

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 5, 2012**

Diane M. Fremgen  
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. 2011AP521**

**Cir. Ct. No. 2007FJ8**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MICHELLE L. GLOWACKI-DUDKA,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MAREK DUDKA,**

**DEFENDANT-APPELLANT.**

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APPEAL from orders of the circuit court for Dane County: JULIE GENOVESE, Judge. *Affirmed and cause remanded.*

Before Vergeront, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Marek Dudka appeals an order requiring him to pay his ex-wife Michelle Glowacki-Dudka \$24,213 for attorney fees she incurred in collecting the property division portion of the parties' divorce judgment. Dudka also appeals a related order that bans him from filing any additional motions until

the attorney fee award has been paid. Glowacki-Dudka moves for an award of costs and attorney fees on the grounds that the appeal is frivolous. We affirm both orders for the reasons discussed below and award Glowacki-Dudka attorney fees and costs for this appeal.

## BACKGROUND

¶2 Dudka and Glowacki-Dudka were divorced in Indiana in 2006. The final judgment required Dudka to pay Glowacki-Dudka \$300,000 to equalize the property settlement. In 2009 Glowacki-Dudka moved to hold Dudka in contempt, and the circuit court ultimately awarded her receivership of Dudka's Wisconsin business assets, based upon Dudka's failure to comply with the divorce judgment.

¶3 After Dudka's first appeal was dismissed for lack of jurisdiction because he appealed a nonfinal order, Dudka filed two reconsideration motions and attempted to initiate a second appeal. Meanwhile, he also continued to file motions, letters, and other documents in the circuit court. In response, Glowacki-Dudka moved the circuit court for an award of attorney fees and a ban on future filings. The circuit court granted both requests, and Dudka appeals.

## STANDARD OF REVIEW

¶4 We review a circuit court's decision whether to grant attorney fees under the erroneous exercise of discretion standard. *Wright v. Wright*, 2008 WI App 21, ¶45, 307 Wis. 2d 156, 747 N.W.2d 690. A court properly exercises discretion when it considers the facts of record under the proper legal standard and reasons its way to a rational conclusion. *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). Whether excessive litigation has occurred is

a question of fact to be determined by the circuit court. *Zhang v. Yu*, 2001 WI App 267, ¶11, 248 Wis. 2d 913, 637 N.W.2d 754.

¶5 Circuit court orders imposing restrictions on filings by abusive litigants are likewise subject to review under the erroneous exercise of discretion standard. *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991).

## DISCUSSION

### *Attorney Fees*

¶6 A circuit court has authority to award attorney fees in a family action based upon consideration of each party's need and ability to pay or upon finding that one party engaged in overtrial. WIS. STAT. § 767.241 (2009-10);<sup>1</sup> *Ondrasek v. Ondrasek*, 126 Wis. 2d 469, 484, 377 N.W.2d 190. Here the circuit court found that Dudka's conduct constituted overtrial and cited § 767.241 as a basis for its order. Although the court had information about the parties' financial situations from the underlying motion, it did not make explicit findings about their respective abilities to pay in its attorney fee order. However, with respect to overtrial, the court noted that not only was it Dudka's violation of a court order that necessitated the motion in the first place, but that Dudka continued to make almost daily submissions to the court throughout the proceedings. The court's determination that Dudka had engaged in an abusive pattern of overtrial is amply

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<sup>1</sup> WISCONSIN STAT. § 767.241 provides that "[t]he court, after considering the financial resources of both parties, may ... [o]rder either party to pay a reasonable amount for the cost to the other party of maintaining or responding to an action affecting the family and for attorney fees to either party." All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

supported both by the affidavit submitted in support of the motion for attorney fees and by Dudka's filings themselves. We are satisfied that the record shows the circuit court appropriately applied the proper standard of law to the facts to reach a reasonable result. Therefore, we will not disturb the circuit court's award of attorney fees.

### *Filing Ban*

¶7 A court faced with a litigant who has engaged in a pattern of frivolous litigation has the inherent authority to implement a remedy that may include restrictions on that litigant's access to the court. *Minniecheske*, 161 Wis. 2d at 748; *see also Village of Tigerton v. Minniecheske*, 211 Wis. 2d 777, 785-86, 565 N.W.2d 586 (Ct. App. 1997) (the right to access to the courts is neither absolute nor unconditional). Otherwise, such abusive litigants may compromise the fair administration of justice by forcing the court to devote its limited resources to processing repetitive and frivolous requests. *In re Anderson*, 511 U.S. 364, 365 (1994) (citation omitted). Such orders should, however, be as narrowly tailored as possible to address the situation, balancing factors such as the abusive litigant's right of access to the courts, other parties' interests in finality, the taxpayers' interest in appropriate allocation of resources, and the integrity of the judicial system. *Minniecheske*, 161 Wis. 2d at 749 (citations omitted).

¶8 One method of limiting the access of an abusive litigant to the court is to require the litigant to obtain prior approval for any future filings, on a case-by-case basis, so as to prevent additional frivolous suits. *Village of Tigerton*, 211 Wis. 2d at 785-86. This method has the virtue of allowing the litigant continuing access to the courts for any meritorious claims that may arise and comports with the general disapproval of blanket orders. As at least one federal court has noted,

however, it has the drawback of allowing the barrage of frivolous filings to continue while simply shifting to the court the burden of sorting through the litigant's materials at an earlier stage in the proceeding. See *Support Sys. Int'l v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995), *overruled on other grounds by Lee v. Clinton*, 209 F.2d 1025 (7th Cir. 2000).

¶9 Another permissible restriction is to bar an abusive litigant from filing any further civil actions related in subject matter or parties to a prior case that has been found to be frivolous until the litigant has paid any fees or costs imposed as a sanction in the prior case. *Puchner v. Hepperla*, 2001 WI App 50, ¶¶6-8 & ¶10 n.7, 241 Wis. 2d 545, 625 N.W.2d 609. This restriction is appropriate when the litigant has been harassing a particular individual or group of people to whom costs or fees have been awarded because it makes the sanction more meaningful. *Id.*

¶10 The filing ban at issue in this case is similar to that in *Puchner*, and we conclude it was within the circuit court's authority. The court barred Dudka from filing additional motions in the family action until the attorney fee award has been paid. The ban is tailored to the situation before the court because its subject matter is limited to the post-divorce proceedings, and its duration is limited until Dudka has paid the attorney fee award. In other words, Dudka himself controls how long the ban remains in effect.

#### *Costs on Appeal*

¶11 Glowacki-Dudka moves for costs, fees, and reasonable attorney fees under WIS. STAT. RULE 809.25(3)(c) on the ground that the appeal is frivolous. Alternatively, she argues that we can award attorney fees without finding the appeal frivolous because she has incurred additional costs defending an award of

attorney fees. See *Chase Lumber & Fuel Co., Inc. v. Chase*, 228 Wis. 2d 179, 213, 596 N.W.2d 840 (Ct. App. 1999) (when a party has incurred costs defending an award of attorney fees, a further award of attorney fees is necessary to preserve the effectiveness of the remedial purpose of the original award); *Riley v. Isaacson*, 156 Wis. 2d 249, 262, 456 N.W.2d 619 (Ct. App. 1990).

¶12 We agree with the second theory. Because the circuit court's order on attorney fees was issued as a sanction for overtrial, its remedial purpose would be undermined if Glowacki-Dudka was required to expend additional funds defending the award. However, because this court cannot make independent factual findings, we will need to remand for a determination of Glowacki-Dudka's additional attorney fees.

*By the Court.*—Orders affirmed and cause remanded.

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

