

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2008

David R. Schanker
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.

Appeal No. 2006AP1187-CR

Cir. Ct. No. 2003CF722

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

ROBERT B. CIARPAGLINI,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Racine County:
RICHARD J. KREUL, Judge. *Reversed.*

Before Brown, C.J., Anderson, P.J., and Snyder, J.

¶1 PER CURIAM. The State of Wisconsin has appealed from a trial court order striking a rule of probation (Rule 21) imposed on Robert B. Ciarpaglini in April 2004 by the Wisconsin Department of Corrections (DOC). Because

Ciarpaglini's challenge to the rule was moot when the trial court made its decision, we reverse the order.

¶2 Ciarpaglini was convicted of one count of false swearing in September 2003. Sentence was withheld and he was placed on five years of probation. The written judgment of conviction provided that as a condition of probation, "Attorney Mark Nielsen shall be appointed as the gatekeeper regarding all filings" by Ciarpaglini in a court of law. The trial court explained this provision at sentencing, stating:

In other words to make this very clear, what you have to do is you have to file first with Attorney Nielsen any documents that you wish to file with the court system, whether it's in the civil court area or otherwise. And once you have gotten his approval, then whatever claim you make at that point can certainly go forward because the Court does acknowledge Mr. Nielsen as having the competency to make a fair evaluation on such.

¶3 On April 16, 2004, the DOC's Division of Community Corrections imposed rules of probation on Ciarpaglini as permitted by WIS. STAT. § 973.10(1) (2005-06).¹ Rule 21 provided: "You shall not litigate, participate in, review, consult regarding, or assist with, any legal matters of another person, group, or organization." Ciarpaglini signed the rules, but wrote "signed with objection" next to Rule 21 and several others.²

¹ All references to the Wisconsin Statutes are to the 2005-06 version.

² The record includes pro se motions and correspondence filed by Ciarpaglini in the circuit court in July, August and September 2004 objecting to Rule 21. It is not clear from the record whether those motions were ever addressed in the circuit court. However, it is clear that Ciarpaglini filed these motions before entering the Alternative to Revocation Agreement discussed in footnote four of this order, wherein he agreed not to challenge Rule 21.

¶4 In May 2005, the DOC commenced proceedings to revoke Ciarpaglini's probation, alleging fifteen violations of his rules of probation, some pertaining to Rule 21 and some pertaining to other rules. On December 20, 2005, the Division of Hearings and Appeals (DHA) sustained an administrative law judge's order revoking Ciarpaglini's probation, including the administrative law judge's findings that Ciarpaglini committed five violations of Rule 21 and eight violations of other rules.³

¶5 After these revocation proceedings were commenced, but before the decision to revoke was made, Ciarpaglini filed a motion in the trial court to modify and strike Rule 21. After initially denying the motion, the trial court reconsidered the matter at a hearing held in January 2006. While acknowledging that Ciarpaglini's revocation rendered his challenge to Rule 21 moot, the trial court held that the issue was significant because it pertained to the court's authority under WIS. STAT. § 973.09 and that addressing it was in the interest of justice.

¶6 The trial court subsequently entered an order on March 22, 2006, striking Rule 21 on the ground that it was overly broad and vague, and unconstitutionally barred Ciarpaglini's constitutional rights to free speech and association, or to engage in interstate commerce. It also determined that Rule 21

³ The appendix to the State's brief includes the DHA decision revoking probation, along with the decision of the administrative law judge and the September 1, 2006 order issued by Racine County Circuit Court Judge Emily Mueller affirming the revocation of Ciarpaglini's probation in *State ex rel. Ciarpaglini v. Schwarz*, Racine county circuit court case No. 2006CV830. In an order dated January 17, 2007, this court concluded that these decisions were the proper subject of judicial notice.

improperly nullified the condition imposed by the trial court regarding Attorney Nielsen's gatekeeper function.

¶7 On appeal, the State argues that the trial court lacked statutory authority to decide Ciarpaglini's motion after the DHA revoked his probation. In support of this argument, it relies on WIS. STAT. § 973.09(3)(a), which authorizes trial courts to modify conditions of probation “[p]rior to the expiration of any probation period.” It also contends that this case was moot after the revocation of Ciarpaglini's probation and that circuit courts lack authority to address moot cases. Assuming *arguendo* that circuit courts have authority to address moot cases, it contends that circumstances did not justify doing so here.

¶8 We agree with the State that Ciarpaglini's challenge to Rule 21 was moot after his probation was revoked. Because the issue raised by Ciarpaglini does not fall within any exception to the general rule that moot cases should be dismissed, we conclude that the trial court erroneously exercised its discretion by addressing Ciarpaglini's motion and striking Rule 21. We therefore reverse its order.⁴

¶9 A case is moot when its resolution will have no practical effect on an existing controversy. *City of Racine v. J-T Enters. of Am., Inc.*, 64 Wis. 2d 691, 700, 221 N.W.2d 869 (1974). While courts have discretion to address moot cases, they do so only in exceptional or compelling circumstances. *See id.* at 701-02.

