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**DISTRICT I/II**

August 16, 2017

To:

Hon. Dennis Flynn  
Reserve Judge

John Barrett  
Clerk of Circuit Court  
Room G-8  
901 N. 9th St.  
Milwaukee, WI 53233

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Martin B. Hying  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP137	In re the marriage of: Kimberly C. Hying v. Martin B. Hying (L.C. # 2006FA6891)
2016AP1446	In re the marriage of: Kimberly C. Niemi, f/k/a Hying v. Martin B. Hying (L.C. # 2006FA6891)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

In these consolidated appeals, Martin Hying, pro se, appeals two orders stemming from post-divorce remedial contempt rulings, matters he styles as garnishment proceedings. Based on our review of the briefs and the record, we conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We affirm. We also find the appeals

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

frivolous and remand the matter to the circuit court for a determination of reasonable costs, fees, and attorneys' fees. *See* WIS. STAT. RULE 809.25(3)(c).

Hying and Kimberly Hying, n/k/a Kimberly Niemi, divorced in November 2008. Hying since has plied the courts with objections and challenges to and appeals of many of the rulings. Orders issued by Judge Frederick Rosa dated June 24, 2014 and December 23, 2014 found Hying in contempt for failing to pay attorney's fees to the guardian ad litem (GAL) and Niemi's attorney and sentenced him to six months in the House of Corrections with Huber privileges, the penalty stayed until purge conditions were determined at a later hearing before a different judge.

In August 2015, Reserve Judge Dennis Flynn found that Hying intentionally failed to purge the contempt despite having the ability to pay it. The court vacated the stay of the six-month sentence, set purge conditions to include lump sum payments within two weeks to the GAL and Zimmermann Law Offices, S.C., (Zimmermann), the firm representing Niemi, and, after finding Hying financially able, ordered him to pay \$700 per month through a wage assignment as an ongoing purge until his GAL and Zimmermann indebtedness was paid in full.

Hying now appeals a January 7, 2016 order denying his requests to vacate the fees he owed Zimmermann and the GAL; to vacate all past judgments; for sanctions against Attorney Karen Zimmermann; and for reconsideration of a previously submitted parenting plan. He also appeals a June 21, 2016 order requiring him to continue to pay the ongoing purge and modifying the January 7, 2016 order to the extent that payments now were to be made directly to Zimmermann rather than to the Clerk of Court. As Hying has never appealed the finding that he has the ability to pay \$700 a month, that issue is not before us.

Hying's appellate arguments all flow from the faulty premise that a WIS. STAT. ch. 812 garnishment action underlies these appeals. Chapter 812 relates to actions creditors take to try to collect a debt, however. There is no civil judgment against Hying upon which to execute an earnings garnishment. While his purge condition to avoid incarceration was to enter a voluntary wage assignment with his employer, the matter remains a family law case and contempt proceeding under WIS. STAT. chs. 767 and 785.

We review the circuit court's use of its contempt power for an erroneous exercise of discretion. *State ex rel. N.A. v. G.S.*, 156 Wis. 2d 338, 341, 456 N.W.2d 867 (Ct. App. 1990). Judge Rosa's June and December 2014 orders found Hying in contempt for willfully failing to pay attorneys' fees he was able to pay and imposed and stayed a six-month sentence in the House of Corrections. Judge Flynn was within his authority to impose a remedial sanction to terminate the continuing contempt and ensure compliance with Judge Rosa's orders. *See* WIS. STAT. § 785.04(1)(d); *see also Christensen v. Sullivan*, 2009 WI 87, ¶55, 320 Wis. 2d 76, 768 N.W.2d 798. Further, the purge provision clearly spelled out what Hying had to do to be purged and, having been found able to pay, it was within his power to purge the sanction through compliance. *See State ex rel. N.A.*, 156 Wis. 2d at 342. Neither courts' findings are clearly erroneous. *See State v. Rose*, 171 Wis. 2d 617, 623, 492 N.W.2d 350 (Ct. App. 1992). Discretion was properly exercised in regard to the court's use of its contempt power.

Contending that Hyings' consolidated appeals were frivolous, Niemi moves for costs, fees, and attorneys' fees under WIS. STAT. RULE 809.25(3)(c). To find his appeal frivolous, we must find that Hying filed, used, or continued it in bad faith or to harass, RULE 809.25(3)(c)1., and/or knew or should have known it had no 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. To award costs and fees, we must conclude that the entire appeal is frivolous. *Howell v. Denomie*, 2005 WI 81, ¶9, 282 Wis. 2d 130, 698 N.W.2d 621. Whether an appeal is frivolous is a question of law. *Id.*

We conclude the appeals are wholly frivolous. Hying presents them as a challenge to a garnishment proceeding when, as a knowledgeable pro se litigator, he knew full well that the matter stemmed from family court contempt actions. Sanctions are imposed in frivolous actions to “deter litigants and attorneys from commencing or continuing frivolous actions and to punish those who do so,” *Holz v. Busy Bees Contr., Inc.*, 223 Wis. 2d 598, 609, 589 N.W.2d 633 (Ct. App. 1998) (citation omitted), and to compensate those forced to defend frivolous litigation, *Jandrt v. Jerome Foods, Inc.*, 227 Wis. 2d 531, 577, 597 N.W.2d 744 (1999). Hying’s pro se status does not shield him from responsibility for the unnecessary and burdensome financial obligations foisted upon Niemi by his relentless, baseless, legal maneuvers. *See Holz*, 223 Wis. 2d at 609.<sup>2</sup> We remand the matter to the Milwaukee County Circuit Court for a

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<sup>2</sup> We also agree with Niemi that Hying’s Statement of Facts and Statement of the Case are devoid of references, and note that Hying’s briefs are not double-spaced, in violation of WIS. STAT. RULES 809.19(1)(d) and 809.81(4). Hying is put on notice that we have the authority to impose sanctions for a party’s failure to comply with the Rules of Appellate Procedure, *see* WIS. STAT. RULE 809.83(2), although we decline to exercise it at this time.

determination of reasonable costs, fees, and attorneys' fees occasioned by these two appeals. *See Minniecheske v. Griesbach*, 161 Wis. 2d 743, 746-47, 468 N.W.2d 760 (Ct. App. 1991).<sup>3</sup>

Finally, we deny Hying's motion to dismiss the GAL with sanctions for its failure to timely file either a response brief or a statement citing the reason(s) for not participating in the appeals. *See* WIS. STAT. RULE 809.19(8m). The tardy filing does not warrant dismissal or sanctions, as the issues raised on appeal do not involve the parties' child.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the motion to declare the appeals frivolous and for sanctions is granted and the matter is remanded to the circuit court for a determination of Niemi's reasonable costs, fees, and attorneys' fees.

IT IS FURTHER ORDERED that the motion for sanctions for violations of the Rules of Appellate Procedure is denied.

IT IS FURTHER ORDERED that the motion to dismiss the GAL with sanctions is denied.

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<sup>3</sup> Niemi also contends that these appeals illustrate Hying's bad-faith effort to avoid paying the debts he owes and asks that we limit his ability to file further actions relating to her in this or the circuit court until the costs, fees, and reasonable attorney's fees he currently owes her are paid in full. *See Puchner v. Hepperla*, 2001 WI App 50, ¶6, 241 Wis. 2d 545, 625 N.W.2d 609. We decline to do so, but invite the circuit court to address that matter on remand should it so desire.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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