COURT OF APPEALS
DECISION
DATED AND FILED

November 25, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0952

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN RE THE FINDING OF CONTEMPT
IN RE THE MARRIAGE OF:

RENAE SLOAN,

PETITIONER-RESPONDENT,

V.

ROBERT PATNODE, JR.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: PATRICK C. HAUGHNEY, Judge. *Affirmed*.

SNYDER, P.J. Robert Patnode, Jr., appeals a circuit court order denying his motion to vacate an order finding him in contempt for failure to pay child support, health care expenses and state and federal joint tax liabilities. Robert contends that the contempt order is invalid because the court did not have jurisdiction to enter a finding of contempt where no child support obligation

existed. We conclude that Robert's challenge of the contempt order is premature, and, thus, we affirm the circuit court.

Robert Patnode and Renae Sloan were divorced on March 3, 1992, in Waukesha county. Although they were granted joint legal custody of their children, Morgan Curtis Patnode and Sloan James Patnode, Renae was given physical placement of the children. The divorce judgment ordered Robert to pay Renae $750 per month for child support and to be responsible for one-half of the children's uninsured medical expenses and for all tax liabilities resulting from an audit of the parties' tax returns from 1988 to 1991.

One year later, the circuit court amended its custody and child support order by transferring the placement of Morgan from Renae's residence in Colorado to Robert's residence in Hartland, Wisconsin. The parties' other son, Sloan, was left in his mother's custody. The court suspended Robert's child support obligation; however, all other obligations directed by the court's original judgment of divorce continued.

In the summer of 1994, Morgan returned to Colorado to live with Renae who claimed that Robert had refused to accept responsibility for him.[1] As a result, on December 27, 1994, Renae filed a contempt petition and the court then issued an order to show cause for contempt due to Robert's failure to make payments to Renae. At a March 7, 1995 hearing, the court ordered a legal custody and physical placement investigation by the Waukesha County Family Court

[1] Robert had requested an order to show cause in March 1994 in an effort to transfer Sloan to his residence in Wisconsin. Robert's request resulted in a custody placement study but yielded no agreement between the parties. In August 1994, Robert filed a CHIPS petition for his son Morgan because he no longer had "control" over Morgan. Morgan then returned to live with his mother.

Counseling Services. A family court counselor subsequently met with the parties and made arrangements for Sloan to visit his father beginning in the summer of 1995.

On November 11, 1996, a contempt hearing was held in which the court ordered Robert, who appeared pro se, to pay $38,838 for child support, tax liabilities and uninsured medical expenses for the children, plus a $1000 contribution towards Renae's attorney's fees for bringing the order to show cause.[2] After several months had passed and Robert had failed to pay arrearages, Renae filed a second contempt petition with the court on April 14, 1997, requesting that the court impose a sanction of incarceration against Robert. The court ordered Robert to show cause for his contempt.

After the case was reassigned twice,[3] on August 1, 1997, Robert moved the court to vacate the December 23, 1996 order to pay arrearages because the order was "without legal basis in that no order exists in this Court file creating the obligations and responsibilities for which the respondent was found in contempt for failure to fulfill." The circuit court denied Robert's motion on January 30, 1998, finding that

[2] The court ruled that Robert was in contempt of court for "failing to make the court-ordered child support payments from December 12, 1994, through November 15, 1996, resulting in an arrearage of $14,730 plus statutory interest"; failing to pay the uninsured health care expenses for the children through June 1, 1996, in the amount of $7394; and "failing to pay his obligation to the Internal Revenue Service and the Wisconsin Department of Revenue for joint tax liabilities assigned to him through the Judgment of Divorce resulting in payments, penalties, interest and attorneys fees paid by and due the petitioner in the amount of $16,606."

[3] Due to a conflict of interest between Robert's newly retained counsel and Circuit Court Judge Clair H. Voss, the case was reassigned to Judge Patrick L. Snyder on May 5, 1997. Robert then requested a substitute judge, and on May 19, 1997, Judge Patrick C. Haughney was assigned to this matter.

> the action of attacking the underlying judgment after a motion for contempt was filed and after it was set to be heard in May of 1995 does not constitute a reasonable period of time [within § 806.07, STATS.].... [T]his motion's attempt to vacate is a disguised attempt to circumvent the court's orders without going through the appellate process.

Robert now appeals.

In denying Robert's motion to vacate, the circuit court relied upon § 806.07, STATS., which authorizes a court to "relieve a party … from a judgment, order or stipulation" where the "judgment is void." Section 806.07(1)(d). A party must make its § 806.07 motion within a reasonable time. *See* § 806.07(2). It is established law, however, that the "reasonable time" restriction under § 806.07 does not apply to motions to vacate orders that are void. *See* ***Neylan v. Vorwald***, 124 Wis.2d 85, 100, 368 N.W.2d 648, 656 (1985). Here, Robert contends that the December 23, 1996 contempt order is void. Accordingly, he argues that the circuit court improperly relied upon § 806.07 to preclude him from contesting the contempt order. However, we nonetheless agree with the circuit court that Robert's motion to vacate must be denied.

The problem is that Robert's challenge of the order is premature. After holding a § 785.03(1), STATS., contempt hearing on November 11, 1996, the circuit court made findings of contempt and set purge conditions. The December 23, 1996 order, drafted by Renae's counsel, set forth the child support, tax liability and uninsured medical expense contempt findings and a payment schedule to purge the arrearages. However, the order did not include sanctions for failure to meet those purge conditions. Renae now seeks a court-ordered sanction of incarceration against Robert because of his failure to comply with the purge conditions.

We conclude that in order to determine whether a sanction of incarceration should be imposed, the circuit court must now hold another hearing. *See* § 785.03(1), STATS. If sanctions are now ordered, the court must provide purge conditions allowing Robert to end his contempt. *See* ***State ex rel. Larsen v. Larsen***, 159 Wis.2d 672, 675-76, 465 N.W.2d 225, 227 (Ct. App. 1990). If Robert fails to meet these conditions, then the sanctions will be imposed. If the sanctions include incarceration, Robert may request and the trial court must grant "a meaningful hearing." *See* ***State ex rel. V.J.H. v. C.A.B.***, 163 Wis.2d 833, 844, 472 N.W.2d 839, 843 (Ct. App. 1991). At this hearing Robert is entitled to fully contest the validity of the contempt order, including the issue he intends to resolve by this appeal.

Here, Robert appeals an order denying his motion to vacate. This order is nonfinal because it fails to "dispose[] of the entire matter in litigation as to one or more of the parties." *See* § 808.03(1), STATS. As previously indicated, the circuit court will conduct further hearings to determine whether sanctions should be imposed on Robert. An appeal as of right can only be taken from a final order or judgment. *See* ***id.*** Because the order that Robert appeals is nonfinal, *see* ***Haeuser v. Haeuser***, 200 Wis.2d 750, 757 n.3, 548 N.W.2d 535, 539 (Ct. App. 1996) (noting that an appeal of a contempt order was dismissed as premature because it was taken from a nonfinal order in which the issue of contempt was still pending), we conclude that his challenge is premature and affirm the circuit court's order.

By the Court.—Order affirmed.

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