COURT OF APPEALS
DECISION
DATED AND FILED

August 21, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP44 **Cir. Ct. No. 2003GN373**

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

IN THE MATTER OF THE GUARDIANSHIP OF ELEANORE S.:

ST. FRANCIS HOSPITAL,

PETITIONER-RESPONDENT,

V.

JAMES S.,

APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: MICHAEL J. DWYER, Judge. *Affirmed*.

Before Curley, P.J., Wedemeyer and Fine, JJ.

¶1 CURLEY, P.J. James S. appeals the order denying his motion seeking relief from the final stipulation and for a declaratory judgment. He also

appeals the trial court order assessing him $8409 for attorneys' fees after finding that he violated the pleading requirements of WIS. STAT. § 802.05 (2005-06).[1] Because James S.'s motions were filed after he was ordered by the trial court to file nothing further, as he was not a party to the underlying guardianship case and the case was dismissed by stipulation, and because this court advised James S. that the matter was moot in a previous appeal, the trial court properly exercised its discretion in denying his motions and ordering James S. to pay attorneys' fees of $8409 for his violation of § 802.05.[2] Consequently, we affirm.

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

WISCONSIN STAT. § 802.05 was amended pursuant to S. CT. ORDER 03-06, 2005 WI 38 (eff. July 1, 2005). St. Francis argues that the amended version of § 802.05 should not be applied retroactively to this action. The Wisconsin Supreme Court recently addressed this issue in ***Trinity Petroleum, Inc. v. Scott Oil Co.***, 2007 WI 88, ___ Wis. 2d ___, 735 N.W.2d 1, and held that the amended version of § 802.05 is a procedural statute and, therefore, has retroactive effect *unless* it "diminishes a contract, disturbs vested rights, or imposes an unreasonable burden on the party charged with complying with the new rule's requirements." ***Trinity Petroleum, Inc.***, 2007 WI 88, ¶7. The only aforementioned exception that potentially applies based on the circumstances presented would be whether the amended version imposes an unreasonable burden on St. Francis to comply with its requirements. However, this determination need not be made because regardless of whether we apply § 802.05 (2003-04) or the amended version, our decision is the same. *Compare* § 802.05(1)(a) (2003-04) *with* § 802.05(2)(a)-(b) (2005-06) (both include language that the pleading motion or other paper is not to be used/presented "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation"); *see also* ***Trinity Petroleum, Inc.***, 735 N.W.2d 1, ¶47 (noting that the same procedural purposes underlie both the former and the amended version of § 802.05). Furthermore, the safe-harbor notice provisions in amended § 802.05 are not at issue in this matter as James S. received numerous warnings that his conduct was sanctionable throughout the course of the proceedings.

[2] The dissent takes issue with our statement that James S. "was not a party to the underlying guardianship case." Dissent, ¶15. Specifically, the dissent relies on the fact that James S. was an "interested person." Interested person status, however, does not confer upon an individual the same rights as those that are conferred upon a party to an action. *See* ***Coston v. Joseph P.***, 222 Wis. 2d 1, 12-13, 586 N.W.2d 52 (Ct. App. 1998) (noting that "[n]either the guardianship statutes nor the case law, however, provides interested persons with *unlimited rights* to participate") (emphasis added). This is especially true in situations such as this where the *parties* stipulated to dismiss the case.

I. BACKGROUND.

¶2 The genesis of this litigation was St. Francis Hospital's (St. Francis) commencing a guardianship proceeding on July 2, 2003, seeking to have James S.'s mother, Eleanore, protectively placed.[3] Eleanore was a patient at the hospital at the time that the guardianship was filed, and, as a result of a medical examination, it was feared she was unable to care for herself. James S. opposed the guardianship proceeding and attempted to intervene. The trial court appointed a guardian *ad litem* for Eleanore, as well as adversary counsel. Despite James S.'s inability to intervene in the guardianship proceeding, he filed numerous motions with the court. Eventually the trial court dismissed the petition for guardianship

