing before the trial court at which George appeared personally throughout the course of this case. The trial court received the second competency evaluation, which essentially agreed with the first examiner's conclusions and recommended that Ethel have a permanent guardian of her person and her finances.

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[2] Although this order was not immediately honored, George did ultimately turn over the $102,244.32 and it is not at issue in this appeal. Therefore, it will not be discussed further.

[3] Ethel's affidavit stated that she withdrew $200,000 from her bank so that she would have money to pay expenses when she moved to Georgia with George, and that the check was made payable to her or George for the sake of convenience.

¶21 After discussing the procedural history of the case and hearing argument from the parties, the trial court concluded that George had no standing to object to alleged violations of Ethel's rights. Furthermore, the trial court found that the proper statutory procedures were followed, that there were no procedural or due process problems with the guardianship itself, and that Ethel needed a guardian. The trial court denied George's motion to dismiss the guardianship petition.

¶22 Next, the trial court considered George's motion for summary judgment on the counterclaim. The trial court concluded that there were "enormous factual disputes" that precluded summary judgment, especially because discovery had been suspended and was not yet complete. The trial court also denied George's motion to dismiss the counterclaim, concluding that it was appropriate for the guardian ad litem to investigate the circumstances of how George came to possess the money.

¶23 Finally, the trial court stated that it would continue to consider whether George would be a better guardian than Hida. Although the trial court offered to hear testimony immediately, the parties asked for an adjournment so that they could continue with discovery. Counsel for George told the court that discovery should not include information on George's personal finances, but the trial court disagreed: "Well, I am not prohibiting that, but if that becomes an issue based upon written interrogatories, I will consider a motion." A contested hearing date was scheduled for July 17, 2002, to determine whether George had to return the $200,000 and who should be Ethel's guardian.

¶24 On June 6, 2002, the trial court issued a written non-final order outlining the oral decisions made at the May 3, 2002, hearing. On June 10, 2002,

George filed a petition for leave to appeal from the non-final order. On June 12, 2002, George moved the trial court for a stay of the discovery proceedings pending outcome of the appeal. The motion was granted.

¶25 On June 28, 2002, we denied George's petition for leave to appeal from a non-final order. On August 28, 2002, we also denied his motion for reconsideration. George sought review by the Wisconsin Supreme Court, which denied his petition on December 9, 2002.

¶26 On September 25, 2002, after this court denied George's petition for leave to appeal, but before the Supreme Court denied the petition for review, the trial court reopened discovery. The trial court ordered George to respond to the interrogatories previously provided to him within thirty days, and indicated the parties could proceed with depositions.

¶27 In October 2002, George responded to the interrogatories, indicating as his answer to most of them that he

> [o]bject[s], based upon the Fifth Amendment privilege against self incrimination that to answer and/or supply the documents would be an admission against interest in that it could consitution [sic] an admission of fraudulent misappropriation and undue influence on an elderly person a crime and therefore shall not answer. Further, as this is a completed gift discovery of assets of George [M. S.] prior to judgment based either on a valid determination of competency or a judgment of any kind, George [M. S.] has a right to privacy under the Wisconsin and Federal Constitutions and therefore cannot be compelled to answer. Further George [M. S.] challenges the Jurisdiction of the Court and the authority of the guardian to make this discovery and therefore further refuses to answer.

Communications among counsel did not change George's position that he would not provide the documents requested or answer interrogatories that asked, for example, for a list of property being held by George for the benefit of Ethel.

¶28 Over the next six months, counsel continued to disagree about whether George had to provide new answers to the interrogatories or provide the documents requested.

¶29 On April 11, 2003, Ethel's adversary counsel filed a motion to compel discovery. On April 14, 2003, George filed his own motion with respect to discovery, arguing that the guardian ad litem had failed to comply with discovery.

¶30 A hearing took place on May 23, 2003. The trial court declined to make findings or grant the parties' motions, concluding that it was necessary to appoint a special master to resolve the many discovery disputes identified in the parties' motions. The trial court appointed the Hon. Frank Crivello, a retired Milwaukee County Circuit Court judge, to act as the special master.[4]

¶31 The special master issued a written order on October 29, 2003, that found that the trial court had subject matter jurisdiction by virtue of the WIS. STAT. ch. 55/880 proceeding and personal jurisdiction over George due to his participation in the action. The special master further found that once George subjected himself to the trial court's jurisdiction, he waived his right to privacy in

[4] It is clear that the trial court's authority to appoint the person referred to consistently in the record as the "special master" is found in WIS. STAT. § 805.06, which describes the functions performed here by the "special master" although the statute uses the term "referee" to refer to the person so appointed.

matters related to the action. The special master also modified some of the interrogatories George was to answer and ordered George to answer the interrogatories within twenty days from the date of the order.

