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DISTRICT IV

December 16, 2014

To:

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You are hereby notified that the Court has entered the following opinion and order:

2013AP1602

Arlo M. Tratz v. Christine J. Monroe (L. C. #2012CV347)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Arlo Tratz, pro se, appeals from an order denying a request for attorney's fees and costs pursuant to WIS. STAT. § 244.17(2) (2011-12).¹ Tratz argues that Christine Monroe is required to reimburse him for attorney's fees and costs expended to compel a partial accounting of activities when she was his power of attorney. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition and we summarily affirm. *See* WIS. STAT. RULE 809.21.

Tratz is an inmate at Waupun Correctional Institution. Monroe is his sister and was designated as his power of attorney. Tratz alleged that Monroe, in the capacity of his power of

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

attorney, took funds from him that were not repaid. Tratz filed a petition in Columbia County Circuit Court Case No. 12CV347, asking the court “to order that an accounting be made of the assets over which [his] sister had power and control pursuant to the Power of Attorney previously granted to her,” and that in the event an accounting should reveal monies owed, to allow him an opportunity to amend the “complaint at that time to allege conversion of those assets and damages as may be appropriate.”

Subsequently, Tratz filed a “Petition for Fees and Costs,” alleging that Monroe “still refused to provide any accounting of [Tratz]’s cash assets.” Tratz further alleged, “[t]hat even though [Tratz] is not fully satisfied with the accounting of the Associated Bank savings account, [Tratz] has enough information about that savings account to close this accounting petition action (Case No. 12-CV-347) and file a new separate damage claim.” Tratz requested an order awarding him attorney fees and costs under WIS. STAT. § 244.17(2). Tratz attached a “copy of the bill from his attorney ... and also a separate accounting of [Tratz]’s costs to date in this matter.” The circuit court issued an order holding open the request for fees and costs “pending the outcome in the action.”

Shortly thereafter, Tratz filed a document entitled “Motion to End Accounting Petition, Case No. 12CV347 and Rule on Petitioner’s ‘Petition for Fees and Costs.’” The motion asked the court to “end this accounting petition.” The motion further asked the “court to rule on the petition for fees and costs that [the] court [was] holding open per its own order.” Tratz alleged:

[T]he 2 page spread sheet that [Monroe] did produce ... and her subsequent deposition ... show enough to determine that [she] has stolen money from [Tratz] and destroyed his retirement accounts. [Tratz] chooses not to amend this accounting petition into a damage claim because [Monroe] revealed at her deposition that the bank is located in Madison, Dane County and not Mayville as

[Tratz] previously thought. Also [Tratz] believes that [Monroe] has moved from her Lodi address and no longer resides in Columbia County. Further, [Tratz] intends to add two other [parties] to his damage claim and one of those is in Dane County ... and that is where he will file his damage claim.

The circuit court construed Tratz's motion as a motion to voluntarily dismiss based on improper venue, and dismissed the action without prejudice. The court also denied the request for attorney's fees and costs because Tratz was voluntarily dismissing the action and changing venue. Tratz now appeals.

Tratz argues the circuit court mischaracterized his motion. Tratz contends he never suggested Columbia County was an improper venue for the accounting action. He asserts, "Ms. Monroe resides in the city of Lodi which is in Columbia County. He was simply informing Judge White that he had chosen Dane County as the venue for any damage claim that he might pursue." The record belies his arguments.

Contrary to Tratz's position, it was reasonable for the circuit court to conclude that Tratz was seeking to terminate Case No. 12CV347 in order to commence a new action in Dane County. Tratz did not indicate that he wished to continue litigating his petition so as ultimately to be entitled to reimbursement for attorney's fees and costs. *See* WIS. STAT. § 244.17(2). Rather, Tratz's petition for fees and costs stated that he "has enough information ... to close this accounting petition action (Case No. 12-CV-347) and file a new separate damage claim." Tratz's motion filed shortly thereafter asked the "court to end this accounting petition." That motion also expressly stated that he did not wish to amend his accounting petition into a damage claim, because through discovery he learned "the bank is located in Madison, Dane County." Tratz also specifically represented to the court that he "believes that [Monroe] has moved from her Lodi address and no longer resides in Columbia County." He further stated that he wished to

add two additional parties, “and one of those is in Dane County.” Tratz summarized that “[f]or all the above reasons” he “now believes that proper venue is in Dane County.”

Accordingly, the court correctly denied the request for fees and costs based upon the record before it. There was no judgment establishing a violation of WIS. STAT. ch. 244, on which to base liability for fees and costs.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals