COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2418 **Cir. Ct. No. 01CV2488**

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

MICHAEL JAHNZ AND JENNIFER JAHNZ,

PLAINTIFFS-RESPONDENTS,

V.

KATHY A. STOVER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge.[1] *Affirmed*.

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

¶1 PER CURIAM. Kathy A. Stover appeals from the final judgment of the circuit court dismissing her counterclaims, granting partial summary

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[1] The Honorable David A. Hansher presided over all proceedings in this case until August 2002, whereupon the case was transferred to the Honorable Jeffrey A. Kremers. Judge Kremers entered the final judgment and presided over the final contempt hearing that has not been appealed.

judgment, granting default judgment, awarding damages, and holding her in contempt. Stover contends that the trial court erred in: (1) dismissing her counterclaims and granting summary judgment; (2) granting default judgment and awarding damages; and (3) holding her in contempt and imprisoning her. We affirm.

I. BACKGROUND.[2]

¶2 Stover graduated from Washburn University School of Law in 1981. Throughout the relevant time period, she was an inactive member of the Missouri and Kansas State Bars, and not licensed to practice law in the State of Wisconsin. Michael E. Jahnz is a musician, and is married to Jennifer A. Jahnz.

¶3 As will be seen, the relationship between Stover and the Jahnzs was unusual. In December 1999, Stover approached Jahnz and offered to serve as his business manager and attorney for a period of one year. Jahnz accepted, but the parties did not execute a written contract.[3] Jahnz delivered several items of personal property to Stover during this time period, which Stover refused to return. Stover also operated web pages in Jahnz's name and published Jahnz's music on the Internet without his consent. From approximately January 2000 until around the beginning of 2002, Stover held herself out as Jahnz's attorney and manager by way of business cards and/or the Internet.

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[2] As Stover has listed only the causes of action, counterclaims, and defenses in the statement of facts portion of her brief, and has failed to include a statement of facts section in her supplemental brief, the background included here is based largely upon the statement of facts provided by the Jahnzs.

[3] Stover apparently alleges, however, that Jahnz approached *her*, and that she did not agree to be Jahnz's attorney.

¶4 During March and April of 2000, Stover, notwithstanding the fact that she was not and is not licensed to practice law in the State of Wisconsin, attempted to provide legal services to the Jahnzs in a property damage matter against third parties. She subsequently abandoned the matter without notice, and consequently, a lien was filed against the Jahnzs' property.

¶5 In November 2000, following a conversation at the Jahnzs' home, Stover "resigned," presumably from her position as Jahnz's manager and attorney. Jahnz advised Stover to leave him and his wife alone. Shortly thereafter, Stover returned to the Jahnzs' home and walked their dog. Between November 2000 and February 2001, Stover delivered packages to Jahnz at his home, made phone calls to his home, and sent a letter threatening to force Jahnz into bankruptcy. Jahnz again advised Stover in January and February that she no longer represented him and that their business relationship had been terminated. He demanded that she discontinue using his name and maintaining web pages in his name, and that she return his personal property. She refused to do so, and again threatened legal action.

¶6 Shortly thereafter, on March 7, 2001, Jahnz petitioned the Circuit Court of Milwaukee County asking for a harassment injunction against Stover. The court prohibited Stover from contacting Jahnz, except through counsel.[4] Again, Jahnz demanded that Stover cease operating web pages pertaining to Jahnz and his music and return his personal property. However, Stover continued to

[4] However, on April 23, 2001, after a *de novo* hearing presided over by the Honorable Dominic S. Amato, this order was transformed into a reciprocal civil injunction prohibiting any contact between the parties except by and between their attorneys.

operate the web pages and refused to return the property as of the time when the complaint was filed commencing the underlying action relevant to this appeal.

¶7 On March 22, 2001, the Jahnzs filed a complaint alleging violation of the right to privacy, false advertising, professional and legal malpractice, breach of fiduciary duty, unlawful detainer, and slander. Stover answered alleging, by way of affirmative defenses, breach of contract, fraud, misrepresentation, unclean hands, abuse of process, negligence, waiver, estoppel, failure to mitigate, privilege, and "pattern of misuse and improper complaints." Stover also counterclaimed alleging breach of contract, abuse of process, fraud, conversion, quantum meruit, and unjust enrichment.

¶8 In September 2001, the trial court granted the Jahnzs' motion to strike the "pattern of misuse and improper complaints" affirmative defense and their motion for summary judgment dismissing all of the counterclaims with prejudice. The trial court further granted the Jahnzs' motion for entry of a declaratory order and found that: (1) Stover entered into an attorney-client relationship with Jahnz; (2) the business transaction between Stover and Jahnz was formed and created contrary to Rule 1.8, MODEL RULES OF PROF'L CONDUCT R. 1.8 (1983), as adopted by Kansas, Missouri, and Wisconsin; (3) all agreements or contracts that Stover attempted to form with Jahnz are void and unenforceable *ab initio*, and no valid or enforceable contract or agreement exists or ever existed between Stover and Jahnz; (4) Stover is not and has never been authorized to represent that she is the manager or agent of Jahnz or that she is authorized to manage, represent, or speak for Jahnz; and (5) Stover is not and has never been authorized to maintain any web page in Jahnz's name without his consent.