¶32 Subsequently, counsel for George sent the parties a letter indicating that his client was unavailable to be deposed until after January 10, 2004, and that his client would no longer pay special master fees. The special master's order dated October 29, 2003, stated that delaying George's deposition "until after January 10, 2004 is unacceptable and an obvious attempt to delay these proceedings. We are mindful that the $200,000 in question exists somewhere, probably drawing interest." The special master also held that trial counsel and George "cannot unilaterally reject the Circuit Court's Order requiring that they pay for ½ of the Special Master services."

¶33 The special master ordered George's counsel to provide, within five days, a list of deposition dates between November 15 and December 5, 2003. It also ordered both parties to pay an additional $2000 toward the special master fees. The order stated: "Failure to abide by this order will result in the Special Master recommending sanctions to the Circuit Court."

¶34 On December 4, 2003, Ethel's adversary counsel moved the trial court for an order for sanctions against George, based on his failure to provide discovery answers. Specifically, the motion sought judgment for $200,000 plus interest and costs, a dismissal of all remaining claims, an order that George pay all fees of the special master, and an order requiring George to pay reasonable attorney fees associated with his failure to comply with discovery orders. Counsel argued these sanctions were appropriate because George had not complied with

the special master's orders, including failing to pay special master's fees and scheduling his deposition.

¶35 After a hearing, the trial court found that George had failed to follow the special master's orders, but held that this failure had "not reached the egregious state to justify a default judgment." The trial court also noted its concern about the whereabouts of the $200,000 at issue. The trial court ordered that the special master be paid, that discovery be completed in a manner satisfactory to all parties or that they comply with the special master's orders regarding discovery, that the parties appear before the trial court on February 3, 2004, and that George deposit $200,000 with the clerk of courts no later than January 19, 2004, pending final disposition of the matter.

¶36 On January 30, 2004, the guardian ad litem moved the trial court for judgment demanding return of the $200,000, plus costs and punitive damages. The guardian ad litem asserted that George continued to refuse to return the funds, and noted that she had already expended $35,000 in legal fees trying to recover the funds.

¶37 A hearing was held on February 3, 2004. George's counsel filed an affidavit from George stating that he: (1) continues to object to giving testimony on matters that threaten his Fifth Amendment rights and rights to privacy; (2) "refuses to appear to give testimony in part due to his belief" in those rights, and "because he fears that he will be arrested … upon any appearance by him in person to give testimony"; (3) has been informed by relatives in Wisconsin that he will be arrested if he comes to Wisconsin; (4) had been threatened with prosecution by Ethel's representatives; and (5) would therefore "not appear at any deposition of him at any time any where [sic]."

¶38 The trial court asked the guardian ad litem about George's claim that she threatened him with prosecution. She acknowledged that in a letter in October 2001 she indicated that she might need to discuss the matter with the district attorney if George did not return the money, but she told the trial court that she had never contacted the district attorney and had no plans to do so. Both she and adversary counsel indicated that they were not aware of any referrals to the district attorney's office, although it was possible Ethel's other family members may have told George they were going to contact the district attorney.

¶39 The trial court found that George's fear of arrest was unfounded. The trial court then discussed George's failure to cooperate:

> I find it egregious that an action is brought where we've had a great deal of difficulty getting through basic discovery so that the court had to appoint a special master because you folks were coming back repeatedly … motions to compel and those sorts of things.
>
> The parties then agreed and started the proceedings before the special master on discovery issues, and then at some point during that proceeding [George] decided that he was going to stop cooperating. That, again, is egregious and outrageous.
>
> ….
>
> And the troubling part of the affidavit that he provided to me is "Therefore, [George] will not appear at any deposition of him any time any where." Now he is just saying that [he] is absolutely 100 percent certain that he is not going to cooperate.

The trial court said that it was contemplating a default judgment against George, but wanted to give George another opportunity to reconsider his position. The trial court added: "[George] can complain about [F]ifth [A]mendment all the time, but he can come in and take the [F]ifth [A]mendment in a deposition. That is allowable…. [H]iding in Florida in February is not an excuse."

