

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 25, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2007AP2720

Cir. Ct. No. 2005FA2621

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE FINDING OF CONTEMPT IN RE THE MARRIAGE OF
CARTER J. RIERSON V. ANURADHA RANGASWAMY:**

CARTER J. RIERSON,

PETITIONER-APPELLANT,

v.

ANURADHA RANGASWAMY,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Dane County:
SARAH B. O'BRIEN, Judge. *Affirmed.*

¶1 BRIDGE, J.¹ In December 2005, Carter Rierson sought the dissolution of his marriage to Anuradha Rangaswamy. At the time, Carter was

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

employed by and the president of Best Defense, Inc., a security business. Anuradha was employed as a school teacher. At the time he filed for divorce, Carter also requested a hearing for a temporary order establishing the parties' financial arrangements during the pendency of the action. In February 2006, the circuit court entered a temporary order. In the order, the court found that Carter had an annual income of \$40,000, which is a monthly income of approximately \$3,333.33, and that Anuradha had a monthly income of \$3,345. The temporary order also provided, among other things, that Carter was limited to drawing \$3,333 per month from all businesses and that Carter was prohibited from "us[ing] business funds for personal use, including but not limited to gas, phone or satellite [television]."

¶2 It is undisputed that following the entry of the temporary order, Carter used funds from Best Defense to, among other things, make all of his personal credit card payments, pay expenses related to the construction of a home he and Anuradha were in the process of building at the time of divorce (hereinafter the Hanover property), and pay Best Defense's accounting firm for a business valuation obtained for purposes of the parties' divorce. Approximately eleven days before trial on this matter, Carter provided Anuradha with a copy of Best Defense's 2006 general ledger, which showed these payments, as well as various other payments made by Best Defense on Carter's behalf which are not relevant to the present appeal. After receiving the ledger, Anuradha moved for remedial contempt. She claimed that these payments as well as others totaling \$101,960 were for Carter's personal purposes and in violation of the temporary order.

¶3 Following a hearing on Anuradha's motion, the court ruled that Carter was in contempt of the temporary order for using Best Defense's funds to

pay \$66,031 in personal expenses. The court imposed a remedial sanction of approximately \$33,015.50, which Carter was to pay to Anuradha.

¶4 With regard to expenses paid by Best Defense for valuation of the business, the court found that the valuation was for purposes of the divorce and was therefore personal. The court observed that Carter had repaid the money to Best Defense, but pointed out that Carter had testified that he would seek a return of that money. Accordingly, the court treated the money as though Carter was in possession of those funds.

¶5 With regard to payments made by Best Defense on Carter's personal credit card debt, the court found that although some of the expenses were business expenses, the vast majority of the expenses were personal. Among those charges which the circuit court found to be personal were expenses related to the construction of the Hanover property.² The court ruled that Carter violated the temporary order by having Best Defense pay these personal expenses and held him in contempt. The court also ordered Carter to pay Anuradha's attorney's fees relating to the contempt motion.

¶6 A court is granted the power to issue orders of contempt under Chapter 785 of the Wisconsin Statutes. "Contempt of court" includes, among other things, the intentional disobedience of an order of a court. WIS. STAT. § 785.01(1)(b).

² In addition to these expenses, the circuit court found that Carter was in contempt for using funds from Best Defense for a number of other personal expenditures. However, Carter does not challenge the court's rulings with regard to those expenditures and we therefore do not address them.

¶7 The determination of whether an act is in contempt of court is discretionary and will not be reversed unless that finding was clearly erroneous. *Currie v. Schwalbach*, 132 Wis. 2d 29, 36, 390 N.W.2d 575 (Ct. Ap. 1986), *aff'd*, 139 Wis. 2d 544, 407 N.W.2d 862 (1987). We accept all factual findings unless they are clearly erroneous. *Id.* Factual findings are clearly erroneous only where they are unsupported by any credible evidence. *Insurance Co. of N. Am. v. DEC Int'l, Inc.*, 220 Wis. 2d 840, 845, 586 N.W.2d 691 (Ct. App. 1998).

¶8 Carter first claims that the court erred by holding him in contempt for the amount paid by Best Defense on his personal credit cards. He argues that some of those expenses were business related and that the temporary order did not prohibit him from using Best Defense funds to pay for business related purchases charged on his personal credit cards. He further argues that even assuming finance charges, over-credit limit fees, and late fees totaling \$4,684.14 are not business expenses, Anuradha failed to prove that the remaining amount paid by Best Defense on his personal credit cards were related to personal expenses.³

¶9 We begin by observing that Carter misplaces the burden of proof in this case. In a remedial or civil contempt proceeding, the burden of proof is on the person against whom contempt is sought. *State v. Rose*, 171 Wis. 2d 617, 623, 492 N.W.2d 350 (Ct. App. 1992). Thus, Carter had the burden to prove that expenditures were business related and not personal.

