

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 17, 2010

David R. Schanker
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. 2009AP2402

Cir. Ct. No. 2009SC3002

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

THERESE ANN KROLL,

PLAINTIFF-APPELLANT,

v.

KURT PAUL KROLL,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
JOHN C. ALBERT, Judge. *Affirmed.*

¶1 LUNDSTEN, J.¹ Therese Kroll appeals *pro se* from an order of the circuit court dismissing her claim seeking money from her former husband for past expenses related to their children. I affirm the circuit court's order.

Background

¶2 Therese Kroll and her former husband, Kurt Kroll, were divorced on March 26, 2000. Prior to the divorce, they had three children together. Pursuant to their divorce decree, Kurt was required to pay child support and, additionally, to pay one-half of the children's dental and medical bills.² At some point, Kurt fell behind on payments related to these obligations.

¶3 In January 2004, pursuant to a petition from Therese, the family court entered an order expunging all child support arrears and interest. Therese's petition stated that "all monies described as child support ... [have] been paid in full." Also incorporated into the family court's order was Therese's request that, going forward, Kurt would pay \$100 a month as child support, which, apparently, was to be paid directly to Therese. In April 2006, Therese and Kurt entered into a stipulation that also purported to expunge all arrears and interest owed to Therese and, additionally, to expunge all receiving and disbursement fees incurred in 2005 and 2006. Kurt and Therese's youngest child turned eighteen in the fall of 2007.

¶4 In April 2009, Therese filed suit in small claims court, seeking one-half reimbursement of the children's dental bills and medical insurance dating

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² The divorce decree is not in the record. The parties appear to agree on its contents to the extent described in the text above.

back to January 2004. After a hearing, the court commissioner found in favor of Therese and awarded her approximately \$4000. Kurt then requested a trial. Following a bench trial, the circuit court found that Therese failed to prove that Kurt owed the amounts claimed and ordered her claim dismissed.³ Therese appeals from that order.

Discussion

¶5 Therese argues that the circuit court erred when it dismissed her claim against Kurt for child-related expenses. She points to the existence of their children's dental bills showing that certain expenses were in fact incurred, and she refers to a divorce decree that makes Kurt responsible for one-half of these expenses. She also points to an agreement from January 2004 requiring Kurt to make monthly child support payments directly to her. She alleges that, although Kurt testified to having check registers as proof of payment to her, he in fact had no checking account and never paid his share of the dental bills or the monthly payments. Kurt does not dispute the existence of the agreements, but he does assert, as he did at trial, that he has paid all amounts owed to Therese.

¶6 Therese's arguments essentially ask this court to credit her testimony about what occurred and favor that testimony over Kurt's conflicting version of events. The trial judge, however, has already made this credibility determination, and I defer to his determination that Kurt was credible. See *Lessor v. Wangelin*, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998) ("When the trial court acts

³ In addition to the medical-related amount cited in her complaint, Therese also stated at trial that Kurt owed her several years of monthly child support payments totaling \$2600. On appeal, Therese asserts that this unpaid amount totals \$3600.

as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness's testimony.”).

¶7 As the circuit court indicated in its decision, this case boils down to who to believe. Kurt testified that he made the disputed payments to Therese, and he stated that he had check registers reflecting those payments. Therese offered contrary testimony, alleging that the payments were never made. In weighing the conflicting testimony, the circuit court noted certain unexplained aspects of Therese's version, such as why she would have signed a stipulation in 2006 forgiving Kurt's child support debt if he owed her substantial dental costs dating back to 2004. All said, it is apparent the court found that Kurt's testimony was at least as credible as Therese's testimony, stating that “the Plaintiff has not met her burden of showing that she is entitled to any relief.”

¶8 Accordingly, I affirm the order dismissing Therese's claim.

By the Court.—Order affirmed.

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