¶40 Following the February 3, 2004 hearing, Ethel's adversary counsel filed a motion for default judgment based on George's failure to comply with discovery orders. George moved the trial court to reconsider its motion for summary judgment that the trial court denied on June 6, 2002.

¶41 The parties appeared before the trial court on March 11, 2004. George, again, did not appear in person. The trial court heard argument on George's motion to reconsider its motion for summary judgment, and the motion for sanctions against George. The trial court asked whether there was any ongoing investigation of George that would justify his concern about giving a deposition; both the guardian ad litem and Ethel's adversary counsel said they had not had any conversations with the district attorney's office and were unaware of any investigation underway.

¶42 The trial court denied George's motion for summary judgment on the counterclaim, noting that it could not make a legal determination based on the record before it, and that it was improper for George to submit affidavits trying to prove there is no genuine issue of material fact when George had refused to cooperate in the discovery process.

¶43 The trial court next considered whether to grant default judgment against George as a sanction for his refusal to cooperate in discovery. Counsel for George asserted his position that the trial court had no authority to appoint a special master, and that the special master's orders therefore were without authority. The trial court responded that even if the special master's orders were not considered, George had still failed to comply with discovery: "[George has] affirmatively said he is not coming back, he is not answering any further questions, and he is not putting the money up with the clerk of courts."

¶44 The trial court asked George's counsel if he had explained to George the ramifications of continuing to refuse to cooperate with discovery, as the trial court instructed trial counsel at the last hearing. Trial counsel said that he spoke with George on March 10, 2004, and that George "knows everything that would happen."

¶45 Adversary counsel asked for default judgment on the pleadings. The trial court made the following findings:

> [I]t is the court's impression that [George] has been less than forthright and cooperative in discovery.
>
> I made that determination, and that was the reason I appointed the special master for the purpose of moving this forward because I wanted to try this case….
>
> [The special master] issued some orders which, quite frankly, make a lot of sense and are an attempt to orderly get through the discovery process. It is at that time that [George] indicated that he was not going to cooperate with the special master. The matter came back before the court….
>
> I denied a motion for a default judgment at that time because it was just he was vigorously objecting to the process and asserting constitutional rights and various interlocutory appeals to the Court of Appeals and the Supreme Court. So the process was going ahead.
>
> But [then] there was a continued lack of cooperation, then finally his January letter saying that "I am afraid that I am going to be criminally charged, therefore I am not going to cooperate; I am not going to submit to depositions."…
>
> [D]iscovery cooperation … was at an impasse. I adjourned it I think two times to have [George's counsel] go back and tell his client that a default judgment was now back on the table with the court because I was concerned that it was now becoming egregious….
>
> I have made numerous attempts to get through the discovery process, and now I have had two court appearances where I have given [George] an opportunity to

> rethink, or adjust, or change his position on refusing to cooperate with discovery, and he has declined to do so….
>
> His failure to cooperate is egregious.…
>
> So I am granting the default judgment based upon the egregious conduct of [George] in failure to cooperate, making himself available for … what I thought was reasonable discovery demands, his inability to honestly answer even written interrogatories. [For example, George objected to providing his date of birth.] [T]hat is noncooperative. That is obstructionist.
>
> [I s]ent it to a special master because of the obstructive behavior. [George d]oes a little bit of work with the special master, then says he is not going to cooperate with that. *There is nothing the court has left but to grant a default judgment. And that default judgment is granted upon the pleadings, which includes fraudulent misconduct.*

(Emphasis added.) The trial court added that it was finding that George's refusal to cooperate with the discovery process was "without a clear and justifiable excuse."

¶46 The trial court's written order stated that the trial court found [George's] refusal to cooperate with discovery had been egregious and in bad faith, and granted default judgment against [George] for $200,000. The order also dismissed George's objection to the appointment of a guardian for Ethel and his request to be appointed Ethel's guardian, and ordered [George] to pay $2000 toward the special master's fees. The order indicated that if George wanted to appeal the court's ruling, he had to post $200,000 cash or bond.

¶47 This appeal followed. Although this court initially declined to waive the trial court's order that George post $200,000 cash or bond, we ultimately allowed the appeal to continue without cash or bond being posted. To date, it does not appear that George has posted cash or a bond for $200,000.