¶9 In December 2001, the trial court, by way of a first scheduling conference order, required: (1) that Stover respond to the Jahnzs' motion for partial summary judgment, injunctive relief, and an order to show cause why Stover should not be held in contempt; (2) that Stover produce, for inspection and copying, all documents responsive to the Jahnzs' second interrogatories and requests for production of documents, and the properly executed and authenticated consent forms, for the disclosure of tax returns, return information, and waiver of privilege, already delivered to Stover; and (3) that the Jahnzs reply to Stover's response to their motion.

¶10 In February 2002, the trial court granted the Jahnzs' motion for summary judgment on the claim of a violation of the right to privacy, finding no genuine issue of material fact existed in regard to that claim. The trial court denied the Jahnzs' motion for summary judgment on the false advertising claim. The court also ordered Stover to send out emails and written correspondence disassociating herself with all internet pages in Jahnz's name. In regard to the Jahnzs' motion for injunctive relief to remedy the privacy violation, the trial court ordered a full evidentiary hearing to be scheduled to determine the scope and conditions of a potential injunction. Accordingly, the trial court denied the Jahnzs' motion for an order to show cause why Stover should not be held in contempt, in favor of making findings and issuing orders after the conclusion of a full evidentiary hearing. Further, as Stover had not signed the consent forms for the disclosure of her tax returns and information, the court ordered her to sign the forms and she promised to do so.

¶11 In April 2002, the trial court granted the Jahnzs' motion for a temporary injunction. As a part of that temporary injunction, the trial court ordered Stover to make her computer available for the "delinking" and disabling

of the Michael Jahnz web pages on a specified date and time agreed upon by the parties. It also ordered Stover to provide Jahnz with an irrevocable assignment of all right, title, and interest in and to the domain names in order for Jahnz to gain control of the web pages. In regard to the disclosure of Stover's financial records, there was no record of Stover having filed tax returns for the relevant years, and the court thus suggested scheduling a deposition.

¶12 Stover refused to make her computer available for the "delinking" and disabling process on the specified date and time. Specifically, Stover was in her apartment at the date and time arranged for the Jahnzs' expert to access her computer, but refused to allow anyone to enter the apartment. At the deposition, she also refused to sign the irrevocable assignment as ordered by the court.

¶13 At a contempt hearing shortly thereafter, Stover provided testimony that contradicted her deposition testimony, and again refused to sign the irrevocable assignment when the court gave her the opportunity to purge her contempt. She also failed to provide user names and passwords when ordered to do so by the court. Regarding the transfer of control over the web pages, Stover presented the court with printouts allegedly indicating that she transferred control and ownership to Jahnz. However, the court found them to be insufficient. As a result of Stover's perjury and violations of the court's orders, the trial court found her in contempt and sentenced her to six months of imprisonment. The trial court authorized Stover's release upon: (1) the provision of the keys to her apartment and the user names and passwords necessary to access the computer for the necessary "delinking" and disabling; (2) the execution of the irrevocable assignment; and (3) the correction of the names and addresses associated with the web pages.

¶14 One week later, Stover was again given the opportunity to purge her contempt, but she refused to do so. After Stover refused to answer the court's question regarding whether anyone had access to her computer since the court found her in contempt the week before, the trial court again found Stover in contempt and sentenced her to an additional six months of imprisonment. As a result of her failure to cooperate with discovery, the trial court struck Stover's answer and affirmative defenses and entered a default judgment against her on all the remaining claims as a sanction. It found that extraordinary circumstances existed to warrant the default judgment as a sanction. It also ordered Stover not to destroy any documents on her computer or give access to anyone to facilitate the destruction of any discoverable information.

¶15 In June 2002, the Jahnzs filed for bankruptcy.

¶16 Later, in its decision and order dated July 17, 2002, the trial court converted the preliminary injunction into a permanent injunction, permanently enjoining and restraining Stover from: (1) contacting or attempting to contact the Jahnzs; (2) coming or being within 250 feet of the Jahnzs; (3) entering onto the street on which the Jahnzs live; and (4) publishing, or causing to be published, any information regarding Jahnz in any media in any way. It also ordered Stover to: (1) immediately disable, cease, and desist using, in any way, any web page mentioning Jahnz; (2) immediately cease and desist from referencing Jahnz in any manner, on or through any type of media; (3) immediately disclose the passwords and usernames of all accounts she has or has had with internet service providers; (4) immediately execute the irrevocable assignment; (5) immediately cease and desist from using "MEJ Productions" and from continuing to do business under that name; and (6) cooperate with the Jahnzs' attorney in contacting internet service providers.

¶17 The trial court also noted in its decision and order that Stover failed to file a brief regarding damages after the trial court ordered briefs to be filed by both parties. The Jahnzs sought damages on two causes of action: the right to privacy violation and professional malpractice. In regard to the professional malpractice, the trial court awarded the Jahnzs' their actual attorney fees in clearing the lien. In regard to the right to privacy violation, the trial court awarded the Jahnzs $30,000 for Stover's tortious interference with Michael Jahnz's privacy rights, and $5,000 for her tortious interference with Jennifer Jahnz's privacy rights. The court also awarded $550,000 in punitive damages to Michael and $25,000 in punitive damages to Jennifer.

