COURT OF APPEALS
DECISION
DATED AND RELEASED

September 12, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2907
No. 94-3269

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

In Re the Marriage Of:

MARY C. VOLKER f/n/a MARY C. PENTINMAKI,

Petitioner-Respondent,

v.

OLIVER A. PENTINMAKI, JR.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Dane County: MICHAEL N. NOWAKOWSKI, Judge. *Affirmed and cause remanded.*

Before Eich, C.J., Dykman, P.J., and Robert D. Sundby, Reserve Judge.

PER CURIAM. Oliver A. Pentinmaki, Jr., appeals from an order disposing of several motions related to his divorce and the support and custody of his children.

Pentinmaki's ex-wife, Mary Volker, and the guardian ad litem have made motions for costs for a frivolous appeal under RULE 809.25(3), STATS. Pentinmaki, alleging misstatements of fact by the guardian, made a motion for sanctions against the guardian under § 802.05(1)(a), STATS. Because the record supports the trial court's order, we affirm. We also hold that Pentinmaki's appeal is frivolous under RULE 809.25(3), and we deny Pentinmaki's motion for sanctions as meritless.

BACKGROUND

Pentinmaki and Mary Volker were divorced in Milwaukee County in 1990. After the divorce, Pentinmaki filed numerous motions and appeals in the Milwaukee County Circuit Court relating to the divorce, including motions regarding a new trial, child custody and visitation, child support, and maintenance. Among other things, the motions challenged the credibility of the witnesses at the divorce trial.

On March 29, 1993, the Milwaukee County Circuit Court, finding that Pentinmaki was attempting to relitigate issues which had already been decided, issued a post-divorce order prohibiting him from bringing any future motions without the leave of the court.[1] We affirmed the order in ***Volker v. Pentinmaki,*** Nos. 92-2609, 93-1070, 93-1434, unpublished slip op. (Wis. Ct. App. Apr. 19, 1994).

Subsequent to the Milwaukee order, both parties moved to Dane County and Pentinmaki brought several more divorce-related actions in Dane County. This appeal concerns a series of motions he filed from late 1993 through early 1994 seeking: (1) a custody study by the Dane County Family Court Counseling Service and waiver of the study fee; (2) a one-time change in his physical placement date with his children; (3) a permanent change in physical placement from Saturday to Sunday; and (4) modification of child support.

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[1] A subsequent Memorandum Decision and Order issued by the court also required an affidavit of personal service signed by a deputy sheriff before any correspondence, motions, or pleadings would be accepted and reviewed by the court.

On June 30, 1994, the Dane County Circuit Court denied Pentinmaki's motions in an oral decision. The court found that Pentinmaki was aware of the prohibition of future motions in the Milwaukee County order, but denied the guardian's motion for sanctions, reasoning that Pentinmaki, appearing *pro se*, might not have understood that the Milwaukee County order would also be enforced in Dane County. As before, a major part of Pentinmaki's "case" involved challenges to the credibility of the trial witnesses. The court, noting that these issues had been fully litigated, warned him that if he continued to raise these issues in subsequent motions, the court would deem the motions frivolous and impose all costs and fees against him.

The court's decision was reduced to a written order on September 20, 1994, which: (1) prohibited Pentinmaki from filing any non-emergency motions relating to divorce issues before January 1, 1997, without first obtaining the trial court's written consent; (2) confirmed and continued the Milwaukee County order requiring Pentinmaki to pay the guardian's fees in the Milwaukee County proceedings; (3) required him to pay the guardian's fees in the Dane County proceedings; and (4) prohibited him from conducting any litigation-related interviews with his children. The court scheduled an evidentiary hearing on Pentinmaki's motion to modify child support.

At the support hearing, held on October 14, 1994, Pentinmaki offered no evidence in support of his motion, claiming that the portion of the September 20, 1994, order prohibiting him from re-litigating witness credibility prevented him from presenting evidence relevant to his support-modification motion. The trial court denied the motion for failure of proof.

