

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 29, 2010**

A. John Voelker  
Acting 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 Nos. 2009AP392  
2009AP2017**

**Cir. Ct. No. 1999FA1626**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN RE THE MARRIAGE OF:**

**TERI S. JENDUSA-NICOLAI P/K/A TERI S. JENDUSA,**

**PETITIONER-RESPONDENT,**

**V.**

**DAVID M. LARSEN,**

**RESPONDENT-APPELLANT,**

**MAGNUM OPUS INVESTMENTS (A TRUST) VIA ITS DOMESTIC  
TRUSTEE, JAMES M. LARSEN, VELOCITY PARTNERS FAMILY LIMITED  
PARTNERSHIP VIA ITS REGISTERED AGENT, DAVID M. LARSEN, AND  
RICHARD A. LARSEN AS POWER OF ATTORNEY FOR DAVID M. LARSEN,**

**DEFENDANTS.**

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APPEAL from orders of the circuit court for Racine County:  
GERALD P. PTACEK, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. David M. Larsen appeals from the orders of the circuit court dated March 2 and July 20, 2009, concerning matters related to the distribution of assets from a trust being held in receivership. Larsen argues that the circuit court erred in a variety of ways, including improperly seizing the trust assets, improperly seizing and denying Larsen access to his retirement assets, wrongly assuming jurisdiction over the Magnum Opus Trust, wrongly denying him access to the assets of his trust to obtain legal counsel, and wrongly using trust assets to satisfy civil judgments against him. We conclude that the circuit court did not err, and that the court properly allowed trust assets to be used to satisfy civil judgments. We affirm.

¶2 Larsen and Teri S. Jendusa-Nicolai were divorced in 2001. During the pendency of the divorce, Larsen transferred assets into a trust and a partnership. Larsen had a lifetime interest in the trust and his daughters from his marriage to Jendusa-Nicolai are named beneficiaries. Jendusa-Nicolai claimed that the trust assets were marital assets and that the trust had been fraudulently created.

¶3 Three years after their divorce, Larsen brutally attacked Jendusa-Nicolai in her home, stuffed her into a garbage can, sealed the can with duct tape, drove the can to Illinois, put it in a storage locker, and left. Jendusa-Nicolai survived, and Larsen was convicted of attempted first-degree intentional homicide. *See State v. Larsen*, 2007 WI App 147, 302 Wis. 2d 718, 736 N.W.2d 211.

¶4 After the attack, the Racine county family court ordered that Larsen's funds be placed in a receivership. The order creating the receivership was entered in November 2004. In a later civil action, Jendusa-Nicolai, her

current husband, David Nicolai, and her children were awarded over \$3.6 million in damages. The circuit court then granted a motion to satisfy the civil judgment in part with assets from the receivership. Larsen appeals from this order and from another order that denied his requests to access the funds in the receivership.

¶5 Larsen raises a number of issues in this appeal. Some of the issues he raises concern the validity of the receivership created in 2004. The time to appeal from that order has long since passed. Consequently, that order is not before us in this appeal, and we will not address any of his arguments relating to the validity of the receivership.

¶6 The only issues before us in this appeal are those involving the orders entered on March 2, 2009, and July 20, 2009. To the extent Larsen raises additional arguments, we deem them to lack sufficient merit or importance to warrant individual attention. “An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.” *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

¶7 In the March 2 order, the circuit court, among other things, denied Larsen’s motion to adjourn, granted Larsen’s request for the payment of some expenses and denied his request for others, and ordered that funds from the Magnum Opus Trust be used to pay the civil judgments his daughters had obtained against him, with the balance of the trust used to satisfy, in part, the civil judgment obtained by David Nicolai. In the July 20 order, the circuit court denied Larsen’s requests to allow him access to the assets of the trust to obtain counsel to represent him in various civil proceedings in state and federal court. Larsen’s arguments concerning the two orders that are before us in this appeal are that the Racine county family court lacked jurisdiction to enter the orders; there was no service of

process; and the court erred in denying him access to the assets of the trust to obtain counsel to represent him.<sup>1</sup> He raises for the first time in his reply brief the issue of whether the assets of the trust were exempt from the civil judgment claims. We address these issues in turn.

¶8 The first issue is whether the circuit court had jurisdiction over this case. Larsen argued in the circuit court that the family court was not the proper place for this proceeding to have been heard. The court considered the issue, and concluded that because the motion was to have the funds of the receivership used to pay the civil judgments, and the receivership had been created because there was a motion in the divorce case that the trust had been fraudulently created with marital assets during the pendency of the divorce, then the motion was properly in family court. The court also noted that if the motion was not heard in family court, it would be heard in the same court sitting as the probate court.

¶9 The circuit court properly decided the motions before it. The Magnum Opus Trust is a named defendant in this family court case. The receivership was created in the family court case, and Larsen himself sought and received distributions from the trust receivership through the family court case. We reject Larsen's argument that the family court lacked jurisdiction. Because the matters were properly heard in the family court case, we need not address the question of whether there was proper service of process.

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<sup>1</sup> Larsen discusses a number of instances in which he asserts he was denied access to the funds to pay for legal counsel. To the extent the denials were not made in either the March 2 or July 20 orders, they are not part of this appeal and we will not consider them.

¶10 Larsen’s next argument is that the circuit court erred by not allowing him to use assets from the funds in the receivership accounts to obtain counsel, and that he was denied his Sixth Amendment right to counsel. The court denied these motions in the July 20, 2009 order. In that order, the court explained to Larsen that he does not have a Sixth Amendment right to counsel in a civil matter. The court also explained that it no longer had jurisdiction of the receivership because Larsen had filed both a notice of appeal to this court and a bankruptcy proceeding. The court directed Larsen to make the request of the bankruptcy court. Although Larsen argues that he has been denied due process, he has not explained how the court erred when it concluded that it could not exercise jurisdiction over funds that were controlled by the bankruptcy court. We reject Larsen’s argument that the circuit court erred.

¶11 Larsen argues in his reply brief that the circuit court erred when it allowed the funds in the receivership to be used to pay civil judgments. We will not, as a general rule, consider an issue raised for the first time in a reply brief. *See Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981). In this case, however, we will consider the issue because the respondent addressed it in her responsive brief.

¶12 The issue is whether the circuit court erred when it allowed the funds in the receivership to be used to pay the civil judgments obtained against Larsen by his daughters and their stepfather. “Section 701.06(6) contemplates a payment of income or principal to satisfy a judgment creditor.” *Grohmann v. Grohmann*, 189 Wis. 2d 532, 539, 525 N.W.2d 261 (1995). We conclude that WIS. STAT. § 701.06(6) controls in this case. The statute provides that when the settlor of a trust is also a beneficiary: “upon application of a judgment creditor of the settlor, the court may, if the terms of the instrument require or authorize the trustee to

make payments of income or principal to or for the benefit of the settlor, order the trustee to satisfy part or all of the judgment” of the creditor. *Id.*

¶13 In this case, Larsen was both the settlor and a beneficiary. He does not dispute that he was allowed by the terms of the trust to receive payments for his own benefit.<sup>2</sup> His daughters, who were also beneficiaries of the trust, and their stepfather had civil judgments against Larsen. We conclude that under WIS. STAT. § 701.06(6), the court properly allowed the funds in the receivership to be used to satisfy Larsen’s judgment creditors.

¶14 For the reasons stated, we affirm the orders of the circuit court.

*By the Court.*—Affirmed.

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

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<sup>2</sup> As we have discussed, one of his main arguments is that the court erred by not allowing him to receive the payments he requested.