¶18 The court later amended and supplemented its decision and order with findings of fact, conclusions of law, and an order for judgment. In part, the court awarded the Jahnzs $7,000 in attorney fees, plus statutory costs, for the invasion of privacy claim, and $330 in attorney fees for clearing the lien. Stover was subsequently released from custody.

¶19 In the judgment entered on August 6, 2002, the trial court included a replevin judgment mandating the return of Jahnz's personal property, in addition to the injunctive decree and money judgment. On August 27, 2002, at a hearing regarding the Jahnzs' motion for imposing contempt sanctions on Stover for her failure to comply with either the preliminary or permanent injunction, Stover finally signed the irrevocable assignment.

¶20 It is from the grants of summary judgment, the grant of default judgment and subsequent awarding of damages, and the contempt and imprisonment that Stover now appeals.

II. ANALYSIS.

A. The grants of summary judgment were proper.

¶21 It is unclear as to precisely what Stover is appealing in the summary judgment realm. In September 2001, the trial court granted the Jahnzs' motion for summary judgment dismissing Stover's counterclaims. In February 2002, the trial court granted the Jahnzs' motion for summary judgment regarding the privacy claim. While it initially appears that Stover is only appealing the trial court's grant of summary judgment dismissing her counterclaims, Stover also briefly addresses the trial court's grant of summary judgment on the privacy claim.[5] Curiously, Stover also needlessly argues the merits of the Jahnzs' motion for summary judgment on the false advertising claim. That motion was denied. Accordingly, operating under the assumption that Stover is attempting to appeal both the grant of summary judgment dismissing the counterclaims and the grant of summary judgment on the privacy claim, we will address both.

¶22 Stover contends that there were disputed issues of material fact presented by the affidavit she filed in opposition to the Jahnzs' motion for summary judgment dismissing the counterclaims. Specifically, Stover appears to be claiming that the nature of the contractual relationship between Stover and Jahnz was in dispute. She contends that in both her answer and affidavit she denied the Jahnzs' allegation that she agreed to act as Jahnz's attorney. She also

[5] In her first brief, under the heading "The Circuit Court Erred in Dismissing the Defendant's Counterclaim and Granting Summary Judgment," Stover addresses the Jahnzs' privacy and false advertising claims and includes and cites to an affidavit dated December 19, 2001, in support of her contentions. However, the trial court granted summary judgment dismissing her counterclaims in September 2001. Her supplemental brief addresses only the September grant of summary judgment dismissing her counterclaims.

argues that she: (1) was not a licensed attorney in Wisconsin; (2) had not appeared for any party in any legal proceeding in Wisconsin; (3) was not a member of the Wisconsin State Bar; and (4) denied any attorney-client relationship with Jahnz, and, as such, there was a genuine issue of material fact to be tried. Further, Stover contends that the trial court erroneously applied public policy considerations in granting summary judgment to the Jahnzs. Yet, she never specifically identifies which counterclaims were "improperly" dismissed as a result of these alleged issues of material fact and why.

¶23 Stover also contends that the Jahnzs' improperly relied upon ***Hirsch v. S.C. Johnson & Son, Inc.***, 90 Wis. 2d 379, 280 N.W.2d 129 (1979), with respect to their invasion of privacy claim, in that the "decision in ***Hirsch*** is clear and emphatically contradicts the position advanced by the plaintiffs and adopted by the Circuit Court." However, it is the decision of the court, and not what the Jahnzs' may have relied upon in their brief, that should be the focus of Stover's argument. Further, aside from merely replicating a portion of the ***Hirsch*** opinion and making the statement noted above, Stover provides no references to the record or the evidence. Accordingly, we decline to address this contention. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may decline review of an issue inadequately briefed).

¶24 In an appeal from the entry of summary judgment, this court reviews the record *de novo*, applying the same standard and following the same methodology required of the trial court under WIS. STAT. § 802.08. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987); ***Wright v. Hasley***, 86 Wis. 2d 572, 579, 273 N.W.2d 319 (1979).

¶25 In ***Preloznik v. City of Madison***, 113 Wis. 2d 112, 116, 334 N.W.2d 580 (Ct. App. 1983), we set out the methodology to be applied in evaluating a summary judgment motion.

> Under that methodology, the court, trial or appellate, first examines the pleadings to determine whether claims have been stated and a material factual issue is presented. If the complaint … states a claim and the pleadings show the existence of factual issues, the court examines the moving party's affidavits for evidentiary facts admissible in evidence or other proof to determine whether that party has made a prima facie case for summary judgment. To make a prima facie case for summary judgment, a moving defendant must show a defense [that] would defeat the claim. If the moving party has made a prima facie case for summary judgment, the court examines the affidavits submitted by the opposing party for evidentiary facts and other proof to determine whether a genuine issue exists as to any material fact, or reasonable conflicting inferences may be drawn from the undisputed facts, and therefore a trial is necessary.
>
> Summary judgment methodology prohibits the trial court from deciding an issue of fact. The court determines only whether a factual issue exists, resolving doubts in that regard against the party moving for summary judgment.

Id. (citations omitted).

¶26 Summary judgment is warranted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact[.]" WIS. STAT. § 802.08(2). However, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." ***Baxter v. DNR***, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991) (citation omitted). Thus, "[a] factual issue is genuine if the evidence is such that a

reasonable jury could return a verdict for the nonmoving party." ***Id.*** (citation omitted).