¶10 The record reflects that the circuit court systematically went through the task of determining which credit card charges paid by Best Defense were

³ Carter makes a similar argument with regard to the business valuation. For the same reasons discussed, we reject this argument.

personal and which were business related. In response to an argument by Carter's attorney that the court was holding Carter in contempt for business related expenses, the court specifically advised the attorney that Carter was being held in contempt only for those personal expenses paid by Best Defense, not for business related expenses paid. Carter has not provided this court with any convincing, credible evidence establishing that he was sanctioned for business related expenses paid by Best Defense. We therefore conclude that the circuit court's contempt finding was not clearly erroneous.

¶11 Carter next contends that the court erred by holding him in contempt for using Best Defense funds to pay for expenses related to the Hanover property. He argues that the temporary order did not prohibit Carter from using Best Defense to pay construction costs, and that Anuradha agreed that Best Defense could pay for those expenses. The temporary order clearly prohibited Carter from using Best Defense funds to pay for personal expenditures. The Hanover property was a personal property, not a business property. Thus, Carter was prohibited from using business funds to pay for expenses related to it. In addition, any agreement between Carter and Anuradha is not relevant to the question of whether Carter violated the temporary order. We therefore conclude that the circuit court's finding that Carter was in contempt for those amounts expended by Best Defense with regard to the Hanover property was not clearly erroneous.

¶12 In addition to challenging the contempt ruling, Carter also challenges the sanctions imposed by the circuit court. Where a party is in contempt of court, the circuit court may impose remedial or punitive sanctions. WIS. STAT. § 785.02. A punitive sanction, the objective of which is to uphold a court's authority, is imposed to punish a past contempt of court. WIS. STAT. § 785.01(2). A punitive sanction requires that a district attorney, attorney general,

or special prosecutor formally prosecute the matter by filing a complaint and following the procedures set out in the criminal code. WIS. STAT. § 785.03(1)(b). In contrast, a remedial sanction is imposed for the purpose of terminating a continuing contempt of court. WIS. STAT. § 785.01(3). A person aggrieved by another's contempt may file a motion for imposition of a remedial sanction for contempt. *Frisch v. Henrichs*, 2007 WI 102, ¶35, 304 Wis. 2d 1, 736 N.W.2d 85. Remedial sanctions include imprisonment, forfeitures, and 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.” WIS. STAT. § 785.04(1)(a), (b), and (c). The contempt motion was brought by Anuradha, and constituted a remedial sanction.⁴

¶13 Carter first contends that the circuit court was not authorized to impose a remedial sanction for Carter's use of funds from Best Defense to pay for the valuation of the business for purposes of the parties' divorce proceedings.⁵ He argues that he had repaid the company for those expenses before the contempt order was entered and, therefore, the contempt was no longer continuing.

¶14 The authority of a circuit court to impose remedial contempt sanctions under the facts in question requires the interpretation of a statute, which is a question of law reviewed de novo. *Christensen v. Sullivan*, 2008 WI App 18, ¶7, 307 Wis. 2d 754, 746 N.W.2d 553.

⁴ We reject Carter's assertion that the circuit court's sanction was punitive, not remedial.

⁵ Although Carter challenges the circuit court's imposition of remedial sanction, he does not dispute the court's findings that he violated the temporary order by paying for the valuation with Best Defense's funds and that he was in contempt for doing so.

¶15 Under WIS. STAT. ch. 785, the imposition of a remedial sanction for contempt is not contingent upon whether the party in contempt has ceased the contumacious behavior. See *Frisch*, 304 Wis. 2d 1; *State ex rel. Larsen v. Larsen*, 165 Wis. 2d 679, 478 N.W.2d 18 (1992); *Christensen*, 307 Wis. 2d 754. Rather, it is contingent upon whether the other party has suffered injuries not undone by mere compliance with the court’s order. *Christensen*, 307 Wis. 2d 754, ¶19. As we explained in *Christensen*, where a continuing disobedience has caused injuries that cannot be undone merely by belated compliance with a court’s order, “the injuries compensated ... can also be understood as a form of continuing contempt because the noncompliance frustrates the basic purpose of the original order ... which could be purged only by requiring the contemnor to restore the victims of the contumacious conduct to the position in which they would have been had the contempt not occurred.” *Id.*, ¶19.

