

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

December 12, 1995

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. 95-1657

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**IN RE THE FINDING OF CONTEMPT  
IN RE THE MARRIAGE OF ANNE E.  
WHITEAGLE AND TIMOTHY G. WHITEAGLE:**

**JOHN E. JOYCE,**

**Appellant,**

**v.**

**ANNE E. WHITEAGLE and  
TIMOTHY G. WHITEAGLE,**

**Respondents.**

APPEAL from a judgment and an order of the circuit court for Dunn County: DONNA J. MUZA, Judge, and GARY SCHLOSSTEIN and ROBERT PFIFFNER, Reserve Judges. *Affirmed.*

MYSE, J. John E. Joyce appeals an order finding that he was in contempt for violating a temporary order in the respondents' divorce action and imposing a remedial sanction of \$10,000 to be paid to Anne E. Whiteagle to compensate her for the loss she sustained as a result of Joyce's contemptuous violation.<sup>1</sup> Joyce contends that: (1) the temporary order was void because the

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<sup>1</sup> The order was incorporated in the divorce judgment of Timothy Whiteagle and Anne

family court commissioner who issued the order was not properly appointed; (2) he was denied due process rights; (3) the \$10,000 sanction was not warranted by the evidence; and (4) the trial court erred by not making a finding that he had the financial ability to pay the sanction. Because this court concludes that Joyce failed to adequately develop his argument regarding the violation of due process rights and the other arguments are without merit, the judgment and order are affirmed.

Joyce, an attorney practicing in Dunn County, represented Timothy Whiteagle in a divorce action involving Timothy and Anne Whiteagle. Robert G. Walter was the family court commissioner for Dunn County, but took an official leave of absence. As a result, Phillip Steans was appointed as the "assistant family court commissioner" to serve in Walter's absence. This appointment was made by the Dunn County circuit court judges and approved by the chief judge for the 10th Judicial Administrative District. Steans, as "assistant family court commissioner," signed a temporary order that required Timothy to freeze in a joint account any funds he received in excess of his \$5,000 monthly salary, except to apply such funds to the parties' outstanding marital obligations. Timothy challenged the temporary order contending that Steans was not authorized to act as family court commissioner because the county board had not created the position of assistant family court commissioner as required by § 767.13(1)(b), STATS.<sup>2</sup>

The trial court took the motion challenging Steans' ability to act under advisement and the divorce action proceeded. Timothy subsequently received a series of substantial payments as a result of negotiating a severance  
(..continued)  
Whiteagle.

<sup>2</sup> Section 767.13(1)(b), STATS., provides:

[T]he person appointed shall continue to act until a successor is appointed and qualified, except that in the event of disability or extended absence the judges may appoint another reputable attorney to act as temporary family court commissioner. The county board may provide that one or more assistant family court commissioners shall be appointed by the circuit judges for the county subject to the approval of the chief judge.

agreement with Southwest Casino and Hotel Corporation for whom he had been acting as an independent contractor. Among the payments received was a \$25,000 check that was placed in Joyce's trust account. Before the trial court determined the validity of the temporary order, Joyce paid Timothy \$25,000 from the trust account and received a \$4,000 payment for legal services performed for Timothy in the divorce proceedings and other matters. Joyce does not dispute that the \$25,000 payment violated the temporary order.

When Anne learned of the unauthorized payment, she filed an order to show cause why Timothy and Joyce should not be held in contempt for violation of the temporary order. This was not addressed initially because the trial court had not yet resolved the question of Steans' ability to act as family court commissioner. The trial court ultimately concluded that Steans was qualified to act because he was a temporary family court commissioner and was validly appointed under § 767.13(1)(b), STATS. Accordingly, the trial court concluded that the temporary order was valid. Joyce was ultimately replaced as counsel for Timothy. The trial court then conducted a series of hearings in regard to the contempt motion. In at least two different hearings, Joyce testified to the merits of the contempt motion. The trial court ultimately found Joyce in contempt for his payment and ordered him to pay \$10,000 to compensate Anne for the loss she sustained as a result of Joyce's contemptuous conduct. Joyce appeals.

Joyce first contends that Steans was not authorized to act as family court commissioner because his appointment was designated as assistant family court commissioner and the county board had failed to create the position prior to the appointment. The issue of whether Steans was validly appointed raises a question of law that this court determines without deference to the trial court because it involves the application of a statute to undisputed facts. *Chang v. State Farm Mut. Auto. Ins. Co.*, 182 Wis.2d 549, 560, 514 N.W.2d 399, 403 (1994).