A few weeks later, Pentinmaki wrote to the trial court asking for a hearing date on motions he intended to bring to amend the child-custody and placement provisions of the original divorce judgment, to vacate the September 20, 1994, order, and to have the court recuse itself from hearing further proceedings in his case. On November 2, 1994, the trial court, having determined that the motion to amend custody was not of an emergency nature, issued an order allowing Pentinmaki to refile the motion with an up-to-date affidavit after October 1, 1996 for a hearing to be scheduled after January 1, 1997. The court denied both the motion to vacate the order of September 20, 1994, and the recusal request.

Pentinmaki appeals from the September 20, October 14 and November 2, 1994, orders, each involving several motions. We consolidated the appeals.[2]

ANALYSIS

Pentinmaki first argues that the trial court erroneously exercised its discretion by prohibiting him from filing nonemergency motions in this case until January 1, 1997. He claims the order denies him due process.

He made the same argument to us in his appeal from the 1993 Milwaukee County Court, and he does not allege any change of circumstances in the interim, raise any new issues, or make any new legal arguments.[3] In short, he has not presented us with any reason to depart from our analysis in ***Volker*** of a trial court's authority to enter such an order under the circumstances of Pentinmaki's continued attempts to relitigate issues relating to his divorce.

A trial court has "inherent power to protect itself against any action that would unreasonably curtail its powers or materially impair its efficiency." ***Jacobson v. Avestruz***, 81 Wis.2d 240, 245, 260 N.W.2d 267, 269 (1977) (citations omitted). In addition, although an individual has a due process right of access to the courts, ***Piper v. Popp,*** 167 Wis.2d 633, 644, 482 N.W.2d 353, 358 (1992), that right is not absolute and may be curtailed where a litigant abuses the court system. *See* ***Support Sys. Int'l, Inc. v. Mack,*** 45 F.3d 185 (7th Cir. 1995) (prohibiting prodigious litigator from filing noncriminal motions). Since Pentinmaki began filing his serial post-divorce motions in 1990, three trial

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[2] Although Pentinmaki lists eleven issues in his appellate brief, many are redundant. He presents, at most, five issues on appeal.

Pentinmaki also challenges the trial court's denial of his motion to recuse itself, but has provided no arguments or citation to authority in support of his argument. We do not review it. "Generally, we do not consider arguments broadly stated but never specifically argued." ***Fritz v. McGrath,*** 146 Wis.2d 681, 686, 431 N.W.2d 751, 753 (Ct. App. 1988).

[3] He does argue that the Dane County Circuit Court's order, which allowed for "emergency" motions, was too vague to be enforceable. However, he provides no citation to authority or even examples illustrating how allowing for "emergency" motions constitutes an erroneous exercise of discretion or a due process violation.

court judges--two in Milwaukee and one in Dane County--found them to be generally meritless and primarily designed to harass his former wife.

In this case, after an extensive review of the record, the trial court concluded that Pentinmaki was attempting to relitigate previously decided issues, the volume and nature of his continuous stream of litigation interfered with the court's ability to address legitimate issues in other pending litigation, and Pentinmaki's refusal to accept the courts' rulings and decisions on issues surrounding his divorce was negatively affecting the parties' children. We are satisfied that the trial court did not erroneously exercise its discretion or its inherent powers, nor did its orders violate Pentinmaki's due process rights.

Pentinmaki next argues the trial court erroneously exercised its discretion and violated his First Amendment rights when it warned him that any future attempt to challenge the credibility of witnesses involved in prior proceedings would be deemed frivolous, harassing, or would constitute over-litigation.[4] Because Pentinmaki has not referred us to any authority in support of this argument, we need not consider it. ***State v. Pettit,*** 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992).

Pentinmaki next claims the trial court erroneously exercised its discretion when it considered the Milwaukee County Circuit Court's evaluation of his "credibility" in issuing the Milwaukee order. We reviewed and affirmed the Milwaukee order on a previous appeal; in doing so, we noted that the record in that proceeding was "replete with Pentinmaki's lack of concern, hiding assets, shirking, manipulation, lying, untruthfulness and unconcern for [his] children's best interests." ***Volker v. Pentinmaki,*** Nos. 92-2609, 93-1070, 93-1434, unpublished slip op. at 1 (Wis. Ct. App. Apr. 19, 1994). Pentinmaki failed to persuade us that it was in any way unreasonable for the trial court to rely on the Milwaukee County court's assessment of either his motives or his credibility.

