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**DISTRICT I**

May 24, 2022

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

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2021AP628

Kohner Mann & Kailas SC v. Metallurgical Associates, Inc.  
(L.C. # 2015CV6012)

Before Donald, P.J., Dugan and White, JJ.

**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).**

Robert J. Hutchinson, *pro se*, appeals from circuit court orders awarding attorneys' fees to the law firm of Kohner, Mann & Kailas, S.C. ("KMK") and awarding costs and fees to North River Insurance Company ("North River") in connection with its amended motion for a protective order and to quash the subpoenas served on one of its officers. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary

disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> We summarily affirm. In addition, because we conclude that Hutchinson continues to file frivolous motions and appeals, we grant KMK and North River’s motion for sanctions, which was previously held in abeyance pending resolution of this appeal.

This case has a long procedural history which need not be repeated in its entirety. Suffice it to say, that in March 2013, Hutchinson and his wife retained KMK to represent them and their company, Metallurgical Associates, Inc. (“MAI”), in a contract dispute with a former business partner. KMK ultimately withdrew as the Hutchinsons’ counsel, after KMK expressed concern about the Hutchinsons’ ethical behavior while they were clients. When KMK withdrew as Hutchinsons’ counsel, it had incurred \$119,424.08 in legal services that the Hutchinsons had not paid.

In 2015, KMK filed a lawsuit against the Hutchinsons and MAI to recover the unpaid attorneys’ fees. The Hutchinsons and MAI filed a counterclaim against KMK, alleging that KMK performed negligently, but MAI later withdrew from the counterclaim. In February 2016, the trial court dismissed the counterclaim without prejudice, and the Hutchinsons filed an amended counterclaim against KMK. Subsequently, North River, which provided professional liability insurance to KMK, was made a party to the case.

Ultimately, KMK moved for summary judgment, seeking dismissal of the Hutchinsons’ counterclaim and judgment against the Hutchinsons for the legal expenses incurred when it represented the Hutchinsons. The circuit court granted KMK’s motion.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Following numerous filings by Robert Hutchinson, KMK ultimately moved for sanctions against him arguing that he continued to engage in a pattern of inappropriate litigation. The circuit court agreed and entered an order requiring Hutchinson<sup>2</sup> to pay a \$5,000 sanction, and to obtain leave of the court prior to filing any additional motions against KMK stemming from KMK's representation of Hutchinson or MAI.

Among Hutchinson's multiple appeals stemming from KMK's initial lawsuit is the appeal that resulted in this court's opinion and order issued on December 29, 2019, concluding that the appeal was frivolous. We also granted KMK's motion for costs and reasonable attorneys' fees incurred in the appeal and remanded the matter to the circuit court for a determination of the proper amount thereof.

Following that opinion and order, Hutchinson moved this court for reconsideration, a motion this court denied. He then filed a petition for review with the Wisconsin Supreme Court. The petition was denied.

When the matter finally returned to the circuit court, KMK filed a fee petition, which included information setting forth the hourly rate billed, the number of hours billed, and a description of the time billed related solely to the appeal. In response, Hutchinson attempted to conduct discovery on North River on wholly unrelated issues. He also filed a motion for declaratory judgment in violation of the circuit court's sanctions order prohibiting Hutchinson from making further filings. As a result, North River moved for a protective order and to quash

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<sup>2</sup> At this point in the proceedings, Robert Hutchinson was the primary litigant. Accordingly, we refer to Robert Hutchinson as Hutchinson.

the subpoenas Hutchinson served on Juan Trillo, the Vice President and Corporate Counsel for North River's parent company. North River also filed its attorneys' fees petition, which was supported by an affidavit describing the number of hours worked, the hourly rate billed, and an account of the time billed related to responding to Hutchinson's frivolous attempts at discovery.

Following a hearing, the circuit court granted North River's amended motion for a protective order, quashed the subpoenas issued to Trillo, and awarded North River attorneys' fees and costs. The circuit court also granted KMK's fee petition and struck Hutchinson's motion for declaratory relief. In rendering its decisions, the circuit court admonished Hutchinson for continuing to make filings in violation of the circuit court order requiring him to obtain leave of the court prior to filing any additional motions. The circuit court also encouraged Hutchinson to accept that "this case is over [and] [t]here is simply nothing else to litigate."

Clearly Hutchison did not heed the circuit court's advice, as this appeal follows.

On appeal, Hutchinson raises many issues that have been previously litigated and this court will not address them. Simply put, the only issues before this court are: (1) whether the circuit court properly exercised its discretion in its order determining attorneys' fees and costs on remand from this court; and (2) whether the circuit court properly exercised its discretion when it awarded North River its fees and costs in connection with its amended motion for protective order and to quash the subpoenas served on Trillo.

This court applies an erroneous exercise of discretion standard when reviewing the circuit court's determination regarding the reasonableness of attorney's fees and whether to impose sanctions. See *Bettendorf v. Microsoft Corp.*, 2010 WI App 13, ¶¶15-16, 323 Wis. 2d 137, 779 N.W.2d 34.

We are satisfied that the circuit court properly exercised its discretion in its determination of KMK's attorneys' fees. The circuit court reviewed the submissions provided by KMK and employed a logical rationale based on the appropriate legal principles and facts of record. The circuit court addressed the length and complexity of the case, as well as Hutchinson's inability to accept the finality of his case. Moreover, Hutchinson did not contest KMK's submissions.

The circuit court also properly exercised its discretion in awarding North River's motion for fees and costs. Again, Hutchinson did not contest the reasonableness or necessity of the fees sought by North River. The circuit court noted that Hutchinson was simply attempting to relitigate settled matters. The circuit court considered the appropriate legal principles and properly exercised its discretion.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that KMK's and North River's motion for sanctions, which this court held in abeyance per its September 9, 2021 order, is granted.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*