⁴ If this court reverses an order based on one issue, we need not address other alternative grounds for reversing the order. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1993). We therefore need not address whether the trial court lacked statutory authority to modify Rule 21 after the revocation of Ciarpaglini's probation or whether the DOC exceeded its authority by imposing a rule of probation that was inconsistent with or frustrated a condition set by the trial court at sentencing.

Exceptions may be made when a case presents an issue of great public importance; the constitutionality of a statute is involved; the precise issue under consideration arises so frequently that a definitive decision is essential to guide the trial courts; the issue is likely to arise again and should be resolved to avoid uncertainty; or the issue is capable and likely of repetition but evades review because the appellate process usually cannot be completed or undertaken quickly enough to have a practical effect upon the parties. *In re Aaron J.J.*, 2005 WI 162, ¶3 n.1, 286 Wis. 2d 376, 706 N.W.2d 659.

¶10 Ciarpaglini's challenge to Rule 21 became moot when his probation was revoked. His revocation was based upon multiple rules violations, including eight violations unrelated to Rule 21. The violations unrelated to Rule 21 were sufficient, in and of themselves, to justify his revocation.⁵ Whether Ciarpaglini had shown grounds for striking Rule 21 when his motion was addressed by the

⁵ In *State ex rel. Ciarpaglini v. Schwarz*, No. 2006AP2759, unpublished slip op. (Wis. Ct. App. Nov. 28, 2007), this court ultimately affirmed Judge Mueller's order affirming the DHA decision revoking Ciarpaglini's probation. In our decision, we determined that Ciarpaglini was judicially estopped from challenging Rule 21 in the appeal. *Id.* at 1-2. We noted that the DOC began revocation proceedings against Ciarpaglini in 2004 and that in a September 26, 2004 letter, Ciarpaglini requested an alternative to revocation, including fifteen conditions, one of which read: "No challenge made to Rule number 21." *Id.* at 2. We noted that four days later, Ciarpaglini and the DOC entered into an Alternative to Revocation Agreement in which Ciarpaglini explicitly admitted that he violated rules and conditions of his probation. *Id.* The agreement incorporated the conditions of Ciarpaglini's letter, including his agreement not to challenge Rule 21. *Id.* Based upon Ciarpaglini's actions, we held that he was estopped from challenging Rule 21 in his appeal from the circuit court order affirming his revocation. *Id.*

trial court in January 2006 therefore could have no effect on his revocation, and this case was moot.⁶

¶11 Because Ciarpaglini's motion to strike Rule 21 from his rules of probation was moot in January 2006, the only issue remaining is whether the trial court was entitled to address the motion under one of the exceptions to the general rule of dismissal for mootness.⁷ We conclude that the trial court erroneously exercised its discretion by addressing Ciarpaglini's motion. Issues regarding the constitutionality of Rule 21, and the alleged inconsistency between Rule 21 and the condition imposed by the trial court regarding Attorney Nielsen's gatekeeper function, were issues unique to Ciarpaglini. As such, Ciarpaglini's motion did not present an issue of great public importance, or one which is likely to arise again or so frequently as to necessitate a definitive decision to guide trial courts.⁸ It also involved no challenge to the constitutionality of a statute. Under these

⁶ Ciarpaglini contends that he remained on probation when the trial court made its January 2006 ruling because he had not yet been returned to the trial court for sentencing after revocation. This argument provides no basis for relief. Ciarpaglini's conduct was no longer governed by Rule 21 or other rules of probation after the DHA revoked his probation on December 20, 2005. In addition, because the DHA revoked his probation for violations unrelated to Rule 21, striking that rule from his conditions of probation would have no effect on his revocation. This case was therefore moot in January 2006.

⁷ Although it is not necessary to address this matter, we reject the State's argument that circuit courts have no authority to address moot issues even when they fall within one of the exceptions to the general rule permitting dismissal of moot cases.

⁸ Ciarpaglini alleges that his motion needed to be addressed because he will again be subject to the provisions of Rule 21 when he is released from confinement. This is pure speculation. Assuming Ciarpaglini is eventually released on extended supervision, new rules will be imposed on him by the DOC.

circumstances, Ciarpaglini's motion challenging Rule 21 should have been dismissed. The trial court's order striking Rule 21 is therefore reversed.⁹

By the Court.—Order reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

⁹ In reaching this conclusion, we reject all of Ciarpaglini's remaining arguments for affirming the trial court's order.

