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**DISTRICT III**

November 29, 2016

To:

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

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2016AP293

Margaret Bach v. REM Wisconsin II, Inc. (L. C. No. 2015CV203)

Before Stark, P.J, Hruz and Seidl, JJ.

Margaret Bach, pro se, appeals an order denying her motion for waiver of transcript fees.<sup>1</sup>

The circuit court dismissed Bach's claims against REM LLC, Life Navigators, and certain employees of those entities (collectively, "REM"), and Bach wishes to pursue an appeal for which she requires a transcript of the circuit court's hearing regarding REM's motion to dismiss. Based upon our review of the briefs and record, we conclude at conference that this case is

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<sup>1</sup> Although Bach is representing herself, it appears she is a member of the Wisconsin State Bar in good standing.

appropriate for summary disposition, and we summarily affirm the judgment of the circuit court. *See* WIS. STAT. RULE 809.21.<sup>2</sup>

As we explained in *Bach v. St. Vincent Hospital*, No. 2015AP1221, unpublished slip op. ¶¶2-3 (WI App Nov. 29, 2016) (hereinafter *Bach VI*), Bach’s adult son, Aaron, suffers from a rare brain tumor known as a hypothalamic hamartoma that causes seizures and aggressive behavior requiring twenty-four-hour, supervised care. Bach was appointed Aaron’s guardian in 2007. She was subsequently removed as his guardian in 2009 upon a finding that she had not acted in Aaron’s best interests. Since that time, Bach has filed a near-constant stream of litigation in an attempt to overturn the guardianship and placement decisions, prompting the Milwaukee County Circuit Court, by Judge Jane Carroll, to enter an order on October 16, 2012, prohibiting Bach from further state and federal court filing related to Aaron without the approval of the Milwaukee County Circuit Court. Bach did not appeal that order.

Bach commenced this action in the Oconto County Circuit Court on November 9, 2015. Her complaint is fifty-eight pages long and has attached more than one hundred pages of additional documents. Bach requested that she be allowed daily contact with Aaron; she also advanced a claim for negligent infliction of emotional distress and asked the circuit court to void the October 16, 2012 order. Bach subsequently filed a document entitled “Motion for a Temporary Order Allowing Margaret Bach to See and Speak to Her Son and His Care Providers.” REM opposed the motion and filed a motion to dismiss. The circuit court dismissed the complaint following a hearing, finding that Bach violated the terms of the October 16, 2012

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

order by failing to obtain permission from the Milwaukee County Circuit Court for the filing. The dismissal was without prejudice, and the court determined Bach could refile her complaint if she received permission.

Bach attempted an appeal in the present action and filed a motion for waiver of transcript fees due to her alleged indigency. REM objected, arguing any appeal would be frivolous. In response, Bach asserted her appeal was not frivolous because her “litigation and appeal concern how Aaron’s protective placement ... is not legal or sufficient leading to harm for Margaret and Aaron, as well as the denial of Aaron’s rights under the Patient Bill of Rights.” The circuit court agreed with REM and entered an order denying Bach’s motion for waiver of transcript fees. The court subsequently denied Bach’s motion for reconsideration.

The only issue presented in this appeal is whether Bach is entitled to waiver of transcript fees. “[A] meritless assertion by a putative appellant will not furnish a foundation for a judicially ordered waiver of fees.” *State ex rel. Girouard v. Circuit Court for Jackson Cty.*, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990). The individual must be found to be indigent *and* present a claim upon which relief can be granted. *Id.* Whether the individual has presented arguably meritorious claims is a question of law. *State ex rel. Hansen v. Circuit Court for Dane Cty.*, 181 Wis. 2d 993, 998, 513 N.W.2d 139 (Ct. App. 1994).

By Bach’s own admission, her claims before the circuit court plainly challenged matters (e.g., Aaron’s guardianship and placement) that fell within the scope of the October 16, 2012 injunctive order. As we explained in *Bach VI*, these matters are unreviewable on appeal in a separate action as a result of Bach’s failure to pursue an appeal from that order. *See Bach VI*, ¶¶9, 11 (citing *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972);

*Kellogg-Citizens Nat'l Bank of Green Bay v. Francois*, 240 Wis. 432, 435-36, 3 N.W.2d 686 (1942)). Bach's reply brief asserts she did initiate an appeal, but in federal court, by filing a claim under 42 U.S.C. § 1983 (2012), because she "no longer trusted the state court would provide a fair review." However, commencing a new action, in a different court, is not the equivalent of an appeal. Bach did not allege that at the time she filed the present action, the October 16, 2012 order had been withdrawn, vacated, or otherwise found invalid by any court.

Accordingly, Bach was required to obtain approval of the Milwaukee County Circuit Court prior to filing the present action. It is undisputed she did not do this, instead mounting a collateral attack against the validity of the order in her complaint. Such attacks are generally disfavored because they disrupt the finality of prior judgments and therefore tend to undermine confidence in the integrity of judicial procedures and delay and impair the orderly administration of justice. See *State v. Hershberger*, 2014 WI App 86, ¶8, 356 Wis. 2d 220, 853 N.W.2d 586, review denied, 2015 WI 1, 360 Wis. 2d 173, 857 N.W.2d 617. It is not enough to show that an order or judgment was erroneous; a successful collateral attack requires the party to demonstrate that the order is void, it was procured by fraud, or there was no meaningful opportunity for review. *Id.*, ¶¶9-10, 12.

There is no merit to any contention that the October 16, 2012 order is susceptible to collateral attack. When a court has subject matter jurisdiction and personal jurisdiction over the party, "the fact that an order or judgment is erroneously or improvidently rendered does not justify a person in failing to abide by its terms." *Id.* (quoting *State v. Campbell*, 2006 WI 99, ¶49, 294 Wis. 2d 100, 718 N.W.2d 649). The Milwaukee County Circuit Court has plenary power (not to mention exclusive jurisdiction of the guardianship proceedings under WIS. STAT. §§ 54.30 and 54.68); its jurisdiction is not limited to probate matters, contrary to Bach's

argument. See *Amy Z. v. Jon T.*, 2004 WI App 73, ¶6 & n.5, 272 Wis. 2d 662, 679 N.W.2d 903. Moreover, the circuit court had authority to sanction Bach for filing what it determined was repeated frivolous litigation. See *Puchner v. Hepperla*, 2001 WI App 50, ¶7, 241 Wis. 2d 545, 625 N.W.2d 609 (per curiam); see also *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991) (“A court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant’s access to the court.”). We perceive no basis to conclude the October 16, 2012 order was procured by fraud, and Bach’s bare assertion that she “no longer trusted the state court” does not establish the absence of a meaningful opportunity to appeal that order.

Because there is no arguable merit to any of Bach’s claims regarding the validity of the October 16, 2012 order, we conclude Bach is not entitled to a waiver of transcript fees. Further, we observe that Bach has now been sanctioned in both state and federal court for her repeated misuse of the judicial system. See *Bach VI*, ¶¶18-19. Bach is a licensed attorney in this state, and we admonish her that future refusals to comply with the October 16, 2012 order (or any other court order) may result in sanctions, including dismissal of the appeal, imposition of costs, or other penalties. See WIS. STAT. RULE 809.83(2).

IT IS ORDERED that the judgment of the circuit court is summarily affirmed.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*