DISCUSSION

¶48 George raises numerous issues on appeal.[5] We will address them in the following order: (1) whether George was entitled to notice of the WIS. STAT. ch. 55/880 hearings and whether the trial court lacked jurisdiction; (2) whether guardianship was proper and whether the guardian had a conflict of interest; (3) whether the trial court had authority to appoint a special master; (4) whether George was entitled to summary judgment on the $200,000 counterclaim based on the affidavits he supplied; and (5) whether the trial court erroneously exercised its discretion when it granted default judgment against George based on his failure to comply with discovery.

I. Whether George was entitled to notice of the guardianship proceedings and whether the trial court lacked jurisdiction

¶49 George argues that when the State filed the original guardianship action, it should have given him notice as an "interested person" under WIS. STAT. § 880.01(6). He further asserts that because he was not given proper notice, the entire guardianship is invalid and should be reversed. George argues, without citation to authority, that "[w]hat is invalid from inception cannot and should not be made valid by means of subsequent improper procedure. No remedial effect of Wis. Stat. 870.01 can over come [sic] these serious constitutional violations."

¶50 Even assuming that George was an interested person who should have had notice of the original guardianship petition, George provides no authority

[5] George presented numerous arguments in his thirty-two page brief, many of which overlap one another. To the extent we do not address each nuance of George's claims, we deem them to lack sufficient merit or importance to warrant individual attention. "An appellate court is not a performing bear, required to dance to each and every tune played on an appeal." ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

for the proposition that this lack of notice renders the entire guardianship (and presumably the default judgment against him) invalid. On the contrary, it is well established that "[f]ailure to name and notify interested persons in a guardianship proceeding is not jurisdictional." ***In re J.L.G.***, 145 Wis. 2d 131, 136, 426 N.W.2d 52 (Ct. App. 1988).

¶51 To the extent George is renewing his objection to the trial court's general jurisdiction, we also reject this argument. The trial court correctly concluded that it had both subject matter jurisdiction, and personal jurisdiction over George. Wisconsin statutes have long provided that anyone who chooses to use our courts thereby submits to the personal jurisdiction of the court. WISCONSIN STAT. § 801.06 provides:

> A court of this state having jurisdiction of the subject matter may, without a summons having been served upon a person, exercise jurisdiction in an action over a person with respect to any counterclaim asserted against that person in an action which the person has commenced in this state and also over any person who appears in the action and waives the defense of lack of jurisdiction over his or her person as provided in s. 802.06 (8). An appearance to contest the basis for in rem or quasi in rem jurisdiction under s. 802.06 (2) (a) 3. without seeking any other relief does not constitute an appearance within the meaning of this section.

George invoked the court's jurisdiction by filing his petition for guardianship of Ethel, and by asking for various other relief. His jurisdictional arguments are meritless in view of the clear language of this statute.

¶52 Finally, with respect to George's claims on Ethel's behalf, we note that the trial court, exercising an abundance of caution and patience, allowed George to raise questions about the guardianship, and even ordered a second competency evaluation at George's request. George was given every opportunity to question the employed guardianship procedures, Ethel's need for a guardian,

and the appropriateness of Hida as a guardian. George chose not to actively pursue those issues, focusing instead on his defense to the counterclaim for $200,000. We reject his argument that the guardianship is invalid based on the State's alleged failure to notify him, or on jurisdictional grounds.

II. Whether the guardianship was proper and whether the guardian ad litem should also be allowed to serve as Ethel's guardian

¶53 George argues that the guardianship should be dismissed because Ethel's constitutional rights were violated by improper procedures. He also argues that Hida should be disqualified from serving as both the guardian ad litem and guardian. Like the trial court, we conclude that George lacks standing to make these arguments on Ethel's behalf. Ethel has adversary counsel, who has repeatedly stated that the guardianship was properly put in place, that the guardianship is necessary, and that Hida is an appropriate guardian. In response to George's concerns, the trial court also reviewed these issues. For example, a second competency evaluation was ordered; the evaluation echoed the recommendations from the first that a guardian was necessary. The only person objecting to the guardianship and the guardian is George, who has provided no evidence that Ethel objects to having a guardian or does not need a guardian, or that Hida should be removed. George has also not pursued his request to be named Ethel's guardian. George's arguments are without merit and are therefore rejected.

III. Whether the trial court had authority to appoint a special master

¶54 George argues that the trial court lacked authority to appoint a special master. He argues: "In effect, the [special master] has become the judge in this case and been able to put into place a default judgment by his erroneous

findings." George contends that having a special master violates the Wisconsin Constitution "which prohibits paying for justice."