[4] Pentinmaki also asserts the trial court erroneously exercised its discretion by refusing to vacate the order which, he claims, prevented him from supporting his motion for child support. Because we hold that the order itself was not erroneous, we need not consider the argument further.

Pentinmaki also argues the order prohibiting him from conducting litigation-related interviews with his children infringes the children's First Amendment rights. As before, he offers no supporting authority for the argument and we need not consider it further. ***Pettit,*** 171 Wis.2d at 646, 492 N.W.2d at 642.

Finally, Pentinmaki argues the trial court erred by requiring him to pay the guardian's fees in the Dane County and Milwaukee County proceedings. We have held that a trial court does not erroneously exercise its discretion by ordering one party to pay the guardian's fees when the circumstances establish that the party is responsible for "overtrial" of the case. ***Ondrasek v. Ondrasek,*** 126 Wis.2d 469, 484, 377 N.W.2d 190, 196 (Ct. App. 1985). In this case, among other things, the trial court found that Pentinmaki repeatedly filed motions for the sole purpose of harassment. The record--to say nothing of this court's and the Milwaukee and Dane County courts' experience with Pentinmaki--amply supports that finding. We see no error in the trial court's order requiring Pentinmaki to pay the guardian's fees.

MOTION FOR FRIVOLOUS COSTS

Volker and the guardian both move for costs under RULE 809.25(3)(c), STATS., authorizing the imposition of costs where an appeal "was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another" or "was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." RULE 809.25(3)(c)(1), (2).

We agree that Pentinmaki has prosecuted this appeal in bad faith. Such a determination requires consideration of the litigant's subjective motives or intent, ***Tomah-Mauston Broadcasting Co. v. Eklund***, 143 Wis.2d 648, 659, 422 N.W.2d 169, 173 (Ct. App. 1988), which may be made by inferring intent from the acts and statements of the litigant in light of the surrounding circumstances. ***Stern v. Thompson & Coates, Ltd.***, 185 Wis.2d 220, 236-37, 517 N.W.2d 658, 664 (1994). We cannot, of course, find facts, but we can--and must--accept reasonable inferences drawn by the trial court and facts found by the trial court that are not clearly erroneous. ***Id.***

Following the original divorce judgment and Pentinmaki's appeal from that judgment, he filed hundreds of motions in the trial court. He brought eleven appeals and filed five additional petitions with this court. He requested a John Doe hearing and unsuccessfully attempted to obtain a restraining order against his former wife--all in aid of his unflagging efforts to challenge by indirection the findings and order of the Milwaukee County Circuit Court in the original divorce proceedings. His arguments on this appeal are without merit.

The trial court found that Pentinmaki "is obsessed with perpetrating a pattern of harassment" upon his former wife and "is absolutely insensitive to the impact that this conduct continues to have on [his] minor children." Two additional judges presiding over Pentinmaki's endless litigation noted that he is "obsessed" with attempting to reopen and relitigate his divorce.

Our consideration of these factors leads us to conclude that the only reasonable inference to be drawn from Pentinmaki's conduct in this case is that the appeal was undertaken in bad faith for the purpose of harassing Volker. Accordingly, we award frivolous costs to Volker and the guardian ad litem, and we remand to the trial court to determine, under RULE 809.25(3), STATS., the fees and costs to be charged against Pentinmaki.[5]

By the Court.--Order affirmed and cause remanded with directions.

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

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[5] Pentinmaki also moved for "sanctions" against the guardian for a violation of § 802.05(1)(a), STATS., requiring pleadings, motions and other papers to contain the name, state bar number, telephone number and address of the attorney appearing in the case. Any technical violation of that provision is *de minimis,* and does not constitute grounds for any sanction against the guardian.

Finally, the guardian has requested that we enter an order prohibiting Pentinmaki from filing future appeals. At this point, at least, we are satisfied that the continuing trial court order barring him from filing nonemergency orders until January 1997 is sufficient deterrence.