[3] St. Francis has previously claimed, as it does here, that the petition was filed in the circuit court on July 1, 2003, which is also the date that Eleanore was transferred to St. Francis's nursing home. This is an important fact because if the petition was not filed until after Eleanore was moved to the nursing home, such a move would have been contrary to the statutory scheme set forth in WIS. STAT. § 50.06 (2001-02). Despite its insistence that the petition was filed on July 1, the petition itself was file-stamped on July 2, 2003. Although St. Francis claims that the petition was filed on July 1, 2003, it has never presented any evidence, save its bald assertion, that July 1 was the actual filing date. Thus, we consider July 2, 2003, as the date that the petition for guardianship was filed. We, of course, have no way of knowing on what day the petition was actually presented to the trial court. However, to fail to advise this court that the only documentation in the record reflects a different filing date from the one stated in St. Francis's brief is misleading. Even if the attorneys representing St. Francis sincerely believed that the date of July 2, 2003, was inaccurate, they were under an obligation to alert us to the discrepancy. *See* SCR 20:3.3 (2005-06): "Candor toward the tribunal." As a result, we are assessing the attorneys for St. Francis costs of $150 each.

However, the attorneys' infraction pales in comparison to the conduct of James S. in this proceeding. Apparently James S. believes litigation is a blood sport, and in the course of it, he is free to say or write whatever he wishes. James S.'s conduct has been outrageous. He has engaged in crude *ad hominem* attacks on the attorneys representing St. Francis. His vitriolic attacks have also spilled over into his comments about the trial courts, as he has written vicious and potentially libelous letters about the trial judges. Were we not affirming costs of over $8000 in this opinion, we may have considered remanding the matter for further proceedings dealing with his conduct. We want to alert James S. that in the future, such conduct will not be tolerated. We trust that James S. will comport himself in a more professional manner in future legal proceedings.

on April 27, 2004, based upon a stipulation of the parties. Prior to its April 27, 2004 dismissal of the guardianship petition, the trial court entered an order reiterating an October 30, 2003 order that James S. was not a proper party in the matter of the petition of St. Francis for permanent guardianship of Eleanore because, among other things: "There is no legal authority in Wis. Stat. § 880.33 which gives [James] the right to file motions or participate in the [guardianship] trial…." The trial court also ordered James S. not to file any other motions in the matter, warning him that the failure to observe this order could subject him to sanctions. Several appeals have been started by him in this and related cases; all, save one, have been unsuccessful. In one of them, he was told by this court that the matter was moot.

¶3 Undaunted, James S. filed additional motions seeking relief from the stipulation and later filed a request for a declaratory judgment with a successor trial judge. On August 12, 2005, over a year after the case was dismissed by stipulation, the trial court denied his motions and assessed costs against James S. of $8409 after finding that he violated WIS. STAT. § 802.05.[4] The trial court's order stated that the costs would be stayed unless James S. appealed the denial of his motion.[5] On January 11, 2006, the trial court was advised that James S. had

[4] The trial court asked the attorneys to submit affidavits reflecting the hours and charges generated by James S.'s motions.

[5] Upon assessing costs against James S., the trial court could have declined to give James S. the benefit of a stay by ordering that payment be made immediately. By allowing the award of costs to be stayed pending the filing of an appeal, the dissent contends that the trial court acted as a gatekeeper for this court. Dissent, ¶14. We agree that trial courts should not act as our gatekeepers, and, had the trial court not attempted to give James S. the opportunity to avoid an order for costs, the dissent would not be in a position to make this argument. Notwithstanding, we conclude that the stay did not have the effect of requiring James S. to "purchase" access to this court, Dissent, ¶14, as his decision to file this appeal resulted in nothing more than an order for costs that the trial court had already made but stayed.

filed this appeal, and on January 12, 2006, the trial court signed an order requiring him to pay $8409 to St. Francis's attorneys.

¶4 At the time that the trial court assessed costs against James S., these findings were made:

> I make a finding that there is an order in this case by Judge Brennan that's well over a year old that precludes that which was filed in this court. I reject as legitimate the explanation as to why Mr. S[.] did not feel that this motion was a violation of that order, that reason being that he was ordered by Judge Brennan to further participate in the guardianship, which somehow overruled that order precluding filings. And in fact Mr. S[.] honored the order, as he explained to the Court of Appeals, which is why he made his motions there rather than in the trial court.
>
> And I conclude that it is a reasonable finding of fact that the reason that Mr. S[.] felt free to bring this motion before this Court was that he saw a chance to get another kick at the cat, and that there was a degree of forum shopping going on, and that Mr. S[.] knew or should have known that [] forum shopping is improper.
>
> ….
>
> … Mr. S[.] is engaged in a crusade about this 50.06 issue. He has concerns about what he considers to be lies, false affidavits, fraud visited upon the court, all of that. But he has missed the point. The point is that this case is about a guardianship and a protective placement, which was dismissed, which is what he wanted to have happen. And that he has sought to litigate other issues in the context of this guardianship is not reasonable based in law or equity, and he has been told that at least three times by Judge Brennan, and by the Court of Appeals twice, and that there is no – and that the reasons given today are not reasonably supported in law, nor do they even attempt to cite some sort of extension of the law.
>
> Those are basically the same findings that are required under 802.05 for someone who must file, who files documents. But I do find that these motions are not reasonable based in law.

