

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 18, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 2006AP130**

**Cir. Ct. No. 1998PA64**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE MATTER OF THE CONTEMPT IN RE THE  
PATERNITY OF NATHANAEL J. G.:**

**MARTHA SUE GATTEN,**

**APPELLANT,**

**V.**

**EILEEN PERKET,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Burnett County:  
MICHAEL J. GABLEMAN, Judge. *Reversed.*

¶1 CANE, C.J.<sup>1</sup> Martha Gatten appeals an order finding her in contempt for interfering with the court-ordered visitation rights of her child's paternal grandmother, Eileen Perket. Gatten challenges the remedial sanctions ordered by the court, contending they were defective because she was unable to purge them by complying with court orders.<sup>2</sup> This court agrees and reverses the order.

¶2 In January 2005, Perket filed a motion seeking physical placement of her grandchild, pursuant to WIS. STAT. § 767.24(3), alleging that neither Gatten nor the child's father were capable of caring for the child and the child was in need of protection or services. In June 2005, pursuant to a stipulation of the parties, the court ordered that Perket have substantial visitation rights. In August 2005, Perket filed a motion to find Gatten in contempt for violating that order. In November, 2005, the court entered an order finding Gatten in contempt, which is the order she now appeals.

¶3 The contempt order sentenced Gatten to thirty days in jail, which was stayed pending Gatten's successful compliance with the visitation order. The order also provided the following:

8. If Martha Sue Gatten is in noncompliance with the above order, temporary physical custody of [the child] shall immediately be transferred to Eileen Perket with reasonable visitation to Martha Gatten until the Court may review a permanent disposition. This finding and order is warranted

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

<sup>2</sup> Gatten makes additional claims that this court chooses not to address because we reverse on her first claim. Her other claims include that the sanctions imposed were not amongst the sanctions available for remedial contempt, that the November order violates her fundamental rights as a parent, and that the court erred by not allowing her to present a defense.

and necessary given the substantial manipulation, the falsehoods, and the willful disobedience of Court orders, as has been demonstrated by Martha Gatten and her family.

**FAILURE TO OBEY THE ABOVE ORDER SHALL RESULT IN A COMMITMENT ORDER AND WARRANT FOR THE ARREST OF MARTHA SUE GATTEN TO SERVE THE SENTENCE SET FORTH ABOVE AND FOR TRANSFER OF TEMPORARY PHYSICAL CUSTODY OF [THE CHILD] AS SET FORTH ABOVE.**

In January 2006, after Gatten failed to comply with the visitation schedule, the court transferred physical placement of the child to Perket.

¶4 Gatten contends the contempt order reflected an incorrect use of remedial sanctions because she was unable to purge them by complying with the court's orders. Perket and the guardian ad litem argue that the court appropriately imposed sanctions it believed were necessary to stop a continuing contempt of court. This court concludes that the contempt order was defective because it does not provide a continuing opportunity to purge the contempt.

¶5 The contempt of court statutes are found in WIS. STAT. ch. 785, which provides for two different types of sanctions. For criminal contempt, which requires the involvement of the district attorney, punitive sanctions are authorized. WIS. STAT. §§ 785.03(1)(b) and 785.04(2). For civil contempt, the court is limited to remedial sanctions.<sup>3</sup> WIS. STAT. §§ 785.03(1)(a) and 785.04(1). However,

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<sup>3</sup> Permissible remedial sanctions are outlined in WIS. STAT. § 785.04(1), which states:

REMEDIAL SANCTION. A court may impose one or more of the following remedial sanctions:

- (a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.

(continued)

remedial sanctions must be purgeable through compliance with the original court order. *Frisch v. Henrichs*, 2006 WI App 64, ¶27, 713 N.W.2d 139. This is because civil or remedial contempt is designed to terminate a continuing contempt of court, rather than punish the contemnor. *Id.*, ¶¶26-27; *see* WIS. STAT. § 785.01(2) & (3).

¶6 The fatal feature of the sanctions in this case is that, once triggered, they could not be purged by compliance with a prior court order. It is true that Gatten could prevent the sanctions from being triggered by complying with the November contempt order. However, once the sanctions were triggered, Gatten was no longer in a position to comply with the court's order, thereby defeating the purpose of remedial contempt. *See* WIS. STAT. § 785.01(3).

¶7 In effect, the sanctions ordered were punitive sanctions, stayed pending compliance with conditions, much in the way probation is used in criminal cases. Thus, even though the court had good intentions to use the weight of the sanctions to ensure compliance with the contempt order, it stepped beyond its bounds by imposing civil sanctions that could not be purged.

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(b) Imprisonment if the contempt of court is of a type included in s. 785.01 (1) (b), (bm), (c) or (d). The imprisonment may extend only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.

(c) A forfeiture not to exceed \$2,000 for each day the contempt of court continues.

(d) An order designed to ensure compliance with a prior order of the court.

(e) A sanction other than the sanctions specified in pars. (a) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

*By the Court.*—Order reversed.

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

