

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

June 6, 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. 95-0211**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**IN RE THE MARRIAGE OF:**

**MYRA LEVINE (HEILPRIN),**

**Petitioner-Respondent,**

**v.**

**RICHARD HEILPRIN,**

**Respondent-Appellant.**

APPEAL from orders of the circuit court for Dane County: JACK F. AULIK, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. Richard Heilprin appeals from orders providing for the execution of liens on a home he owned, and on his pension. The liens benefitted his former wife, Myra Levine, and resulted from his failure to pay a \$61,000 maintenance arrearage to her. We affirm both orders. We also conclude

that the appeal is frivolous, and grant Levine's motion for costs and reasonable attorney's fees.

The parties divorced in 1985. In May 1994, in an order addressing the arrearage and other maintenance questions, the trial court ordered that Levine "shall have a lien against the Heilprin Law Offices' profit sharing plan and a lien upon the respondent's residence at 6001 N. Highland, Madison, Wisconsin as security for payment of the [arrearage], and the court shall sign any further documents necessary to effectuate said lien." Heilprin appealed from this order, asserting, among other things, that the court erred by imposing a lien on his pension. He did not raise an issue concerning a lien on his real estate. We eventually reversed that part of the trial court's order holding him in contempt, but otherwise affirmed. *Levine v. Heilprin*, No. 94-1327, unpublished slip op. (Wis. Ct. App. Sept. 14, 1995). Meanwhile, Levine's counsel learned that a sheriff's sale of the real estate was scheduled for October 18, 1994. On October 5, he asked the court to sign orders acknowledging the liens ordered in May, and providing for execution of them against funds payable to Heilprin for the sheriff's sale, and against the pension fund if the federal tax lien against it was lifted. Counsel for Heilprin received service of the proposed orders on October 6. He immediately objected to them and asked for a hearing. The court scheduled a telephone conference for October 12 to hear the objections.

At that hearing, Heilprin objected to the request for the orders because it was made by letter and not motion, and because he had insufficient notice of Levine's arguments in support of the order, which he heard for the first time at the hearing. The trial court gave him an additional five days to submit any arguments he intended to make, and Heilprin did submit additional material. Levine chose not to. On October 18, the trial court issued a decision rejecting Heilprin's objections and signed the lien orders.

On appeal, Heilprin argues that the trial court violated his due process rights by signing the lien orders when he received insufficient notice of the motion, and by denying him an evidentiary hearing. We disagree. The lien orders were nothing more than what the trial court promised to sign in its May order. Heilprin cites no authority for the proposition that a formal motion, with statutory notice and supporting papers, was necessary in such circumstances. The liens were imposed by the May order, and were no longer a disputed issue in the trial court. In that sense, signing the orders for execution on the liens was

merely a ministerial act of the court, and Heilprin had no right to relitigate the matter at an evidentiary hearing. Even if he did, the argument is meritless because he never attempted to raise any evidentiary issues. The sole issue he raised was one of law – whether a stay imposed in Heilprin's first appeal, which then remained pending, deprived the trial court of authority to order execution on the liens.

Additionally, Heilprin cannot reasonably argue that the court denied him an opportunity to fully present his objections. When counsel was served with the proposed orders, the trial court scheduled a hearing six days later on his objections and allowed five additional days to present further argument. Heilprin has not explained why, under those circumstances, he was constitutionally deprived of notice and opportunity. As noted, he presented only one straightforward and easily-resolved legal issue.<sup>1</sup>

Heilprin next argues that the trial court erred by granting liens on the home and the pension. Those issues were resolved by the trial court's May order, and this appeal was not timely as to that order. In any event, the pension issue was resolved in Heilprin's first appeal, which was timely from the May order, and he could have challenged the lien on his home as well. He is not now entitled to a second appeal on those issues that were or could have been decided in his first appeal.

Heilprin finally argues that Levine and her counsel unlawfully and improperly interfered in settlement negotiations in a separate litigation between Heilprin and a third party. The argument is made completely outside the record in this appeal, and we therefore disregard it. *Jenkins v. Sabourin*, 104 Wis.2d 309, 313-14, 311 N.W.2d 600, 603 (1981).

Levine has moved for costs and attorney's fees on the grounds that the appeal is frivolous. We may find an appeal frivolous if the party or the party's attorney knew, or should have known, that the appeal lacked any

---

<sup>1</sup> Heilprin's argument to the trial court, that our stay in the first appeal precluded execution on the liens, was also meritless. Our stay order plainly applied only to the trial court's contempt order, and did not preclude any other trial court action allowed under § 808.075, STATS.

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)2, STATS. Applying that standard to all the arguments Heilprin raises on appeal results in a finding of frivolousness. None have any basis in law and both Heilprin and his attorney should have known that to be the case by applying fundamental principles of law. On remittitur, Levine may apply to the trial court for a determination of reasonable attorney's fees on appeal.

*By the Court.* – Orders affirmed.

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