¶5 In his brief to the trial court, James S. took the position that he had standing in the case because he was his mother's agent, due to his once being named power of attorney for health care for her, and he submits that the trial court never had jurisdiction to hear the guardianship because it was commenced improperly. Among his other claims, he argues that his mother's adversary counsel was ineffective for failing to challenge the trial court's competency to act in the matter due to its being improperly commenced, and he sought a declaratory judgment, claiming that WIS. STAT. § 50.06 (2001-02) bestows certain rights on him, including his right to sue for violation of the statute, because, as Eleanore's adult son, under the statute he is one of a class of people who could have consented to Eleanore S.'s admission to the nursing home.[6]

¶6 Following the filing of the appeal, other matters transpired. The trial court attempted to hold a hearing on the amount of fees owed to St. Francis's attorneys in a contempt proceeding. James S. failed to appear and a bench warrant was issued for his arrest. Eventually, the trial court found James S. in contempt and entered a judgment against him for $8474.50, payable to St. Francis for its attorneys' fees and costs. That matter is the subject of a different appeal.

II. ANALYSIS.

¶7 James S. makes several arguments. First, he complains that the trial court failed to make sufficient findings to sanction him to pay $8409 in attorneys' fees to St. Francis's attorneys, and he contends that the sanctions were

[6] In his brief to the trial court, James S. asked the court to declare that Eleanore was a protectively-placed person under WIS. STAT. ch. 55, and that she was entitled to the protections of the Patients Rights Statute.

inappropriate. He also claims that the trial court erred in finding both: that it had jurisdiction to proceed "over a perjured, improperly filed petition for guardianship"; and, in denying his motion for declaratory judgment on the basis that WIS. STAT. § 50.06 (2001-02) does not confer any rights for an individual listed in the statute to redress violations of the statue when a healthcare provider intentionally violates the statute. We refuse to address his arguments because the matter is moot.

¶8 A stipulation was entered on April 27, 2004, dismissing the guardianship. That document concluded the matter. Even before the stipulation was entered, the trial court ordered James S. not to file any additional papers in this case because he was not a proper party. James S. disregarded that order on numerous occasions. Following the dismissal, James S. appealed the trial court's decision, and on September 28, 2004, this court dismissed the appeal as being moot. James S.'s request for reconsideration was also dismissed by this court. James S. then filed a motion in the circuit court seeking to be relieved of the final stipulation and for a declaratory judgment. The successor judge to Judge Brennan denied James S.'s motions on August 12, 2005. This is an appeal of those motions. Thus, James S. has been told by at least two trial court judges that he has no standing to bring any motions in this case and this court has concluded that that matter is moot. A matter is moot if a determination is sought that cannot have a practical effect on an existing controversy. ***State ex rel. Olson v. Litscher***, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. The sought-after guardianship has long since been abandoned and the case dismissed. No motions brought by James S. can have any effect on that controversy as it has been resolved. Consequently, there is no existing controversy. Thus, our resolution of the issues raised by James S. would have no practical effect. *Cf.* ***id.***, ¶3 (an issue is moot

when our resolution thereof would be purely academic and have no practical effect on the ultimate controversy; we need not address such issues). Therefore, we decline to address James S.'s issues raised in his motion.

¶9 We next address the trial court's determination that James S.'s filing of additional motions in this case violated WIS. STAT. § 802.05 and, as a consequence, ordered him to pay St. Francis's attorneys' fees of $8409.

¶10 WISCONSIN STAT. § 802.05(2), in pertinent part, requires:

> **Signing of pleadings, motions, and other papers; representations to court; sanctions.**
>
> ….
>
> **(2)** REPRESENTATIONS TO COURT. By presenting to the court, whether by signing, filing, submitting, or later advocating a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following:
>
> (a) The paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (b) The claims, defenses, and other legal contentions stated in the paper are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

To comply with § 802.05, a person who signs a pleading makes three warranties:

> First, the person who signs a pleading, motion or other paper certifies that the paper was not interposed for any improper purpose. Second, the signer warrants that to his or her best "knowledge, information and belief formed after reasonable inquiry" the paper is "well grounded in fact." Third, the signer also certifies that he or she has conducted a reasonable inquiry and that the paper is warranted by existing law or a good faith argument for a change in it.

