

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2002

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. 01-2260
STATE OF WISCONSIN

Cir. Ct. No. 91-FA-1277

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE FINDING OF CONTEMPT IN RE THE
MARRIAGE OF JANICE HOWE V. RONALD HOWE:**

JANICE HOWE,

PETITIONER-RESPONDENT,

V.

RONALD HOWE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed and cause remanded with
directions.*

¶1 LUNDSTEN, J.¹ Ronald Howe appeals an order of the circuit court holding him in contempt for failure to make child support and property division payments as ordered in the judgment of divorce. The court ordered Ronald to pay \$8,120 in child support arrears, \$1,307.88 in interest on the arrearage, \$92 per month toward his daughter's health insurance, and \$8,299.94 in attorney fees incurred by Janice Howe due to Ronald's failure to comply with the judgment of divorce and prior court orders. For the following reasons, we affirm.

Background

¶2 In 1991, Janice petitioned the circuit court for a divorce from Ronald and for custody of the parties' two minor children. On October 4, 1991, the court issued a temporary order awarding Janice primary physical placement of the parties' children. Thereafter, the court issued a temporary order requiring Ronald to pay child support.

¶3 The parties were granted a judgment of divorce on May 5, 1994. Both Ronald and Janice were awarded an equal share of royalties from the sale of their bottling business to Neenah Springs, Inc. At the time of the judgment, Ronald was in arrears for child support in the amount of \$5,759. Ronald was ordered to pay \$500 per month in child support and \$200 per month, as well as interest, on the arrearage. Ronald was also ordered to pay \$4,000 to Janice's attorneys, incurred as a result of Ronald's previous failures to abide by several court orders.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 Ronald was awarded real estate valued at \$103,196 and the court ordered Ronald to pay a property division equalization payment of \$66,098 to Janice. Ronald was to pay this latter figure in \$500 installments, including monthly interest at 5% per annum on the declining balance, with the entire remaining balance due on April 1, 1999. The court also ordered, without objection from Ronald, that Ronald pay to Janice an additional sum of \$4,074, to be paid in the same manner as the property equalization payment. To ensure that he would make the ordered payments, Ronald was ordered to execute a mortgage in favor of Janice on the real estate, which would give Janice a means of obtaining funds should Ronald fail to comply with the court order.

¶5 Ronald failed to comply with the court's order, with the exception of the child support payments that Janice received directly from the Neenah Springs royalty payments. An order was issued August 25, 1995, finding Ronald in contempt. The court order indicates that Ronald failed to make any payments on the principal or interest on the property division, failed to execute the required mortgage, failed to pay Janice's attorney fees as ordered, failed to pay debts assigned to him, failed to pay real estate taxes, and failed to pay his share of the children's health insurance premiums. The court also found that Janice incurred fees and costs in the amount of \$6,116.60 in enforcing the divorce judgment. The court assigned all of Ronald's royalties from Neenah Springs to Janice, to apply as follows:

- (a) First, to current principal and interest payments due under the property division.
- (b) Second, to respondent's share of current health insurance premiums for the minor children.
- (c) Third, to respondent's share of past health insurance premiums for the minor children.

(d) Fourth, to past due principal and interest payments under the property division.

(e) Fifth, to attorneys' fees reasonably incurred by the petitioner in attempting to enforce the judgment of divorce.

(f) Sixth, to reimburse petitioner for payment of debts respondent was required to pay, but which were paid by petitioner.

The assignment was to continue until all payments were made in accordance with the court's order. Ronald did not appeal this order.

¶6 After the Neenah Springs royalty payments ended in March of 1999, Ronald failed to satisfy the outstanding obligation on the property division and he made child support payments in an amount less than ordered. A contempt order was issued by the family court commissioner on September 28, 1999, finding an outstanding principal balance on the property division obligation of \$44,172, and interest due in the amount of \$4,970.53. Ronald was ordered to pay \$500 per month in child support and \$100 per month toward the arrearage, and either list for sale or obtain financing on certain real estate to cover the outstanding balance due on the property division. Ronald was also ordered to pay \$828.36 toward Janice's attorney fees.

¶7 Ronald challenged the court commissioner's decision and a *de novo* hearing was held before the circuit court on January 19, 2001. On October 6, 2000, prior to the hearing, Ronald filed *pro se* a "motion to dismiss contempt order" and a "motion for summary judgement on counter claim." Ronald asserted in his motions that the obligation on the property division was satisfied in September of 1997, but Janice nonetheless continued to accept royalties, and that Ronald should be relieved of his obligation to pay child support because the parties' daughter was living with him, while the parties' son remained with Janice.

¶8 At the January 19, 2001, hearing, Janice testified that when the royalty payments from Neenah Springs ended in March of 1999, Ronald still owed \$44,172 on the property division, and he paid less than the \$500 required for child support. After the contempt order was issued on September 28, 1999, Janice brought a foreclosure action on the mortgage she held to cover the unpaid property division. Janice testified that she prevailed in that judgment, and subsequently assigned her interest in the judgment to Wisconsin Glacier Springs. Janice was paid \$60,000 for the assignment.

¶9 The court found Ronald in contempt, but withdrew an arrest warrant based on Ronald's representations that he would pay the child support arrearage in the amount of \$8,120 before leaving court that day. The court concluded that Ronald owed Janice \$44,172 for the property division, but stated it would deem that amount satisfied based on the assignment and foreclosure judgment, assuming there were no subsequent changes in that judgment. Finally, the court denied Ronald's motions, except as to the issue of future child support, because it determined that Ronald was properly given credit for all royalties paid on his behalf.