¶27 Stover fails to specify which counterclaims were improperly dismissed in light of the allegedly genuine issue of material fact that existed in regard to the nature of Stover and Jahnz's contractual relationship. Accordingly, we will not review the dismissal of the conversion, fraudulent inducement, and abuse of process counterclaims, as they appear to have no direct relation to the issue of the nature of the contractual relationship. That leaves only the claim of breach of contract, and arguably the claims of unjust enrichment and quantum meruit.

¶28 As noted above, "[t]o make a prima facie case for summary judgment, a moving defendant must show a defense [that] would defeat the claim." ***Preloznik***, 113 Wis. 2d at 116. Here, the "defendant" is Jahnz, and his "defense" is that the alleged business and financial transaction to which Stover is referring is illegal, void, unenforceable, and contrary to public policy because it was made in violation of SCR 20:1.8 or MODEL RULES OF PROF'L CONDUCT R. 1.8.[6] In order for Stover to have a viable breach of contract claim, the existence of a valid and enforceable contract would have to be established. Thus, if successful, Jahnz's "defense" would defeat the claim.

¶29 SCR 20:1.8 provides, in relevant part:

> **Conflict of interest: prohibited transactions.**
>
> **(a)** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership,

[6] SCR 20:1.8 and Rule 1.8 are textually identical.

> possessory, security or other pecuniary interest adverse to a client unless:
>
> (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
>
> (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
>
> (3) the client consents in writing thereto.

Accordingly, if the alleged agreement between Stover and Jahnz falls within the parameters of this rule, and it is determined that the contract is void because it is contrary to public policy as a result of the violation of Rule 1.8, there is no valid and enforceable contract.

¶30 Stover fails to mention that because of her failure to answer the Jahnzs' first request for admissions, the matters contained therein were deemed admitted. Among those matters deemed admitted were the facts that: (1) before entering into the claimed business transaction, no writing was prepared fully disclosing all of the proposed terms and conditions of the transaction; (2) before entering into the claimed business transaction, no writing fully disclosing all terms and conditions was given to Jahnz; (3) before entering into the claimed business transaction, Jahnz was not given a reasonable opportunity to seek the advice of independent counsel; (4) before entering into the claimed business transaction, no writing was prepared or signed expressing Jahnz's consent to the terms and conditions of the proposed transaction; and (5) no writing exists or has ever existed that states all of the terms and conditions of the claimed business transaction and is signed by Jahnz. Thus, the only way for Jahnz's "defense" to fail is if there was no attorney-client relationship between Stover and Jahnz.

¶31 Stover admits that she is an attorney licensed in the States of Kansas and Missouri. She contends, however, that the nature of her business relationship with Jahnz was a disputed and genuine issue of material fact in light of her contention that she: (1) was not a licensed attorney in Wisconsin; (2) had not appeared for any party in any legal proceeding in Wisconsin; (3) was not a member of the Wisconsin State Bar; and (4) denied any attorney-client relationship with Jahnz. Her argument is unpersuasive for the reasons that follow.

¶32 The fact that she is not licensed in Wisconsin or a member of the State Bar does not render her "immune" to Rule 1.8, as both Kansas and Missouri have adopted the MODEL RULES OF PROF'L CONDUCT. Further, it was not necessary for Stover to have appeared in court in any legal proceeding for an attorney-client relationship to have formed. "Since representation is often informal, the relationship may be implied from the words and actions of the parties." ***Security Bank v. Klicker***, 142 Wis. 2d 289, 295, 418 N.W.2d 27 (Ct. App. 1987). Accordingly, we turn to the evidence and affidavits submitted by both parties.

¶33 Jahnz provided an affidavit stating, among other things, that Stover was acting as his manager and attorney, and attached copies of several items listing Stover as Jahnz's manager and attorney. He also provided sworn affidavits from Kevin C. Wolf and Herman C. Morgan, both of State Farm Fire & Casualty Company, stating that Kathy Stover had contacted each of them and represented herself to be the attorney for Michael and Jennifer Jahnz with respect to a property damage claim.

¶34 In her affidavit, filed in opposition to the Jahnzs' motion, Stover denies that she and Jahnz had an attorney-client relationship, that she ever

telephoned Morgan or Wolf, and states that "[a]t all times, Michael Jahnz agreed and understood that [she] was not licensed to practice law in the State of Wisconsin, and [she] would not serve as his attorney-at-law for either his business or personal affairs." Interestingly, she also attached a copy of a check she wrote to Jahnz that had "Attorney-at-Law" printed under her name.

¶35 Stover's conclusory denials and her personal belief that Jahnz understood that she was not his attorney are not enough to create a genuine issue of material fact. In light of the evidence and affidavits, this court concludes that there was no *genuine* issue of material fact as to whether Stover and Jahnz had an attorney-client relationship, and accordingly, that Rule 1.8 was violated. As such, it is necessary to determine whether the agreement between Jahnz and Stover should be deemed void as against public policy.[7]

¶36 "Public policy is a broad, not easily defined concept. It embodies the community common sense and common conscience. Public policy is that principle of law under which freedom of contract or private dealings is restricted by law for the good of the community." ***Merten v. Nathan***, 108 Wis. 2d 205, 213, 321 N.W.2d 173 (1982) (citation omitted). Further, the supreme court has noted: "The provisions of the Wisconsin Constitution initially declared the public policies of this state. Each time the constitution is amended, that also is an expression of public policy. In addition, public policy is regularly adopted and promulgated in the form of legislation." ***Brockmeyer v. Dun & Bradstreet***, 113 Wis. 2d 561, 573, 335 N.W.2d 834 (1983).

