

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 1, 2011**

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. 2010AP1531**

**Cir. Ct. No. 2008CV163**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STEVEN M. KOCH AND DAVID J. KOCH,**

**PLAINTIFFS-RESPONDENTS,**

**V.**

**CARMEN NEUMANN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Lincoln County:  
GLENN H. HARTLEY, Judge. *Affirmed.*

¶1 BRUNNER, J.<sup>1</sup> Carmen Neumann appeals an order holding her in contempt of court for violating the terms of a judgment granting Steven Koch and David Koch a driveway easement on Neumann's property. Neumann contends the

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

circuit court erred by holding her in contempt and ordering remedial sanctions. Because we conclude the evidence supports the circuit court’s determination that Neumann violated the judgment and the circuit court properly sanctioned Neumann, we affirm.

## **BACKGROUND**

¶2 Neumann owns property in Merrill, Wisconsin. The Kochs own property situated behind Neumann’s property. The Koch property is landlocked but for an easement for purposes of ingress and egress in a circular driveway on the Neumann property. The driveway splits, encircling Neumann’s residence, and then rejoins behind the Neumann residence to serve the Koch property.

¶3 The Kochs brought suit against Neumann seeking a declaration confirming the validity of the easement and an injunction prohibiting Neumann from obstructing or interfering with their easement. Specifically, the Kochs alleged Neumann was interfering with the easement by parking vehicles in the easement. Neumann filed an answer and counterclaim, denying interference with the easement and asking the court to determine the easement’s location. She asserted the easement granted the Kochs the right to use only one of the two “forks” of the circular driveway—specifically, the south fork.

¶4 On April 21, 2009, the circuit court determined the rights and responsibilities associated with the easement. In particular, the court concluded:

6. The easement is clearly granted for the purposes of ingress and egress.

....

8. The Court finds that the driveway is in fact one driveway ....

....

11. The plaintiffs, Steven M. Koch and David J. Koch, are entitled to free unobstructed use of the entire driveway.

12. That right is in common with the defendant, Carmen Neumann, as to the portion of the driveway that is on defendant[']s ... property, as long as her use does not infringe or impede the plaintiffs['] use.

....

14. The defendant, Carmen Neumann, her respective heirs, beneficiaries[,] assigns[,] transferees and invitees are enjoined from blocking the plaintiff[s'] ... use of the easement in any way.

¶5 On September 23, 2009, the Kochs filed an order to show cause for contempt against Neumann. Specifically, the Kochs alleged that after the circuit court's April 21, 2009 judgment, Neumann continued to allow individuals to park on the driveway.

¶6 A motion hearing was held regarding Neumann's contempt. The Kochs presented evidence, which Neumann did not dispute, showing that after the judgment her invitees continued to park on the driveway. Neumann argued the court's judgment was ambiguous and she interpreted the paragraph prohibiting her and her invitees from "blocking the ... use of the easement in any way" to mean she could allow individuals to park on the driveway as long as the Kochs could access their property in some way. She also asserted she was not home during the times her guests parked on the driveway.

¶7 The circuit court held Neumann in contempt, reasoning that it stated in its previous judgment the Kochs were to have free and unobstructed use of the entire driveway and Neumann had intentionally violated its judgment. The court stated:

Ms. Neumann, you tell me now you didn't understand. I don't believe you. There is no question in my mind given the posture taken at the last hearing and at the prior hearings that you've made this all about others and not about you.

This court made it clear in its order that it involved – it implied [sic] not only to you, to your heirs, successors, assigns, and invitees. If someone comes on to your property, it is your property and your obligation to make sure that they do not obstruct that driveway. You have not done that.

Now, I don't get upset about tops of garbage cans and things of that nature, but clearly parking trucks, parking boats and things of that nature in that driveway by your significant other or friend but certainly invitee is improper and it's in direct violation of my order. I do not believe that you didn't understand that. I believe that you understood perfectly what was required of you but you have just been very stubborn about this and you won't accept it.

The circuit court ordered Neumann to thirty days' jail with Huber privileges, "stayed for a period of one year [with] the following conditions: (a) There shall not be any ... violations of the Court's decision and Judgment ... [and] (b) The Defendant shall pay the Plaintiffs' actual attorney's fees and costs."<sup>2</sup>

## DISCUSSION

¶8 Neumann raises two arguments on appeal. First, she contends the circuit court erred by finding her in contempt because the court's judgment granting the easement was ambiguous and there was no evidence showing she "intentionally" violated the judgment. Second, Neumann asserts the court erred by imposing remedial sanctions because her contempt was not "continuing."

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<sup>2</sup> We assume the conditions of no violations and payment of costs and attorney fees are purge conditions.