Wisconsin Chiropractic Ass'n v. Chiropractic Examining Bd., 2004 WI App 30, ¶13, 269 Wis. 2d 837, 676 N.W.2d 580 (citations omitted); *see also* § 802.05(1)(a). If the trial court finds "that any one of the three requirements set forth under the statute [governing signing of pleadings, motions, and other papers] has been disregarded, it may impose an appropriate sanction on the person signing the pleading or on a represented party or both." ***Wisconsin Chiropractic Ass'n***, 269 Wis. 2d 837, ¶13.

¶11

> When we review the grant or denial of attorney fees under WIS. STAT. § 802.05(1), our standard of review varies depending on the issue presented. The first warranty—that the pleading is not used for an improper purpose—requires factual findings, and we accept factual findings made by the trial court unless they are clearly erroneous.

Id., ¶16 (citing WIS. STAT. § 805.17(2) and ***Stern v. Thompson & Coates, Ltd.***, 185 Wis. 2d 220, 236, 517 N.W.2d 658 (1994)). After reviewing the trial court's factual findings made on August 12, 2005, we are satisfied that the trial court did not erroneously exercise its discretion.[7] Here, the trial court noted that James S. was "forum shopping" by raising his issues before a new judge, and that he filed his most current motion because he was "engaged in a crusade." We agree. James S. has refused to let go of this matter. He has been rebuffed by two levels of courts, yet he continues to file motions. He has violated the statute and filed motions for improper purposes.

[7] Because of our holding, we do not address the remaining parts of WIS. STAT. § 802.05. ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (if a decision on one point disposes of the appeal, then the appellate court need not decide other issues raised).

¶12 Moreover, James S.'s refusal to follow the trial court's order to refrain from filing any further motions in the case because he was not a party to the case is, in itself, a clear violation of the statute. James S.'s conduct in this case has been egregious. He has totally ignored the trial court's rulings regarding his standing and our rulings that the case was moot. The disputed issue in the guardianship was resolved long ago and in a fashion favorably to James S. It is unfair to require St. Francis to continue to pay the cost of their attorneys' fees for James S.'s shenanigans. The lawyers have documented the time they expended in this matter and the trial court found it reasonable. We agree, and affirm the order requiring James S. to pay $8409.

By the Court.—Orders affirmed.

Not recommended for publication in the official reports.

¶13 FINE, J. (*dissenting*). Although I join in the first paragraph of the Majority Opinion's footnote 3, I respectfully dissent from the rest of the opinion for the following reasons.[1]

¶14 First, the Majority approves and affirms the circuit court's attempt to force James S. to not appeal. An appeal to this court is "of right" if the order or judgment from which the appeal is taken is final. WIS. STAT. § 808.03(1) ("A final judgment or a final order of a circuit court may be appealed *as a matter of right* to the court of appeals unless otherwise expressly provided by law.") (emphasis added). The Majority points to nothing that gives the circuit court authority to act as our gatekeeper, and I am aware of nothing. That does not mean, of course, that we are forced to tolerate appeals that are frivolous or filed to harass or intimidate other parties; we are given ample authority to vindicate the proper use of the appellate process. WIS. STAT. RULE 809.25(3). By conditioning enforcement of the $8,409 award on James S.'s not exercising his right to appeal—that is, by *permanently* "staying" enforcement of the eight-thousand-dollar award—the circuit court, in essence, required him to "purchase" his access to this court. In my view, this violates article I, section 9 of the Wisconsin

[1] The rest of footnote 3 in the Majority Opinion apparently references emails dated December 3 and 14, 2006, that James S. sent to one of the lawyers representing St. Francis Hospital. The emails were submitted to us by St. Francis in a supplemental appendix that was received by the clerk of this court on February 12, 2007. The emails are puerile, vile, and insulting, but, obviously, were not before the circuit court when it signed either the September 6, 2005, order, reifying its August 12, 2005, oral decision, or the January 12, 2006, judgment. The emails are, therefore, not material to the issues presented by this appeal.