¶55 Other than generally referencing article I, section 9 of the Wisconsin Constitution, George provides no legal authority for the proposition that a trial court is prohibited from appointing a special master to work with parties on discovery disputes. We decline to develop George's argument for him and will not address it further, *see* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court will not address issues inadequately briefed and inadequately supported by legal authority), except to note that trial courts frequently appoint special masters, also called discovery referees, to work on discovery disputes, *see, e.g.*, ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2004 WI 112, ¶¶10, 13, 275 Wis. 2d 1, 683 N.W.2d 58 (involving recommendation of discovery referee).

¶56 In addition, we note that although the special master provided valuable assistance to the trial court by working with the parties to resolve the discovery disputes, the trial court's ultimate determination that default judgment was appropriate was made after its examination of George's answers to interrogatories and George's explicit refusal to be deposed, and after warning George of the consequences of continuing to refuse to participate in discovery. Therefore, George's challenge to the default judgment is based on the trial court's actions, not those of the special master. We reject George's challenge to the appointment of a special master, and affirm the trial court's order requiring George to pay fees associated with having the special master.

IV. Whether George was entitled to summary judgment on the $200,000 counterclaim

¶57 Summary judgment is proper when there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). George argues that there was no genuine issue of material fact that Ethel gave him a $200,000 gift and that he was therefore entitled to judgment as a matter of law. George explains that the affidavit he provided from a bank employee who issued the check to Ethel and George is adequate proof that the money was a gift, and that this finding is bolstered by an affidavit from George's father stating that Ethel would be inclined to give such a gift because George was like a son to her.

¶58 While these affidavits may be evidence supporting George's opinion that the $200,000 was a gift, they are not uncontroverted. For example, Ethel signed an affidavit stating that she never intended to give George $200,000 as a gift. George questions the reliability of that affidavit, and notes that Ethel's deposition testimony contradicts parts of the affidavit. The fact that George himself must weigh the evidence to make his case for summary judgment only supports the trial court's finding that there are genuine issues of material fact in dispute concerning how George came to possess the $200,000. The fact that George has refused to be deposed about those facts, making it difficult for the opposing parties to demonstrate additional disputed facts, makes the trial court's conclusion all the more reasonable. The facts surrounding the disputed $200,000 were anything but undisputed. Summary judgment was properly denied.

V. Whether the trial court erroneously exercised its discretion when it granted default judgment based on George's failure to comply with discovery

¶59 The trial court granted adversary counsel's motion for default judgment based on George's failure to comply with discovery orders. Trial courts have both statutory and inherent authority to sanction a party for failure to comply with court orders and procedural statutes or rules. ***Johnson v. Allis Chalmers Corp.***, 162 Wis. 2d 261, 273-74, 470 N.W.2d 859 (1991). The court may make "such orders … as are just" when a party fails to attend his own deposition, serve answers to interrogatories or respond to requests for inspection of documents. WIS. STAT. § 804.12(4). "[D]efault judgment is an appropriate sanction for discovery violations if the court finds the noncomplying party's conduct is: (1) without a clear and justifiable excuse, and (2) either egregious or in bad faith." ***Teff v. Unity Health Plans Ins. Corp.***, 2003 WI App 115, ¶13, 265 Wis. 2d 703, 666 N.W.2d 38.

¶60 "The decision to impose sanctions under [WIS. STAT.] §§ 802.10(7) and 804.12 is committed to the trial court's discretion." ***Sentry Ins. v. Davis***, 2001 WI App 203, ¶19, 247 Wis. 2d 501, 634 N.W.2d 553. "A discretionary decision will be sustained if the [trial] court has examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Id.***

¶61 It is undisputed that after numerous warnings, George explicitly refused to answer interrogatories and appear for his deposition. The trial court found that this conduct was egregious, that there was no justifiable excuse for it, and that default judgment was therefore warranted. *See* ***Teff***, 265 Wis. 2d 703, ¶13. George argues that the default judgment should not have been granted

because he participated in discovery to the best of his ability, subject to his Fifth Amendment and privacy objections to answering interrogatories and giving a deposition.