## I. Contempt

¶9 This court reviews a circuit court’s contempt order for an erroneous exercise of discretion. *Monicken v. Monicken*, 226 Wis. 2d 119, 125, 593 N.W.2d 509 (Ct. App. 1999). Discretionary determinations may include findings of fact and conclusions of law. *Id.* We will not overturn findings of fact unless they are clearly erroneous; however, we review questions of law de novo. *Id.*

¶10 An individual may be held in contempt for refusing to comply with a judgment made by a circuit court. *Id.* To determine whether Neumann complied with the circuit court’s judgment, we must first interpret the judgment. *See id.* at 126. This interpretation is a question of law we review de novo. *Id.*

¶11 In this case, the judgment provides “Steven M. Koch and David J. Koch, are entitled to free unobstructed use *of the entire driveway.*” (Emphasis added.) The judgment directs that Neumann may use the driveway “as long as her use does not *infringe or impede the plaintiffs[’] use.*” (Emphasis added.) Finally, the judgment concludes Neumann and her invitees are “enjoined from blocking the plaintiff[s]’ ... use of the easement *in any way.*” (Emphasis added.)

¶12 Neumann argues that the judgment is ambiguous because it uses, without defining, the word “block.” Specifically, she contends she interpreted “blocking,” as used in the judgment, to mean she may allow others to park on the driveway as long as the Kochs have a way to access their property.

¶13 No reasonable reading of the judgment supports her contention that she was permitted to block portions of the easement previously granted.<sup>3</sup> The circuit court's judgment clearly states the Kochs are to have free and unobstructed use of the entire driveway, Neumann cannot infringe on or impede the Kochs' use, and Neumann may not block the driveway in any way. Parking on the driveway would block a portion of it. We conclude the judgment unambiguously prohibited Neumann from parking on the driveway.

¶14 Neumann, however, also asserts that even if we determine the judgment meant she could not park on the driveway, the circuit court erred when it concluded she intentionally violated the judgment. She contends that the offending conduct was not committed by her, but by one of her guests, and she did not know he was parking on the driveway.

¶15 Although Neumann asserted she was unaware her friend consistently parked on the driveway, the circuit court, as the assessor of credibility, told Neumann it did not believe her and found she simply chose to disregard its judgment. The circuit court's finding of intent is not clearly erroneous. *See* WIS. STAT. § 805.17(2). Therefore, we affirm the contempt order.

## **II. Remedial Sanctions**

¶16 Determining whether the circuit court had the statutory authority under WIS. STAT. ch. 785 to impose remedial sanctions is a question of law this

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<sup>3</sup> We also note the Kochs' original complaint alleged in part that Neumann was interfering with the easement by allowing vehicles to park on the driveway. After reviewing the original complaint, we do not understand how Neumann could interpret a judgment granting the Kochs unrestricted use of the entire driveway to mean that her invitees were still permitted to park on the driveway.

court reviews de novo. *Christensen v. Sullivan*, 2009 WI 87, ¶42, 320 Wis. 2d 76, 768 N.W.2d 798. A remedial sanction is “a sanction imposed for the purpose of terminating a *continuing* contempt of court.” WIS. STAT. § 785.01(3) (emphasis added). The main objective of a remedial sanction is to force the contemnor into compliance with a court order for the benefit of a private party litigant. *Christensen*, 320 Wis. 2d 76, ¶55. Remedial sanctions may only be imposed if the contemptuous conduct is ongoing and needs to be terminated. *Id.* “Without a *continuing* contempt of court, nothing remains to be terminated, and thus, a remedial sanction is unwarranted.” *Id.*, ¶54. Consequently, if the underlying contemptuous conduct has been resolved prior to a party filing a contempt motion, then the circuit court cannot impose a remedial sanction. *Id.*, ¶67.

¶17 Neumann argues the circuit court erred when it ordered remedial sanctions. Specifically, she asserts that because the evidence showed she violated the court’s judgment at various times from May 2009 until September 2009, when the Kochs filed their motion for contempt in October 2009, her contemptuous conduct had already terminated and therefore the court did not have discretion to impose remedial sanctions. Neumann relies on *Christensen* in support of her argument.

¶18 Neumann’s reliance on *Christensen* is misplaced. *Christensen* involved a situation where Milwaukee County admittedly violated a consent decree with inmates from November 2001 until April 2004. *Id.*, ¶24. The consent decree imposed restrictions on jail conditions. *Id.*, ¶15. In April 2004, the county became aware of its violations and adopted new standards so as to be in compliance with the consent decree. *Id.*, ¶¶25, 30. In September 2004, the inmates brought a motion for contempt against the county and sought monetary damages for the violations that occurred from November 2001 until April 2004.

*Id.*, ¶22. The court noted remedial sanctions were only appropriate for terminating a *continuing* contempt. *Id.*, ¶54. The court held that because the county's contemptuous conduct had indisputably ceased before the contempt proceedings began, it could not justify the inmates' request for monetary damages on the grounds of a continuing contempt of court. *Id.*, ¶75.

¶19 In this case, nothing in the record supports Neumann's assertion that her contemptuous conduct had indisputably ceased prior to the Kochs initiating contempt proceedings. Rather, the record supports the circuit court's determination that Neumann's contempt was continuing. At the contempt hearing, Neumann consistently argued to the court that she interpreted its judgment to mean she could block portions of the driveway as long as she did not completely block the driveway. In light of these statements, we determine that but for the filing of the contempt motion, Neumann would have continued to violate the court's judgment; consequently, we conclude the circuit court properly found Neumann's contempt was continuing and properly imposed remedial sanctions.

*By the Court.*—Order affirmed.

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