Constitution: "Every person … ought to obtain justice freely, and without being obligated to purchase it, completely and without denial, promptly and without delay, conformably to the laws." Although it is true that a litigant may have access to the courts restricted to ensure that he or she does not file repetitive frivolous actions, *see* ***Village of Tigerton v. Minniecheske***, 211 Wis. 2d 777, 785, 565 N.W.2d 586, 589–590 (Ct. App. 1997), the circuit court had no lawful power to chill James S.'s right to appeal.

¶15 Second, the Majority opines that James S. "was not a party to the underlying guardianship case," Majority, ¶1, and bases much of its decision on that conclusion. That conclusion, however, is not entirely accurate. As his mother's adult son, James S. was an "interested person" under WIS. STAT. § 880.01(6) (2003–04) ("'Interested person' means any adult relative … of the person to be protected under this subchapter.").[2] We have recognized that interested persons are not strangers to guardianship matters. ***Coston v. Joseph P.***, 222 Wis. 2d 1, 20–22, 586 N.W.2d 52, 60–61 (Ct. App. 1998). Thus, as we explained in ***Carla S. v. Frank B.***, 2001 WI App 97, ¶10, 242 Wis. 2d 605, 613, 626 N.W.2d 330, 334:

> It is therefore within a trial court's discretion to allow an interested person to participate in a WIS. STAT. ch. 880 guardianship proceeding. And that is what the trial court did here. The court could see no reason why Carla [the ward's daughter] should be excluded from the motion hearing. And indeed, there was no reason. If Carla had been prohibited from asserting her view, the argument she wished to make would have been made by no one. *And*

[2] WISCONSIN STAT. § 880.01(6) was repealed effective December 1, 2006, by 2005 Wis. Act 387, § 300. ***Id.*** at § 585. An adult child is now an "interested person" by virtue of WIS. STAT. § 54.01(17) (2005–06) ("'Interested person' means … (a) For purposes of a petition for guardianship … 2. The … adult child of the proposed ward. … (b) For purposes of proceedings subsequent to an order for guardianship … 2. The … adult child of the ward.").

> *that is often true in guardianship proceedings*. Without an interested party's ability to protest a guardian's gift of a ward's property, often there would be no check on a guardian's failure to follow the law.

(Emphasis added.)

¶16 As the Majority points out in footnote 3, it is evident from the Record that James S.'s mother was transferred to the facility unlawfully. *See also* ***Szymczak v. Terrace at St. Francis***, 2006 WI App 3, ¶3, 289 Wis. 2d 110, 114, 709 N.W.2d 103, 105 (Ct. App. 2005) ("As the record now reveals, the proposed temporary guardian, listed in St. Francis Hospital's guardianship papers as 'WE FOUR,' a corporate guardian, authorized Mrs. Szymczak's admission to the nursing home before having any legal authority to do so."). Indeed, at the February 1, 2003, hearing before one of the judges previously involved in this matter, one of the lawyers for St. Francis told the circuit court that "[t]he petition for guardianship was filed on July 2," and in its February 3, 2004, order, the circuit court so found.

¶17 There is nothing in the Record that even hints that James S. was not at all times acting in good faith to vindicate his mother's rights. Indeed, the circuit court so found:

> I do believe that Mr. S[.]'s motivation is a belief that I believe he holds in good faith, that his mother was victimized by a violation of 50.06, and that this victimization is a matter of some frequency and is a big problem, and he's on a crusade, I accept that.

James S.'s increasing levels of frustration over the unlawful transfer of his mother, and the obdurate denial of his right to his mother's records, *see* ***Szymczak***, 2006 WI App 3, ¶¶5, 22–25, 289 Wis. 2d at 115–116, 123–126, 709 N.W.2d at 105,

109–110, are understandable; he sought solatium and St. Francis and its related entities misrepresented and stonewalled.

¶18 The Majority does not analyze the merits of James S.'s motions or the circuit court's resolution of those motions, or whether imposition of frivolous-action costs was warranted, given the need to provide breathing room for the law's development, *see* ***Juneau County v. Courthouse Employees, Local 1312***, 221 Wis. 2d 630, 640, 585 N.W.2d 587, 591 (1998) (recognizing the need for "'ingenuity [and] foresightedness'") (quoted source omitted), and viewed against the background of James S.'s good-faith desire to expand the scope of protections given to those in his mother's situation, as the circuit court found. In this light, I see nothing in the Majority Opinion that persuades me that the circuit court appropriately exercised its discretion. Accordingly, other than the first paragraph of footnote 3 in which I join, I respectfully dissent.