[7] Stover's contention that it is improper to apply public policy at the summary judgment stage of this case due to "complex issues and attenuated factual connections" is not persuasive. This is not a case of complex issues and attenuated factual connections.

¶37 When Wisconsin adopted the MODEL RULES, it presumably did so in an effort to delineate the boundaries of and regulate the relationships between attorneys and their clients. Rule 1.8, or SCR 20:1.8, prohibits business transactions between attorneys and their clients unless certain safeguards are satisfied. To enforce a contract that violates this rule would be against public policy, and accordingly, the agreement between Stover and Jahnz is void on these grounds. Thus, Jahnz's "defense" would succeed, and Stover's counterclaim would be defeated.

¶38 Stover's conclusory denials and her personal belief as to Jahnz's "state of mind" do not create a genuine issue of material fact, and accordingly, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment[.]" ***Baxter***, 165 Wis. 2d at 312 (citation omitted). It does not appear that the evidence is such that a reasonable jury could return a verdict for Stover, and accordingly, this court concludes that the grant of summary judgment in regard to the counterclaims was proper. Indeed, at a motion hearing on February 4, 2002, Stover's counsel even stated: "I agree that the motion for summary judgment as to the counterclaims was legally appropriate…."

B. The default judgment and award of damages were proper.

¶39 Stover contends that the trial court erred when it granted default judgment to the Jahnzs despite the fact that Stover's affidavit and testimony "set forth disputed issues of material fact." Specifically, she contends that: (1) her affidavit showed that she had complied with the trial court's order to disable all "internet access relating to the name Michael Jahnz"; (2) she was home the day her computer was to be "delinked" and that no one contacted her; (3) she did not

know that anyone showed up at her apartment; (4) she successfully transferred the michaeljahnz.com web page to him before the court order and that her personal computer was not hosting any Michael Jahnz web page; and (5) the documents she was supposed to sign concerned an account that had nothing to do with Michael Jahnz, and accordingly, the trial court's default judgment was improper. She contends that the trial court "substituted itself for a jury[,] deciding the disputed facts in favor of the plaintiffs[,]" and that the trial court "is not allowed to do this." Further, she contends that the trial court granted the default judgment based on facts that were not pleaded in the complaint.

¶40 Stover also asserts that the trial court erred in awarding damages without the benefit of a jury determination. She insists that the court "had itself expressed the belief that the defendant was entitled to a jury trial on the damages[.]" Accordingly, Stover contends, in a conclusory and undeveloped fashion, that the award of damages was a violation of her due process right "to be heard by a jury on the merits of her cause[.]" Thus, we will address the propriety of the trial court's award of damages without embarking on a formal constitutional evaluation, as Stover has failed to adequately brief the issue. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 520, 451 N.W.2d 759 (Ct. App. 1989) ("Simply to label a claimed error as constitutional does not make it so, and we need not decide the validity of constitutional claims broadly stated but never specifically argued.") (citations omitted).

¶41 Finally, in her supplemental brief, Stover argues that the declaratory relief was improper in that it was not demanded in the complaint and was granted *sua sponte*. Stover contends that "[t]he circuit court's action, sua sponte, effectively deprived the defendant-appellant of the opportunity to effectively defend against the award of declaratory relief since none had been requested in the

plaintiffs' complaint or by motion to amend the pleadings." However, regardless of its merit or lack thereof, Stover waived this argument by failing to raise it in her original brief, and we will not address it here. *See* ***Swartwout v. Bilsie***, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981) (failing to discuss an alleged error in main brief generally precludes appellant from raising it in reply).[8]

¶42 What Stover fails to mention, however, is that the default judgment was entered as a result of her continuing misconduct and her failure to cooperate with discovery. The trial court struck Stover's answer and affirmative defenses and entered a default judgment against her on all the remaining claims as a sanction. It found that extraordinary circumstances existed to warrant the default judgment as a sanction.

¶43 A trial court has both statutory and inherent authority "to sanction parties for failure to prosecute, failure to comply with procedural statutes or rules, and for failure to obey court orders." ***Johnson v. Allis Chalmers Corp.***, 162 Wis. 2d 261, 273-74, 470 N.W.2d 859 (1991). WISCONSIN STAT. § 805.03 provides in relevant part:

> **Failure to prosecute or comply with procedure statutes.** For failure of any … party to comply with the statutes governing procedure in civil actions or to obey any order of court, the court in which the action is pending may make

[8] In her original appellate brief, Stover failed to raise the issue of the propriety of the declaratory relief. The Jahnzs, in their original response brief, indicated that the issue had accordingly been waived. On April 17, 2003, this court ordered supplemental briefs, directing the appellant to demonstrate, by citing specific supporting references to the appellate record, precisely how she contends the trial court erred. This was not, however, an open invitation for Stover to supplement her brief with new arguments previously ignored. As such, arguing the issue of the propriety of the declaratory relief in her supplemental brief is analogous to arguing an issue in a reply brief that was not raised in the original brief.