¶16 In this case, Carter violated the temporary order restricting the parties’ income and the assets available to them. He did so by using money from Best Defense to in part fund his litigation in the divorce proceeding. The money taken by Carter from Best Defense for this purpose was not an insignificant amount, and placed Carter at an advantage over Anuradha who did not have the benefit of those funds for her own litigation purposes. Anuradha’s disadvantage was not and could not be remedied by Carter’s subsequent return of the money to Best Defense. On our own review, we conclude that the sanction was properly imposed.

¶17 Carter also contends that the sanctions provided Anuradha with a windfall. He provides no record citations to where this issue was argued before the circuit court, and we are unable to discern from the record before us that the

issue was raised below. Accordingly we do not address this argument. *See Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983).

¶18 Finally, Carter challenges the reasonableness of the circuit court's award of attorney's fees relating to the contempt motion. Attorney's fees incurred in pursuit of a contempt of court action are recoverable under WIS. STAT. § 785.04(1)(a). *Benn v. Benn*, 230 Wis. 2d 301, 315, 602 N.W.2d 65 (Ct. App. 1999); *Town of Seymour v. City of Eau Claire*, 112 Wis. 2d 313, 320, 332 N.W.2d 821 (Ct. App. 1983). Carter does not dispute the circuit court's authority to award attorney's fees to the prevailing party in a contempt of court action. He contends, however, that not all the attorney's fees awarded to Anuradha were reasonably and necessarily incurred and thus the award was excessive.

¶19 It is within the circuit court's discretion to award attorney's fees. *See Stuart v. Weisflog's Showroom Gallery, Inc.*, 2008 WI 22, ¶14, 308 Wis. 2d 103, 746 N.W.2d 762. We will not reverse the court's decision unless it has erroneously exercised its discretion. *Id.* A circuit court properly exercises its discretion when it applies the correct law to the relevant facts and reaches a reasonable result through a rational process. *Beaudette v. Eau Claire County Sheriff's Dep't*, 2003 WI App 153, ¶31, 265 Wis. 2d 744, 668 N.W.2d 133. We employ an independent review, however, of the circuit court's explanation to determine whether it employed a logical rationale based upon the appropriate legal principles and facts. *Stuart*, 308 Wis. 2d 103, ¶14.

¶20 In this case, Carter objects to the award of attorney's fees because 6.3 of the hours requested were also submitted by Anuradha at the divorce trial. The circuit court rejected this argument, explaining that time spent by Anuradha's attorney reviewing documentation was for the dual purpose of trial preparation

and preparation for the contempt motion, and the fact that it was for a dual purpose does not mean that attorney's fees should not be paid with regard to the contempt motion. We agree. Moreover, Carter's assertion that the 6.3 hours requested by Anuradha's attorney could not serve a dual purpose suggests by implication that Anuradha's attorney should have engaged in duplicative billing.

¶21 Carter also objects to the award of attorney's fees because some of the fees were attributable to Anuradha's unsuccessful attempt to prove that Carter was in violation of the temporary order for additional amounts beyond those established by the circuit court. Carter's argument suggests a per se rule that attorney's fees may be awarded only for those fees attributable to those issues successfully litigated. Carter does not provide any authority suggesting such a rule, nor were we able to locate one. We can conceive of any number of reasons why it would be reasonable for a court to award all or nearly all of the attorney's fees requested, including, for example, the difficulty or inability to separate the charges. In light of the circuit court's advantageous position for deciding the reasonableness of requested attorney's fees, *Maynard Steel Casting Co. v. Sheedy*, 2008 WI App 27, ¶27, 307 Wis. 2d 653, 746 N.W.2d 816, we cannot say that the circuit court erroneously exercised its discretion by not discounting the fees requested. We therefore affirm the award of attorney's fees.

¶22 As a final matter, we address Anuradha's request for attorney's fees incurred on appeal. Anuradha contends that the attorney's fees incurred while prosecuting a contempt action are recoverable damages within the meaning of WIS. STAT. § 785.04(1)(a). See *Town of Seymour*, 112 Wis. 2d at 320. She claims that it logically follows that attorney's fees incurred in an appeal of a contempt action are also recoverable. However, Anuradha cites no legal authority to support this position. We therefore decline her request.

¶23 For the reasons discussed above, we affirm the orders of the circuit court holding Carter in contempt of court and ordering him to pay Anuradha's attorney's fees related to the contempt action. In addition, we deny Anuradha's request for attorney's fees on appeal.

By the Court.—Orders affirmed.

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