¶62 "It has long been recognized in Wisconsin that a person may invoke the [F]ifth [A]mendment in a civil case in order to protect himself from the use of such evidence against him in a subsequent criminal action." ***Grognet v. Fox Valley Trucking Serv.***, 45 Wis. 2d 235, 239, 172 N.W.2d 812 (1969). However, a trial court is not required to accept without question a defendant's Fifth Amendment claim. ***Id.*** at 240. "It may make a limited examination of a witness claiming the [F]ifth [A]mendment to determine whether valid grounds exist for seeking shelter in the right." ***Id.***

¶63 The Fifth Amendment is only validly invoked if there is some connection between the questions asked and potential self-incrimination. *See* ***B & B Invs. v. Mirro Corp.***, 147 Wis. 2d 675, 686, 434 N.W.2d 104 (Ct. App. 1988). Thus, the existence of pending criminal proceedings "'does not by itself excuse a witness of his obligation to give testimony in civil proceedings. Some nexus between the risk of criminal conviction and the information requested must exist.'" ***Id.*** (quoting ***Martin-Trigona v. Gouletas***, 634 F.2d 354, 360 (7th Cir. 1980) (per curiam)).

¶64 Here, George repeatedly asserted, through counsel and an affidavit, that he would not answer interrogatories or appear for deposition because he feared prosecution. The trial court found that George did not have a reasonable fear of prosecution. This finding was based on representations by Ethel's adversary counsel and the guardian ad litem that they were aware of no pending criminal investigations of George. George provided no details of his fear of

pending criminal prosecution except to assert in his affidavit that he had "been threatened by representatives of Ethel K[.] with criminal charges both orally and in written form" and that he had "been informed by the parties who have contacts with the agencies involved that he would be arrested if he were in Wisconsin." Lacking any specific evidence that George faced criminal prosecution, the trial court's finding that George's invocation of his Fifth Amendment rights was unreasonable is not clearly erroneous.

¶65 Moreover, even if George had a valid right to refuse to answer specific interrogatories or deposition questions on Fifth Amendment grounds, he would not be entitled to refuse to answer all interrogatories or refuse to appear for his deposition. George is required to show, on a question-by-question basis, that "[s]ome nexus between the risk of criminal conviction and the information requested" exists. *See* ***Gouletas***, 634 F.2d at 360. It is a rare civil case where one could refuse to answer every question in a deposition or every interrogatory. Here, George refused to provide basic information, such as his date of birth. He refused to be deposed at all, even when one of the disputed issues was whether he should be appointed guardian, an issue not directly related to the $200,000 dispute that is the main reason he invoked his Fifth Amendment rights. George's refusals to cooperate in discovery illustrate the unreasonableness of his position.

¶66 George's unreasonableness was further compounded by his insistence that he was entitled to summary judgment based on his own affidavits concerning the $200,000. George refused to answer questions about the $200,000 or to comply with multiple court orders to deposit the disputed money with the clerk of court. At the same time, he affirmatively asserted his right, as a matter of law, to the $200,000 in dispute. George sought to prove by affidavits of himself and others facts that were useful to him, and refused to respond to questions as to

facts solely within his knowledge when the guardian or adversary counsel tried to test the gift conclusion. Based on these facts, the trial court's finding that George's refusal to cooperate in discovery was both unjustified and egregious is not clearly erroneous.

¶67 In addition to claiming a right to refuse to answer questions based on the Fifth Amendment, George also claimed that his "privacy rights" protected him from answering questions. Precisely what George considered his "right to privacy" in the context of this litigation is somewhat unclear. It appears that he believed he had a right to determine what information he felt was appropriate for the other parties to have, and he could then refuse to provide the rest. George refused to deposit the disputed money with the clerk of court after being ordered by the court to do so. George refused to pay all of his share of the special master's costs, claiming he had a "constitutional right" not to have to "pay for justice." The trial court characterized his numerous refusals to cooperate in discovery or comply with court orders as being without a clear and justifiable excuse, obstructionist, egregious and in bad faith.

¶68 We conclude that the trial court did not erroneously exercise its discretion in the choice of sanctions it imposed. The trial court tried numerous times to accommodate George and find a way for George to participate in discovery. Nothing worked. When faced with an obstructionist litigant whose conduct is persistent and egregious, a default judgment on the pleadings, and dismissal of the offending party's claims, is an appropriate, albeit drastic sanction. Our legal system cannot function without cooperation in the process. When that is refused, as it was so clearly by George here, a drastic sanction is appropriate and justified. Because the record amply supports the trial court's findings and exercise of discretion, we affirm the default judgment.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.