

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 14, 2007

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. 2007AP84
STATE OF WISCONSIN**

**Cir. Ct. No. 1995FA954621
IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

MARCY L. RAND,

PETITIONER-RESPONDENT,

V.

RICHARD J. RAND,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Reversed and cause remanded.*

¶1 FINE, J. Richard J. Rand appeals the circuit-court order directing him to pay \$40,000 to his former wife, Marcy L. Rand, because he did not comply with a divorce judgment that required him to notify the circuit court if his compensation exceeded \$100,000 per year. According to Mr. Rand's appellate

brief, he does “not dispute[] that in the years 1999-2003 Rand did not, as the divorce judgment required, notify the Court that his compensation had increased.” He also does not dispute his liability for the resulting shortfall in his child-support payments. Indeed, he has made those payments. He has also, albeit unwillingly, paid the \$40,000, but seeks its return in whole or in part. Marcy L. Rand does not dispute that Richard J. Rand disclosed his increased earnings for the relevant years before the circuit court found him in contempt and imposed the \$40,000 sanction.

¶2 Richard J. Rand does not challenge the circuit court’s finding him in contempt. The only issues on appeal are whether the circuit court appropriately determined that it could order the \$40,000 payment either under the statutory contempt provisions, WIS. STAT. ch. 785, or under WIS. STAT. § 767.27(2m) (2003–04), and, if so, whether there was sufficient evidence to support the \$40,000 award.¹ We conclude that the circuit court had authority under both ch. 785 and § 767.27(2m) (2003–04) to award compensation to Marcy L. Rand, but that there

¹ Effective January 1, 2007, WIS. STAT. § 767.27(2m) (2003–04) was recreated as WIS. STAT. § 767.54 and amended to read as follows:

In an action in which the court has ordered a party to pay child or family support under this chapter, including an action to revise a judgment or order under s. 767.59, the court shall require the parties annually to exchange financial information. Information disclosed under this section is subject to s. 767.127 (3). A party who fails to furnish information required by the court under this section may be proceeded against for contempt of court under ch. 785. If the court finds that a party has failed to furnish information required under this section, the court may award to the party bringing the action costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

2005 Wis. Act 443, §§ 122, 267. The order from which Richard J. Rand appeals was entered December 15, 2006. On remand the order should be amended to insert a caption; the caption currently is blank.

was insufficient proof to support \$40,000 as the amount. Accordingly, we remand the matter to the circuit court for further proceedings.

¶3 This appeal requires that we apply both WIS. STAT. ch. 785 and WIS. STAT. § 767.27(2m) (2003–04). Our review of the circuit court’s application of these statutes is *de novo*. See *Frisch v. Henrichs*, 2007 WI 102, ¶29, ___ Wis. 2d ___, ___, ___, N.W.2d ___, ___.

¶4 Under Wisconsin’s statutory contempt scheme, there are two types of contempt sanctions: (1) punitive, and (2) remedial. WIS. STAT. § 785.01(2), (3). “‘Punitive sanction’ means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” Sec. 785.01(2). “‘Remedial sanction’ means a sanction imposed for the purpose of terminating a continuing contempt of court.” Sec. 785.01(3). Imposition of a “punitive sanction” requires a charging and trial *unless* the act constituting contempt is in the court’s “actual presence” and an immediate sanction is needed to “preserve[] order in the court and [to] protect[] the authority and dignity of the court.” WIS. STAT. § 785.03(1)(b), (2). Marcy L. Rand does not contend that Richard J. Rand’s contempt satisfied the prerequisites for imposition of a “punitive sanction.” Accordingly, we turn to the statute’s remedial-sanction provisions.

¶5 WISCONSIN STAT. § 785.04(1) authorizes the following “remedial sanctions”:

(a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.

(b) Imprisonment if the contempt of court is of a type included in s. 785.01 (1) (b), (bm), (c) or (d). The imprisonment may extend only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.

(c) A forfeiture not to exceed \$2,000 for each day the contempt of court continues.

(d) An order designed to ensure compliance with a prior order of the court.

(e) A sanction other than the sanctions specified in pars. (a) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

A remedial sanction may only be “imposed for the purpose of terminating a continuing contempt of court.” Sec. 785.01(3). Belated compliance with a court order, even if made before a contempt finding, does not negate the “continuing” nature of the contempt if that belated compliance does not fully vindicate the judgment or order disobeyed. *Frisch*, 2007 WI 102, ¶¶4, 47, ___ Wis. 2d at ___, ___, ___ N.W.2d at ___, ___. In such a situation the offended party is entitled to be made whole for the loss sustained as a result of the contempt. Sec. 785.04(1)(a) (A court may require the “[p]ayment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.”); *Frisch*, 2007 WI 102, ¶¶62–65, ___ Wis. 2d at ___, ___ N.W.2d at ___. As the circuit court here recognized, WIS. STAT. § 767.27(2m) (2003–04) also authorized this result. It provided:

In every action in which the court has ordered a party to pay child or family support under this chapter, including an action to revise a judgment or order under s. 767.32, the court shall require the parties annually to exchange financial information. A party who fails to furnish the information as required by the court under this subsection may be proceeded against for contempt of court under ch. 785. If the court finds that a party has failed to furnish the information required under this subsection, the court may award to the party bringing the action costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.

See also *Frisch*, 2007 WI 102, ¶¶4, 31, 44–45, 47, 49, 81, ___ Wis. 2d at ___, N.W.2d at ___; *Benn v. Benn*, 230 Wis. 2d 301, 315, 602 N.W.2d 65, 71

(Ct. App. 1999) (“The attorney fees incurred in pursuing a contempt of court action are recoverable under § 785.04(1)(a).”). The fees and costs must be both necessary and reasonable. *See* SCR 20:1.5(a); *Cudahy v. Cudahy*, 217 Wis. 355, 361, 258 N.W. 168, 171 (1935). Further, an award under § 785.04(1)(a) is only authorized “to compensate a party for a loss or injury suffered by the party as the result of” the contempt. Although the circuit court alternatively characterized the \$40,000 award as one for attorney fees, and also as, apparently, a free-standing sanction to, in effect, punish Richard J. Rand, both § 767.27(2m) (2003–04) and § 785.04(1)(a) are *remedial*—to make whole the party hurt by the contempt. Marcy L. Rand’s appellate brief does not even seek to justify the imposition of a free-standing \$40,000 sanction unrelated to her actual losses.

¶6 Marcy L. Rand is entitled to prove her losses caused by Richard J. Rand’s contempt, and Richard J. Rand is entitled to challenge her claims of causation, as well as the necessity for and reasonableness of the fees she seeks. Accordingly, we reverse the circuit court’s order, and remand for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded.

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