> such orders in regard to the failure as are just, including but not limited to orders authorized under s. 804.12 (2) (a).

WISCONSIN STAT. § 804.12(2)(a) provides that for failure to comply with an order to provide or permit discovery the court may make such orders as are just including, but not limited to, the following: (1) an order that designated facts be taken as established; (2) an order refusing the disobedient party the right to support or oppose designated defenses or claims; and/or (3) an order striking out pleadings, or portions thereof, or rendering a judgment by default against the offending party. Further, WIS. STAT. § 802.10(7) provides that "[v]iolations of a scheduling or pretrial order are subject to ss. 802.05, 804.12 and 805.03." "The authority to impose sanctions is essential to the circuit court's ability to enforce its orders and ensure prompt disposition of lawsuits." ***Johnson***, 162 Wis. 2d at 274. Yet, "[t]o enter a default judgment, the trial court must determine that the 'noncomplying party's conduct is egregious or in bad faith and without a clear and justifiable excuse.'" ***Smith v. Golde***, 224 Wis. 2d 518, 526, 592 N.W.2d 287 (Ct. App. 1999) (quoting ***Hudson Diesel, Inc. v. Kenall***, 194 Wis. 2d 531, 542, 535 N.W.2d 65 (Ct. App. 1995)).

¶44 "The decision to impose sanctions under [§§ 802.10(7)] and 804.12 lies within the trial court's discretion." ***Sentry Ins. v. Davis***, 2001 WI App 203, ¶19, 247 Wis. 2d 501, 634 N.W.2d 553. A trial court properly exercised its discretion if it "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." ***Loy v. Bunderson***, 107 Wis. 2d 400, 415, 320 N.W.2d 175 (1982). "The question is not whether this court as an original matter would have

imposed the sanction; it is whether the [trial] court abused its discretion in doing so." ***Sentry Ins.***, 247 Wis. 2d 501, ¶19.[9]

¶45 The trial court struck Stover's answer and affirmative defenses pursuant to WIS. STAT. §§ 805.03, 804.12(a)(2) and (3), and 785.03(1), and entered a default judgment on all remaining counts of the complaint. At the hearing the trial court stated:

> Entry of default judgment … as a sanction for failure to comply with discovery is a harsh sanction. It should only be imposed under extraordinary circumstances. This court finds the circumstances exist in this case.
>
> Again I asked Ms. Stover again this morning to purge herself of the contempt finding. She again refuses. She hasn't cooperated with the court order. And I remember now in thinking that her previous attorney, Mr. Corris withdrew and she objected and we took some statements and one of them was from Mr. Corris, and I don't have the transcript in front of me, this is from my memory, that she hasn't cooperated with him, in fact has made false statements to him as an officer of the court he felt he could not proceed. Generally, that was the tone of it, and so I overruled her objection and allowed Mr. Corris to withdraw, and that course of conduct has continued, her lack of cooperation.
>
> The court made previous findings, and I find again this conduct is egregious. It's been repeated, and repeated again this morning. It's flagrant. There's no excuse. This is the worse act of contempt the court has been involved in in thirty-one years of the practice of the law, eleven as a judge. I've never held anyone in contempt before, be it criminal court or civil court. I wanted to complete my

[9] Curiously, Stover cites ***Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.***, 2002 WI 66, 253 Wis. 2d 238, 646 N.W.2d 19, to support her statement that "[t]he Court of Appeals reviews default judgments de novo." Yet, in ***Split Rock***, the supreme court stated: "Granting or denying a motion for default judgment requires an exercise of sound discretion[, and a]n appellate court will not reverse a circuit court's discretionary decision unless the circuit court erroneously exercised its discretion." ***Id.***, ¶¶63-64.

> entire career without holding anyone in contempt let alone sending someone to jail for six months for contempt.
>
> This court finds that it has prejudiced the plaintiff's ability to enforce previous temporary restraining order and temporary injunction, and it has prejudiced … the plaintiff's ability to present evidence to determine actual damages and punitive damages.
>
> And also as a law graduate and former practicing attorney – I don't think she's licensed to practice in Wisconsin – her conduct is more disturbing than a defendant without any legal training. She obviously knows what she's doing and she doesn't give a, quote, damn, end of quote.

As is evident from the transcripts of the hearing, only a portion of which is duplicated above, the trial court considered the facts and the weight and severity of its decision, and found the sanction to be warranted nonetheless. The trial court found Stover's conduct to be egregious, and there was no clear and justifiable excuse for her behavior. The trial court reasonably concluded that Stover's egregious conduct warranted a default judgment. As this was a proper exercise of discretion, the default judgment will not be disturbed.

¶46 Finally, in regard to her argument that the trial court erred when it awarded damages without the benefit of a jury determination, Stover fails to cite any motion or request for a hearing on the matter in her brief or provide the transcripts from the hearing during which the trial court determined the damages. Further, it appears that Stover failed to even submit a brief, as requested by the trial court, on the issue of damages. In her appellate brief, she also fails to provide any authority that prohibits a trial court from determining damages without a jury determination after a default judgment is entered as a sanction. As it appears that a hearing was held, and the nature of the hearing on damages in a default case is left to the discretion of the trial court, *see* ***Chevron Chemical Co. v. Deloitte &***

Touche LLP, 207 Wis. 2d 43, 49-50, 557 N.W.2d 775 (1997), we will not address this contention any further.