Under § 767.13(1)(b), STATS., the position of assistant family court commissioner must be created by the board before the judges can appoint a person to that position. However, the judges may appoint a temporary family court commissioner when the family court commissioner is on an extended leave of absence. *Id.* Joyce argues that the designation of assistant family court commissioner conclusively demonstrates the invalidity of the appointment and

this court need look no further to determine this issue. This court disagrees. While it is true that Steans' appointment was designated as assistant family court commissioner, the evidence is clear that the denomination as assistant family court commissioner was erroneous and that Steans was being appointed to act in place of the absent acting family court commissioner.

The undisputed facts indicate that Steans was appointed to serve as the family court commissioner while Walter was on a leave of absence; he was not appointed to serve as Walter's assistant when he returned. The intent of the appointment, the position to which Walter was appointed and the necessity of appointing a temporary court commissioner as directed by statute when the present court commissioner was unable to act all support the conclusion that Steans was appointed to serve as family court commissioner in lieu of Walter during Walter's leave of absence. In addition, Steans received his salary from funds formerly paid to Walter. Because all parties intended and understood Steans would serve as the temporary family court commissioner, the term "assistant family court commissioner" was a mere denominational error that did not affect Steans' ability to function as the family court commissioner. Accordingly, the trial court correctly concluded that Steans was properly appointed and the temporary order Steans issued was valid and enforceable.

Joyce next contends that he was denied due process during the contempt proceedings. He acknowledges that due process requires notice and an opportunity to be heard. Nonetheless, he asserts without elaboration or explanation that he was denied this opportunity notwithstanding the fact that he was present at each of the hearings and testified at two of the hearings. There is no evidence that he was denied the opportunity to present evidence or that the court limited his defense or explanation of the contempt motion. Because this argument has not been adequately developed and the record discloses no basis for the contention that he failed to receive due process, this court rejects Joyce's contention and will not address this issue further. *See Goosen v. Estate of Standaert*, 189 Wis.2d 237, 252, 525 N.W.2d 314, 320 (Ct. App. 1994).

Joyce next contends that the trial court erred by determining that \$10,000 was necessary to make Anne whole for the loss she sustained as a result of Joyce's contemptuous conduct. Under § 785.04(1)(a), STATS., the court may

impose as a remedial sanction a sum of money sufficient to compensate a party for its losses. The trial court made a finding of fact by concluding that the sanction of \$10,000 for attorney's fees and other costs was necessary to compensate Anne for the loss she suffered as a result of Joyce's contempt. This court accepts the trial court's findings of fact unless they are clearly erroneous. Section 805.17(2), STATS.

The record shows that the issue of the family court commissioner's authority to act was litigated, several contempt hearings were held, briefs were submitted and significant complexities were introduced into the divorce case as a result of this unauthorized payment of funds. Anne's attorney also provided a breakdown of counsel's time and costs incurred totaling over \$25,000. Further, Anne lost the immediate use of the funds, and it is unclear whether Anne will be able to collect all of the equalizing payment that was increased by the unauthorized dispersal of the \$25,000 held in Joyce's trust account. Based upon the trial court's finding of fact, which is adequately supported by the record, this court finds no merit to Joyce's contention that the sanction was inappropriately severe.

Finally, Joyce contends that the trial court erred by not making a finding that he had the ability to pay the \$10,000 sanction imposed for his contemptuous conduct. In support of this position, Joyce relies on *State ex rel. N.A. v. G.S.*, 156 Wis.2d 338, 456 N.W.2d 867 (Ct. App. 1983), and several other cases involving purge conditions. Such reliance is misplaced because those cases deal with remedial sanctions designed to compel future conduct and the requirement that they be purgeable. The sanction imposed by the court, however, was imposed under the authority of § 785.04(1)(a), STATS., as a sum of money sufficient to compensate parties for their losses. In imposing such a money judgment no inquiry into the ability of the person in contempt to make payment need be made. Because there is no requirement that the ability to pay be determined prior to the imposition of a contempt sanction designed to compensate a party for its losses, this court finds no merit to Joyce's contention that the trial court erred.

*By the Court.*— Judgment and order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.