¶10 An additional hearing was held on June 15, 2001, because the foreclosure judgment was vacated before the court's written order was issued. A motion by Wisconsin Glacier Springs to void the assignment was denied.

¶11 In a subsequent written order, the court found Ronald in contempt for failing to pay child support and the property division payments as required by the divorce judgment. Ronald was required to pay \$8,120 in child support arrearages and \$1,307.88 interest on the arrearage. The court denied Ronald's October 2000 motions except the court held, effective November 1, 2000, that no

child support obligation existed because each party had primary physical custody of one child. The court ordered Ronald to pay \$92 per month toward the cost of his daughter's health insurance, and \$8,299.94 toward Janice's attorney fees incurred in enforcing the divorce judgment. Due to the assignment, Ronald was not required to pay any additional monies toward the property division. Ronald appeals.

Discussion

Property Division

¶12 Ronald first argues that the circuit court erred in finding that he failed to satisfy the property division obligation in 1997. Ronald asserts that Janice improperly continued to accept royalties from Neenah Springs. Ronald argues that the Neenah Springs statement of account, admitted as an exhibit at the hearing, shows that Janice actually received \$258,770, far in excess of what she was owed under the property division award.

¶13 Essentially, Ronald claims that the circuit court's finding that he still owed Janice \$44,172 relating to the property division at the time the royalty payments from Neenah Springs ended in 1999 is erroneous. However, the circuit court was free to believe Janice's testimony over Ronald's as to the remaining balance due on the property division. See *Fuller v. Riedel*, 159 Wis. 2d 323, 332, 464 N.W.2d 97 (Ct. App. 1990) (it is for the fact finder, not the appellate court, to resolve conflicts in the testimony). Ronald provided the circuit court with no detailed financial analysis rebutting Janice's testimony. Ronald's broad assertions, both in the circuit court and before this court, completely fail to show that the circuit court's factual conclusion was in error.

Assignment of Mortgage

¶14 Ronald appears to complain that the circuit court erroneously failed to find Wisconsin Glacier Springs in default. However, if this is Ronald's claim, it is wholly undeveloped and it does not merit a response. We do observe that Ronald has completely failed to show that Janice could not legally sell her rights in the mortgage (relating to Ronald's property) to Wisconsin Glacier Springs following Ronald's failure to abide by the payment schedule.

Health Insurance

¶15 Ronald next asserts the circuit court erred in holding him in contempt for failing to pay his share of the children's health insurance premiums. He argues that health insurance premiums were not part of the original decree. While this is correct, the 1995 contempt order did order Ronald to make such payments and Ronald never filed an appeal from that order. The circuit court correctly observed at the January 2001 hearing that Ronald should have appealed from the 1995 order if he disagreed with it. Accordingly, we do not decide this issue. *See* WIS. STAT. § 808.04(1) (setting forth the time for an appeal from a court order).

Attorney Fees

¶16 Ronald next argues that the circuit court erred in awarding Janice \$8,299.94 in attorney fees. Once again, Ronald fails to provide anything remotely resembling a reasoned legal or factual argument in support of his claim. He makes disjointed factual allegations without providing context or sufficient record citations. We need not respond, but we nonetheless observe that the record amply supports the fee award because the record shows that Janice incurred these fees

due to Ronald's failure to comply with the divorce judgment. The foreclosure action was similarly instituted due to Ronald's failure to comply with the divorce judgment and his failure to satisfy the outstanding obligation on the property division. This method of satisfying the remaining obligation was set forth in the divorce judgment.

¶17 Pursuant to WIS. STAT. § 785.04(1)(a), the circuit court may impose the payment of money, as a sanction, sufficient to compensate a party for any loss suffered as a result of another party's contempt of court. This includes attorney fees incurred as a result of a party's contempt. See *Benn v. Benn*, 230 Wis. 2d 301, 315, 602 N.W.2d 65 (Ct. App. 1999). Accordingly, we affirm the circuit court's award of attorney fees.

Counterclaim

¶18 Finally, Ronald argues that the circuit court denied his counterclaim without ever specifically addressing it. We agree with Janice's counsel that Ronald never filed a counterclaim. Instead, he filed a "motion to dismiss contempt order" and a "motion for summary judgement on counter claim." Ronald's arguments in those motions appear to present his asserted defense that Janice was paid in full for the property division and that Janice owed Ronald for amounts overpaid. Regardless how those motions are construed, it is readily apparent that the court rejected them on their merits by finding that Janice's account of the distribution of royalties was credible.

Frivolous Appeal

¶19 Janice has filed a motion asserting that Ronald's appeal is frivolous and seeking an award of costs and fees. "If an appeal or cross-appeal is found to

be frivolous by the court, the court shall award to the successful party costs, fees and reasonable attorney fees under this section.” WIS. STAT. RULE 809.25(3). The purpose of sanctions in this respect is to deter a party from commencing or continuing a frivolous action, and to punish those who do. *Holz v. Busy Bees Contracting, Inc.*, 223 Wis. 2d 598, 609, 589 N.W.2d 633 (Ct. App. 1998).

¶20 In this case, Ronald’s entire appeal is frivolous because he provides no developed factual argument supported with record cites, and no developed legal argument supported by legal authority, challenging the circuit court’s contempt order. We are mindful of the fact that Ronald is proceeding *pro se*. Nevertheless, we conclude that Janice should not be forced to suffer the needless expense of responding to a frivolous appeal simply because Ronald chose to proceed without counsel and to present unsupported arguments. *See id.* at 609-10. Accordingly, we deem the appeal frivolous and remand for a determination of Janice’s costs, fees, and reasonable attorney's fees pursuant to WIS. STAT. RULE 809.25(3).

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

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