C. Holding Stover in contempt and imprisoning her was warranted and proper.

¶47 Stover contends that the trial court erred when it held her in contempt and imprisoned her in that the trial court failed to use its authority with restraint and to fashion a less severe sanction than imprisonment, when less severe sanctions were available to the court. Interestingly, she suggests that an appropriate, less severe sanction would have been a default judgment for the Jahnzs.

¶48 "We review a trial court's use of its contempt power to determine whether the court properly exercised its discretion." ***Krieman v. Goldberg***, 214 Wis. 2d 163, 169, 571 N.W.2d 425 (Ct. App. 1997). As noted above, a trial court properly exercised its discretion if it "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." ***Loy***, 107 Wis. 2d at 415. "We will generally look for reasons to sustain a trial court's discretionary decision." ***Haeuser v. Haeuser***, 200 Wis. 2d 750, 765, 548 N.W.2d 535 (Ct. App. 1996).

¶49 "A person may be held in contempt of court if that person refuses to abide by an order made by a competent court having personal and subject matter jurisdiction." ***Id.*** at 767. However, "[t]he power to punish for contempt is to be used but sparingly. It should not be used arbitrarily, capriciously, or oppressively." ***Kaminsky v. Milwaukee Acceptance Corp.***, 39 Wis. 2d 741, 746, 159 N.W.2d 643 (1968) (citation omitted).

¶50 WISCONSIN STAT. § 785.02 provides: "A court of record may impose a remedial or punitive sanction for contempt of court under this chapter." Further, WIS. STAT. § 785.04 provides, in relevant part:

> **(1)** REMEDIAL SANCTION. A court may impose one or more of the following remedial sanctions:
>
> ….
>
> (b) Imprisonment if the contempt of court is of a type included in s. 785.01 (1) (b), (bm), (c) or (d).[10]
>
> ….

(Footnote added.) Moreover, WIS. STAT. § 785.05 provides:

> **Limitation on Imprisonment**. In any case in which the contempt of court is based upon interference with visitation rights granted under s. 48.925 (1), or upon failure to respond to a citation, summons or warrant under s. 345.28 or any other failure to pay or to appear in court for a nonmoving traffic violation, the court may not impose imprisonment as a sanction under this chapter.

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[10] WISCONSIN. STAT. § 785.01 provides the following definitions:

> **(1)** "Contempt of court" means intentional:
>
> (a) Misconduct in the presence of the court which interferes with a court proceeding or with the administration of justice, or which impairs the respect due the court;
>
> (b) Disobedience, resistance or obstruction of the authority, process or order of a court;
>
> (bm) Violation of any provision of s. 767.087 (1);
>
> (c) Refusal as a witness to appear, be sworn or answer a question; or
>
> (d) Refusal to produce a record, document or other object.

Finally, "[s]atisfaction of the purge condition must be within the power of the contemnor, and, the purge conditions must reasonably relate to the cause or nature of the contempt." ***State ex rel. Larsen v. Larsen***, 159 Wis. 2d 672, 676, 465 N.W.2d 225 (Ct. App. 1990) (citation omitted).

¶51 Stover urges, by quoting ***Young v. United States ex rel. Vuitton et Fils S.A.***, 481 U.S. 787, 801 (1987) (citations omitted), that "[o]nly the least possible power adequate to the end proposed should be used in contempt cases." She also contends that the sanction of imprisonment was disproportionate to her transgression. However, she fails to consider the significance of her contemptuous actions, and her continuously available opportunity to purge her contempt and be released from custody.

¶52 In December 2001, the trial court, among other things, ordered Stover to sign some consent forms and produce documents responsive to the Jahnzs' interrogatories and requests for production. The following February, the court ordered Stover to send out emails and written correspondence disassociating herself with all internet pages in Jahnz's name, and again ordered Stover to sign the consent forms. In April, by way of a preliminary injunction, the trial court ordered Stover to make her computer available for the "delinking" and disabling of the Michael Jahnz web pages at a specified date and time and to provide Jahnz with an irrevocable assignment of all right, title, and interest in and to the domain names. Stover failed to produce the requested documents. She was in her apartment on the date and time arranged for the Jahnzs' expert to access her computer, but refused to allow anyone to enter the apartment. She also refused to sign the irrevocable assignment.

¶53 At a contempt hearing shortly thereafter, Stover provided testimony that contradicted her deposition testimony taken after she refused to allow anyone to enter her apartment. She also again refused to sign the irrevocable assignments when ordered to do so and given the opportunity to purge her contempt. The following are excerpts from the hearing:

> THE COURT: … She was ordered to make her apartment accessible and her computer accessible to Mr. Held and the plaintiffs so they could disengage and check her computer to see if she is hooked up to certain web sites and internet providers and allow Mr. Held to disconnect such connections to the internet providers or web sites.
>
> Why didn't you do it that day? When we left here as far as I know everyone was going into your apartment and it was going to be taken care of. Why weren't you there? First – I don't know, were you there or weren't you there?
>
> ….
>
> KATHY STOVER: I did not know anyone showed up at my apartment.
>
> ….
>
> MR. HANNAN: Your honor, as my client will … testify, I showed up in the lobby. Mr. Sutton was present in the lobby. Mr. Sutton tells me Kathy Stover is not in the building.
>
> ….
>
> THE COURT: Mr. Sutton, as an officer of the court what happened? I'm not going to swear you in, I'll ask you to tell me what happened.
>
> MR. SUTTON: I didn't say she's not in [the] building, I said she's not here and she's not going to let you in, and she's taken this affidavit down to the court, and that was the information that I was provided a half hour before from my secretary.
>
> ….
>
> KATHY STOVER: I was at my apartment.

