

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 22, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-3319

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE PATERNITY OF ATHENA H.:

STATE OF WISCONSIN AND

PETITIONER-RESPONDENT,

JEANA DAKOURAS,

CO-PETITIONER-RESPONDENT,

v.

MICHAEL V.H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
LEE S. DREYFUS, JR., Judge. *Affirmed.*

¶1 SNYDER, J.¹ Michael V.H. appeals pro se from a remedial contempt order for failure to pay child support as the biological father of Athena H. Michael asks that this court reverse the remedial contempt order and remand the matter to the circuit court for further consideration because he was denied his statutory right to a de novo review of a family court commissioner's order pursuant to WIS. STAT. § 767.13. We deny Michael's request.

¶2 The underlying facts are undisputed. On August 1, 1996, Michael was ordered to pay child support at the rate of 17% of his gross income, with a minimum payment of \$68 biweekly. On September 8, 1999, the State filed a contempt motion contending that Michael failed to comply with the support order. A contempt hearing occurred on October 19, 1999, before Assistant Family Court Commissioner Thomas Pieper.²

¶3 Michael was found to be in contempt for failing to pay child support as ordered. He was committed to jail for sixty days and the jail imposition was stayed pending his compliance with purge conditions. The remedial contempt order was signed by Commissioner Pieper on November 9, 1999, ratified and confirmed by Judge Lee S. Dreyfus, Jr. on November 23, 1999, and filed as the order of the family court on November 29, 1999.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (1999-2000). All statutory references are to the 1999-2000 version unless otherwise noted.

² The order to show cause set the hearing for October 19, 1999, while the remedial contempt order indicated that the hearing occurred on October 18, 1999. While we are concerned about the discrepancy, we are satisfied that the hearing occurred when scheduled by the court commissioner.

¶4 The State alleged that Michael had failed to comply with the November 29, 1999 purge conditions and requested imposition of the sanctions at a hearing before the circuit court on October 24, 2000. The court agreed with the State and ordered that Michael pay \$8495.63 in arrearages and interest by November 30, 2000, or report to jail to serve the sixty-day jail sanction.

¶5 On October 31, 2000, Michael filed a motion challenging the validity of the November 29, 1999 remedial contempt order. Specifically, Michael contended that he was not served with a copy of the November 29, 1999 remedial contempt order until eleven days after it was ratified and confirmed by the circuit court. Therefore, he suggests that the order was not valid because he was denied an opportunity to timely move for a WIS. STAT. § 767.13(6) circuit court review of the court commissioner's order. Michael's reliance on § 767.13(6) is misplaced.

¶6 Michael did not appeal from the August 1, 1996 support order. That was a final order appealable as of right. WIS. STAT. § 808.03(1). Nor did he appeal from the November 29, 1999 remedial contempt order as approved and ratified by the circuit court, finding him in contempt of court and setting purge conditions. An order finding one in contempt of court is a final order appealable as of right. *Karel v. Conlan*, 155 Wis. 221, 224-25, 144 N.W. 266 (1913), *overruled in part by Milwaukee Corrugating Co. v. Flagge*, 170 Wis. 492, 175 N.W. 777 (1920). Failure to timely appeal from these orders deprives us of jurisdiction to review them. *Dobberfuhr v. Madison White Trucks, Inc.*, 118 Wis. 2d 404, 406, 347 N.W.2d 904 (Ct. App. 1984). Michael's appeal brings before us only the November 29, 2000 purge order.

¶7 However, we need not address the issue raised in Michael's October 31, 2000 motion and presented as the issue in this appeal because he

abandoned that issue. On November 29, 2000, Michael appeared before the circuit court represented by counsel and entered into a stipulation that revised the purge conditions that were initially imposed in the November 29, 1999 order, and then revised in the October 24, 2000 order. Michael and his counsel did not raise or argue the October 31, 2000 motion at the November 29, 2000 hearing. An issue raised in the trial court but not briefed or argued is deemed abandoned. *Reiman Assocs., Inc. v. R/A Adver., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981).

¶8 In addition, Michael agreed to accept the revised purge conditions at the November 29, 2000 hearing that were based upon the remedial contempt order that he had challenged as invalid in his October 31, 2000 motion. In doing so, he made a deliberate choice to withdraw his challenge to the validity of the remedial contempt order upon which the purge conditions were based. A deliberate choice of strategy is binding upon a defendant and a claim of error based on that choice will not be considered by this court even if the choice may have backfired. *State v. McDonald*, 50 Wis. 2d 534, 538, 184 N.W.2d 886 (1971). Michael does not otherwise appeal from the November 29, 2000 purge order and we affirm that order.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

