

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 21, 2010

A. John Voelker
Acting 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. 2009AP2335

Cir. Ct. No. 2005CV103

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

FIDELIS OMEGBU,

PLAINTIFF-APPELLANT,

v.

**TRINITY MISSIONARY BAPTIST CHURCH AND
STATE FARM FIRE AND CASUALTY COMPANIES,**

DEFENDANTS-RESPONDENTS,

**AMERICAN HOME ASSURANCE COMPANY,
HAROLD TURNER AND HATS, INC.,**

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County:
ELSA C. LAMELAS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Fidelis Omegbu, *pro se*, appeals the circuit court's order dismissing this action. The issues are whether the circuit court properly ordered Omegbu to pay partial attorney fees as a sanction for filing summary judgment motions contrary to circuit court order and whether the circuit court properly dismissed this action as a sanction for Omegbu's failure to comply with discovery orders. We affirm.

¶2 This dispute has a long procedural history. As pertains to this appeal, defendant Trinity Missionary Baptist Church filed a motion to compel discovery and for sanctions against Omegbu on January 12, 2006. Due to a pending appeal, the motion was not heard. On March 10, 2009, the circuit court held a status conference, setting a hearing on the motion and giving defendants Trinity Missionary Baptist Church and State Farm Fire and Casualty Company (collectively, Trinity) permission to file a motion for sanctions for procedural violations under WIS. STAT. § 805.03 (2007-08).¹ At the hearing held May 18, 2009, the circuit court denied Trinity's motion to dismiss as a sanction, but ordered Omegbu to pay attorney fees incurred by Trinity defending two summary judgment motions filed by Omegbu contrary to the circuit court's order. The circuit court also ordered Omegbu to comply with discovery demands by June 9, 2009, warning him that sanctions, including dismissal, could be imposed if he did not comply. After Omegbu filed a purported response on June 11, 2009, Trinity moved to dismiss for non-compliance. The circuit court granted the motion.

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶3 We first address whether the circuit court properly ordered Omegbu to pay attorney fees incurred by Trinity in defending two summary judgment motions Omegbu filed contrary to circuit court order. On July 11, 2005, the circuit court entered a scheduling order stating that the parties were not to file any more dispositive motions. On October 17, 2005, and November 28, 2005, the circuit court warned Omegbu not to raise issues that had been previously dismissed and not to file any more frivolous motions. On June 10, 2008, and February 2, 2009, Omegbu filed summary judgment motions.

¶4 Under WIS. STAT. § 805.03, the statute pursuant to which the circuit court awarded attorney fees incurred defending the two summary judgment motions, “[w]hen a scheduling order is violated, trial courts may make such orders as are just, including requiring the party who failed to obey the order to pay reasonable costs and attorney fees caused by the failure.” *Modica v. Verhulst*, 195 Wis. 2d 633, 651, 536 N.W.2d 466 (Ct. App. 1995). Whether to award costs or attorney fees is committed to the circuit court’s discretion. *See id.* at 650. Reasonable costs and attorney fees may be imposed as a sanction without a finding of egregious conduct because this sanction is not as severe as dismissal. *Id.* at 651.

¶5 We conclude that the circuit court properly exercised its discretion in ordering Omegbu to pay attorney fees incurred by the defendants in responding to the two summary judgment motions Omegbu brought during the period of time when both parties were barred from filing dispositive motions. The circuit court considered the procedural history of the case, the documents filed by the parties and prior circuit court rulings before concluding that dismissal was too harsh a sanction for filing the motions, but that an award of attorney fees was appropriate. The circuit court pointed out that the parties had been informed that no more

dispositive motions were to be filed after July 11, 2005, and that Omegbu had also been repeatedly warned not to file any more frivolous motions. The circuit court found that not only were the summary judgment motions filed in violation of circuit court order, but also the motions were frivolous. Under these circumstances, we conclude that the circuit court properly exercised its discretion in ordering Omegbu “to pay ... attorney fees caused by [his] failure” to comply with the scheduling order prohibiting dispositive motions, as allowed by WIS. STAT. § 805.03.²

¶6 We next address whether the circuit court properly dismissed this action as a sanction for Omegbu’s failure to comply with discovery orders. “The circuit court has both statutory authority ... and inherent authority to sanction parties for ... 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) (overruled on other grounds by *Indus. Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶61, 299 Wis. 2d 81, 726 N.W.2d 898). Because dismissal is a particularly harsh sanction for a party’s failure to obey discovery orders, “a dismissal ... should be considered appropriate only in cases of egregious conduct by a claimant.” *Id.* at 275 (citation omitted). “[W]e will sustain the sanction of dismissal if there is a reasonable basis for the circuit court’s determination that the noncomplying party’s conduct was egregious and there was no ‘clear and justifiable excuse’ for the party’s noncompliance.” *Id.* at 276-77. “A circuit court’s decision to dismiss an action is discretionary, and will not be

² Omegbu devotes a considerable portion of his brief to addressing whether the circuit court properly sanctioned him pursuant to WIS. STAT. § 802.05. The circuit court sanctioned Omegbu under WIS. STAT. § 805.03, not § 802.05.

disturbed unless the party claiming to be aggrieved by the decision establishes that the [circuit] court has [misused] its discretion.” *Id.* at 273.

¶7 After an extensive hearing at which the circuit court repeatedly asked Omegbu to explain his failure to comply with the discovery orders, the circuit court characterized Omegbu as “perhaps the most intractable litigant that I have encountered over decades in the practice of law.” The circuit court found that Omegbu had no excuse for not complying with court orders and legal procedure and that he purposefully obfuscated and obstructed the process to keep the defendants in the dark and to keep the circuit court at bay. The circuit court found that Omegbu was “purposefully evasive” with respect to discovery in particular, and that his failure to comply had become a financial burden to the defendants and had made “a mockery of our system of justice.” The circuit court concluded that dismissal was a proper sanction for this conduct because Omegbu’s conduct was egregious and he had no justifiable excuse for failing to comply with the discovery orders. The circuit court examined the relevant facts and, using a demonstrated rational process, reasonably concluded based on its inherent authority that the action should be dismissed. We therefore conclude that the circuit court properly exercised its discretion in dismissing this case as a sanction for Omegbu’s failure to comply with discovery demands and other procedural orders of the court.

By the Court.—Order affirmed.

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