THE COURT: Then what did you think that Mr. Sutton was going to do with the information that you weren't going to give access?

KATHY STOVER: I did not know if I would be back in time to be there.

THE COURT: But you weren't going to give them access, correct?

KATHY STOVER: I filed the affidavit –

THE COURT: No, no, answer my question.

KATHY STOVER: I do not know. I do not know at that time whether I would or not.

THE COURT: Then why did you tell Mr. Sutton to say you weren't there and you weren't going to give access?

KATHY STOVER: I didn't say that to Mr. Sutton.

THE COURT: Or his secretary.

KATHY STOVER: I did not say that to Mr. Sutton's secretary. She knew I was bringing the affidavit down here for Your Honor – for your consideration, and I did not know if I would make it back in time. I did make it back in time. I was there.

….

THE COURT: Mr. Sutton as an officer of the court's version is a little different.

KATHY STOVER: It is not.

MR. HANNAN: Your Honor, her version under oath yesterday is a little different.

KATHY STOVER: It is not.

….

MR. HANNAN: The cross examination of Robert Sutton of Kathy Stover … Mr. Sutton is asking the question: Okay, now let's get this clear for Judge Hansher tomorrow morning, okay? And … it is true, is it not, that you did not intend to let those men into your apartment and to deprogram your computer? Kathy Stover's answer: That's correct. Question: No matter what, right? Mr.

> Sutton is cross-examining his own client here. Answer: Yes. You told me that, didn't you? Answer: I told your secretary that, yes.

After the above exchanges, and after giving Stover a chance to exercise her right of allocution, the trial court made the following observations:

> I've never had a defendant or witness who has refused numerous court orders and has as far as I'm concerned perjured herself based upon this record….
>
> I've never seen … so many repeated and flagrant violations of the court order. As far as I'm concerned I find that she's perjured herself. I find she hasn't followed court orders in the past, and especially egregious is the one saying on one hand she was in her apartment, she wasn't going to allow access to the computer, and then she has the gall to tell me today I didn't know what I was going to do. She knew what she was going to do.

The court then ordered Stover to sign the irrevocable assignments and she refused to do so. The court ordered her to provide her passwords and usernames, and she refused to do so.

¶54 The trial court found Stover in contempt for failing to allow access to her computer, for refusing to sign the documents, and for insufficiently disassociating herself with the Michael Jahnz web pages.

> The court finds that … she has lied to this court, lied to Mr. Hannan. The court finds this to be repeated acts of contempt. The court finds they're flagrant acts of contempt. They're egregious acts of contempt.
>
> She just indicated she's not a malicious person. … This court believes these acts are malicious and [she] is trying to undermine the authority of this court to enforce its order and to get this case on for trial in several weeks. I've tried to give her as much leeway as possible. She has failed to do so such.
>
> I will not stand for court orders to be disregarded…. I've never seen in the practice of law – and I did litigation, and on the bench, such a defendant who has decided on her own

> – and maybe it's because she went to law school, that she's going to run the case the way she is, and she's making the determination of what she will and will not do.

¶55 The court then considered the different remedial sanctions available pursuant to WIS. STAT. § 785.04, and sentenced Stover to six months in prison as provided for by the statute. Accordingly, the trial court set the "purge conditions" as follows:

> Basically, Ms. Stover, you have the keys to the jailhouse. If you provide the information and sign the documents and access to your apartment can be made and the delinkage is completed and you sign the documents, I will order the sheriff to immediately release you. Until you do those acts, you will remain in prison in the county jail where I'm remanding you for the trial.

¶56 Quite simply, the trial was to commence in a matter of weeks, the injunction was not being obeyed, and the Jahnzs' were not provided with and given access to the information they needed to properly try their case and prove damages. As the trial court noted, Stover was given a considerable amount of leeway. She did not take advantage of that leniency. She consistently refused to follow the court's orders, and she lied to the court.

¶57 There is no indication that any lesser sanction would have been adequate to encourage Stover to purge her contempt and produce the necessary information. In fact, Stover remained in jail until the final judgment was entered in this case. She could have purged her contempt and been released from jail at any time by simply signing the necessary documents and allowing access to her computer. These purge conditions were within her power and reasonably related to the cause and nature of her contempt. Instead, one week after being held in contempt and imprisoned, she again refused the trial court's direct invitation to purge her contempt and refused to answer the court's question regarding whether

anyone had access to her computer since the court found her in contempt the week before.

¶58 Accordingly, we conclude that the trial court properly exercised its discretion when it held Stover in contempt and imprisoned her.

¶59 Based upon the foregoing, the trial court is affirmed.

By the Court.—Judgment affirmed.

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