

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 3, 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. 2005AP350

Cir. Ct. No. 1993FA941278

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE MARRIAGE OF ANNE E. CZARNECKI,
PETITIONER V. PAUL A. CZARNECKI, RESPONDENT:**

ANNE E. GERARD F/K/A ANNE E. CZARNECKI,

APPELLANT,

v.

LAW OFFICES OF PODELL & PODELL,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
MAXINE A. WHITE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Anne E. Gerard appeals *pro se* from an order granting Peggy Podell a protective order stating that Podell was not obligated to

answer the discovery requests made by Gerard. Gerard claims: (1) the trial court should not have granted the protective order; (2) the trial court should not have permitted the Boyle, Boyle & Boyle law firm to join Podell's motion for a protective order; (3) the trial court's ruling violated her legal rights to discovery and other legal rights; (4) the trial court's ruling violated the July 24, 2003 appellate court order; (5) the trial court discriminated against her because she was *pro se*, ill and incapacitated; and (6) the trial court's actions violated her right to due process. Because we resolve each claim in favor of upholding the order, we affirm.

BACKGROUND

¶2 On December 10, 2004, Podell filed a notice of motion and motion for a protective order. The motion sought a protective order that the discovery sought by Gerard "not be had." Notice of the motion was sent to Gerard, who filed a "motion to dismiss the motion" which was set to be heard on January 6, 2005. This exchange arose out of a divorce action between Gerard and Paul A. Czarnecki, wherein members of the Podell law firm represented Czarnecki in a post-judgment divorce proceeding in 1996 and the appeal in 1997-98. This court found Gerard's appeal to be frivolous and ordered the trial court to assign responsibility for fees. The trial court issued an order requiring that Gerard pay 40% of the fees and her appellate attorney pay 60% of the fees. The discovery requests made by Gerard appear to request information relative to what Gerard and her former appellate attorney paid to the Podell law firm. The affidavit in support of the motion seeking a protective order states that this information is not relevant, that affiant is not a party to the action (and therefore not subject to discovery rules), and that nothing was paid since the trial court's orders in 1997.

¶3 The trial court conducted a hearing on the motion on January 6, 2005. Gerard did not appear for the hearing. At the hearing, the trial court concluded that there was no current proceeding which required that discovery be permitted. Accordingly, it granted the motion for a protective order. Gerard now appeals from that order.

DISCUSSION

¶4 Gerard claims: (1) the trial court should not have granted the protective order; (2) the trial court should not have permitted the Boyle, Boyle & Boyle law firm to join Podell's motion for a protective order; (3) the trial court's ruling violated her legal rights to discovery and other legal rights; (4) the trial court's ruling violated the July 24, 2003 appellate court order; (5) the trial court discriminated against her because she was *pro se*, ill and incapacitated; and (6) the trial court's actions violated her right to due process.

¶5 It is important to note that the only order properly before this court for review is the order dated January 19, 2005, which grants a protective order to Attorney Podell and the Podell law offices so that they are not obligated to respond to the discovery requests received from Gerard. Some of Gerard's brief asserts other claims and facts relating to earlier proceedings in the divorce matter, or other trial courts, which are not included in our review of this order.

¶6 In reviewing a trial court's decision to grant a protective order, we apply a deferential standard of review. *State v. Beloit Concrete Stone Co.*, 103 Wis. 2d 506, 511, 309 N.W.2d 28 (Ct. App. 1981); WIS. STAT. § 804.01(3) (2003-

04).¹ Accordingly, we will not reverse the trial court's decision as long as it properly exercised its discretion by considering the relevant facts, applying the pertinent law, and reaching a reasonable determination. *Beloit Concrete*, 103 Wis. 2d at 511. In reviewing this matter, we conclude that the trial court did not erroneously exercise its discretion.

A. Issuance of Protective Order.

¶7 Podell filed a motion seeking a protective order to forgo answering discovery requests Gerard filed with her and the Podell law firm relative to the divorce proceeding. Neither Podell nor the Podell law firm was “a party” to that proceeding. The law firm's only connection to the divorce proceedings was its representation of Czarnecki in post-judgment divorce proceedings and appeal, which completely ceased in 1998. Thus, the discovery requests to Podell and the Podell law firm came despite the fact that neither was a party to any current dispute. This was the basis upon which the trial court issued the protective order. We conclude that the trial court did not erroneously exercise its discretion in issuing the protective order. Based on the aforementioned facts and circumstances, there was no legal basis to require Podell to answer the discovery requests.

B. Allowing Boyle to Join Motion.

¶8 Gerard also contends that the trial court erred in allowing the Boyle law firm to join in Podell's motion. Although the transcript does reflect that the

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

trial court allowed the Boyle law firm to join in the motion, the order signed by the trial court does not reflect that fact. Accordingly, our review is limited to the order granting Podell's motion and, therefore, we need not address this issue.

C. Violation of Legal Rights/Violation of July 24, 2003 Order.

¶9 Gerard next argues that the trial court violated her discovery rights and other legal rights. She argues that she has a right to this discovery based on the July 24, 2003 order and remand from the appellate court. This court is not in a position to determine whether Gerard is or is not entitled to further discovery based on the earlier remand. What is before this court is solely the January 6, 2005 order issuing a protective order. Based on our review of that order, Gerard does not have any legal basis for seeking discovery from Podell or the Podell law firm, neither of whom are currently a party to any action which would justify discovery proceedings.

¶10 Gerard also claims that the trial court violated the July 24, 2003 appellate court remand order when it issued the protective order and violated the December 2003 circuit court order which ordered the status conference in the divorce proceeding adjourned until Gerard provided the court with written notice that she was able to participate in the hearing. Gerard avers in her motion to dismiss Podell's motion that Gerard is still unable to attend any hearings.

¶11 The record before us reflects that in response to Podell's motion seeking a protective order, Gerard filed a motion to dismiss Podell's motion for various reasons. Within Gerard's motion, she refers to the specific date and time set for the motions. On that specific date and time, Gerard failed to appear either in person or by telephone. Further, Gerard did not ask for an adjournment. Accordingly, the only conclusion that can be reached is that Gerard defaulted on

her motion by failing to appear. By defaulting, she cannot now complain about the trial court's decision.

D. Discrimination Claim.

¶12 Gerard claims the trial court discriminated against her due to her *pro se* status, her illness and/or her incapacitation. The record reflects otherwise. The trial court considered the motion/response Gerard filed before rendering a decision. The trial court delayed the hearing on the motion forty minutes to afford Gerard an opportunity to appear. There is no evidence that the trial court discriminated against her in any regard.

E. Due Process.

¶13 Gerard claims that her due process rights were violated. We cannot agree. Gerard clearly knew that the hearing was set for January 6, 2005, at 3:00 p.m. This fact is undisputed. She could have retained counsel, appeared in person, made arrangement to appear by phone, or sought an adjournment. She did none of the above. She cannot now complain that her due process rights were violated. The trial court has no control over whether Gerard will exercise her rights by appearing for a hearing she had proper notice of or by making other arrangements.

By the Court.—Order affirmed.

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

