

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 12, 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. 2011AP1195

Cir. Ct. No. 1986FA524

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JANICE O. LUECK, N/K/A JANICE O. JENSON,

PETITIONER-RESPONDENT,

V.

STANLEY N. LUECK,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County:
WILLIAM M. GABLER, SR., Judge. *Reversed and cause remanded with
directions.*

¶1 HOOVER, P.J.¹ Stanley Lueck appeals an order granting Janice Lueck's (n.k.a. Janice Jenson) motion to dismiss Stanley's contempt motion. Stanley asserts the circuit court erred by determining WIS. STAT. § 893.40 barred his contempt motion. We agree and reverse.

BACKGROUND

¶2 Stanley and Janice were divorced in 1987. The divorce judgment provided, in relevant part:

Janice's pension plan is worth \$35,640 if she withdraws the benefits now. If she leaves the pension and does not begin withdrawals until retirement, its present after-tax value is \$53,768. If Janice withdraws the pension before retirement, she shall pay to Stanley \$17,819.50 plus 9 percent interest from the date the divorce was granted. If, however, she waits to begin withdrawals to the time of retirement (age 65), she shall pay to Stanley 25 percent of her after-tax payments. ... Janice shall assign the foregoing interests to the Clerk of Court to assure payment to Stanley.

¶3 Janice never assigned her interest in the pension to the clerk of court. In 1998, when Janice was fifty-six years old, she made a claim against her retirement account. She began receiving benefits in 1999. Janice never made any payments to Stanley.

¶4 In 2010, Stanley filed a contempt motion against Janice, seeking his portion of the pension fund. Janice moved to dismiss, alleging in part that WIS. STAT. § 893.40 barred Stanley's contempt motion. The circuit court granted Janice's motion to dismiss, reasoning § 893.40 barred contempt actions brought

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

more than twenty years after the judgment was entered. Stanley filed a motion for reconsideration, which the court denied.

DISCUSSION

¶5 On appeal, Stanley argues WIS. STAT. § 893.40 does not bar his contempt motion. Specifically, he asserts that, pursuant to WIS. STAT. § 893.02, his contempt motion did not “commence an action” and thus § 893.40’s prohibition does not apply. He also contends § 893.40 does not apply to this case because courts always retain the ability to enforce their orders, equity mandates reversal, and our supreme court determined in *Hamilton v. Hamilton*, 2003 WI 50, ¶47, 261 Wis. 2d 458, 661 N.W.2d 832, that § 893.40 does not bar contempt proceedings.

¶6 WISCONSIN STAT. § 893.40 is a statute of repose,² which provides, in relevant part: “[A]ction upon a judgment or decree of a court of record of any state or of the United States shall be commenced within 20 years after the judgment or decree is entered or be barred.” (Emphasis added); *see also Hamilton*, 261 Wis. 2d 458, ¶29 (concluding § 893.40 is a statute of repose).

¶7 Stanley first argues that, pursuant to WIS. STAT. § 893.02, his contempt motion did not “commence an action,” and therefore, WIS. STAT. § 893.40 does not apply. Statutory interpretation is a question of law that is reviewed independently. *Richards v. Badger Mut. Ins. Co.*, 2008 WI 52, ¶14, 309

² Statutes of repose differ from statutes of limitations. *Hamilton v. Hamilton*, 2003 WI 50, ¶29, 261 Wis. 2d 458, 661 N.W.2d 832. “A statute of repose ... limits the time period within which an action may be brought based on the date of an act or omission.” *Id.* A statute of repose, therefore, “may cut off litigation *before* a cause of action arises.” *Id.*

Wis. 2d 541, 749 N.W.2d 581. “[S]tatutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.’” *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110.

¶8 WISCONSIN STAT. § 893.02 provides: “Except as provided in s. 893.415(3) [relating to child support judgments], an action is commenced, within the meaning of any provision of law which limits the time for the commencement of an action ... *when the summons ... and the complaint are filed with the court ...*” (Emphasis added). Stanley asserts that, because the contempt proceeding was initiated by a motion and order to show cause, his suit is not barred by WIS. STAT. § 893.40.

¶9 We agree. The plain language of WIS. STAT. § 893.02 indicates an action is not commenced until the summons and complaint are filed. A motion and order to show cause are not a summons and complaint, and therefore, they do not “commence” an action as contemplated by WIS. STAT. §§ 893.02 and 893.40. Consequently, Stanley’s contempt motion does not implicate § 893.40’s twenty-year limitation.

¶10 Janice nevertheless emphasizes that WIS. STAT. § 893.415, which is referenced in WIS. STAT. § 893.40, uses a different standard to determine when an action is commenced.³ However, by Janice’s own assertion, § 893.415 only

³ Pursuant to WIS. STAT. § 893.415(3), “An action under this section [WIS. STAT. § 893.415] is commenced when the petition, motion, order to show cause, or other pleading commencing the action is filed with the court”

applies to child support judgments. Child support is not at issue in this case, and therefore, § 893.415's definition is inapplicable.

¶11 Finally, our determination that WIS. STAT. § 893.40 does not bar a contempt proceeding is further supported by our supreme court's pronouncement in *Hamilton*, 261 Wis. 2d 458, ¶¶46-47. There, the court noted "contempt proceedings remain a viable option" to mitigate any seemingly harsh application of § 893.40.⁴ *Id.*

¶12 Because we determine Stanley's contempt motion did not implicate WIS. STAT. § 893.40, we do not need to address Stanley's remaining arguments regarding § 893.40's applicability. See *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) (appellate courts need not address every issue when one issue is dispositive). We therefore reverse and remand to the circuit court with directions to address Stanley's motion and order to show cause.

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

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

⁴ Janice argued in part that this statement was dictum. However, it was not improper for Stanley to rely on this language. See *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶58, 324 Wis. 2d 325, 782 N.W.2d 682 ("[T]o uphold the principles of predictability, certainty, and finality, [courts] may not dismiss a statement from an opinion by [the supreme court] by concluding that it is dictum.").

