COURT OF APPEALS
DECISION
DATED AND FILED

December 9, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1091 **Cir. Ct. No. 2007SC1608**

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

PARKLAND PLAZA VETERINARY CLINIC S.C.,

PLAINTIFF-RESPONDENT,

V.

ANNE GERARD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: RALPH M. RAMIREZ, Judge. *Modified and, as modified, affirmed.*

¶1 ANDERSON, J.[1] This is the continuing saga of Anne Gerard's Quixotic tilting at windmills. In ***Parkland Plaza Veterinary Clinic, S.C. v.***

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

Gerard (***Parkland I***), No. 2007AP2147, unpublished slip op. (WI App Sept. 3, 2008), she appealed from an order dismissing, with prejudice, Parkland Plaza Veterinary Clinic's collection action against her. We determined that the appeal was frivolous and remanded the case with directions to the circuit court to determine frivolous costs and fees. In ***Parkland Plaza Veterinary Clinic, S.C. v. Anne Gerard*** (***Parkland II***), No. 2009AP331, unpublished slip op. (WI App Nov. 11, 2009), she appealed from the circuit court's findings on frivolous fees and costs. We rejected all of her claims and affirmed. Now, in this appeal from the circuit court's rejection of her motion for relief from judgment under WIS. STAT. §§ 806.07(1)(c) and 806.07(1)(h), she challenges restrictions imposed on her access to the court, claims factual findings of the court greatly distort and misrepresent the truth causing her "great harm and detriment," and raises many of the issues previously litigated in ***Parkland I*** and ***Parkland II***. We affirm.

¶2 To begin, this court incorporates the factual and procedural histories detailed in ***Parkland I*** and ***Parkland II***. Further, this court will not revisit any of the issues relating to the proceedings before the Honorable Paul F. Reilly or to the proceedings leading to the determination of frivolous costs and fees before the Honorable Ralph M. Ramirez.[2] This court's prior opinions are the law of the case. The law of the case doctrine has been defined as a "longstanding rule that a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal." ***Univest Corp. v. General Split Corp.***, 148 Wis. 2d 29, 38, 435 N.W.2d

[2] Judge Paul F. Reilly presided over the original small claims action, described in ***Parkland Plaza Veterinary Clinic, S.C. v. Gerard*** (***Parkland I***), No. 2007AP2147, unpublished slip op. (WI App Sept. 3, 2008), and entered the order dismissing the collection action against Gerard.

234 (1989). Further, to the extent that Gerard raises any new issues which were not asserted the first time regarding those proceedings, they are waived. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727.

¶3 While pursuing her appeal in ***Parkland II***, Gerard filed a thirty-one paragraph "Motion for Relief from Order," seeking twelve different forms of relief. She styled the motion as being brought under WIS. STAT. §§ 806.07(1)(c) and 806.07(1)(h).[3] In a terse order, the circuit court denied Gerard's motion and issued sanctions against her. Portions of the order provided:

> In Gerard's motion filed February 12, 2009 she asks that the order be vacated for numerous reasons. Those reasons include, but are not limited to the following:
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> > A failure to comply with the Americans with Disabilities act;
> >
> > A violation of HIPPA (Health Insurance Portability and Accountability Act);
> >
> > Allegations that the court acted improperly by not directly responding to her every filing;

[3] WISCONSIN STAT. § 806.07 states:

> **Relief from judgment or order. (1)** On motion and upon such terms as are just, the court … may relieve a party … from a[n] … order … for the following reasons:
>
> ….
>
> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
>
> ….
>
> (h) Any other reasons justifying relief from the operation of the judgment.

> Allegations that the court is taking actions to enrich Waukesha County;
>
> Alleges that the sole cause of sanctions and costs against her are attributable to this court.
>
> Defendant also raises various issues that were resolved at the trial court level, at, or prior to the time of the hearing on costs and attorney fees. What defendant fails to do is to raise an issue sufficiently recognizable, or with sufficient factual support, to necessitate a hearing under § 806.07.
>
> As it relates to this case, Gerard has a history of non-compliance with court orders, prosecution of frivolous motions, reckless disregard of court orders, and fabrication of numerous allegations of inappropriate behavior by court officials without any factual basis. Furthermore, she persists in her claim of an inability to participate in court proceedings despite her repeated initiation of court proceedings, as well as her repeated and voluminous filings and notifications to court officials and administrators. Gerard unfailingly continues her pattern of prosecution of frivolous actions.

¶4 The court imposed a series of sanctions upon Gerard designed to protect the court and its staff from her vexatious conduct.

> That the Clerk of Courts for Waukesha County shall no longer accept any filings or correspondence from Gerard or anyone on her behalf;
>
> That any documents or filings that are received by mail are to be sent back to Gerard's last known address without review by the court or clerk;
>
> That only upon proof of payment in full ($2,538.82) to Parkland Plaza Veterinary clinic S.C., or its attorney Basil Loeb, shall any documents be accepted from Defendant Gerard.

¶5 Gerard appeals from this order asserting that the sanctions (1) are extorting money from her by withholding her access to the court until she pays the frivolous fees and costs, (2) violate her due process rights, and (3) are discriminatory. She also attacks the trial court's findings that describe her as a

vexatious litigant. She contends that the findings are unsupported by the record and are libelous.

¶6 To be entitled to relief under WIS. STAT. § 806.07(1)(c), Gerard must show a "plain case" of misrepresentation. *See* ***Burmeister v. Vondrachek***, 86 Wis. 2d 650, 664, 273 N.W.2d 242 (1979). And, in order to establish grounds for relief under § 806.07(1)(h), Gerard must demonstrate "extraordinary circumstances" that justify relief. *See* ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 549, 363 N.W.2d 419 (1985). We will not set aside a trial court's order denying a motion for relief under § 806.07 unless there has been a clear erroneous exercise of discretion. An appellate court will not find an erroneous exercise of discretion if the record shows that the trial court exercised its discretion and that there is a reasonable basis for the court's determination. ***M.L.B.***, 122 Wis. 2d at 542.

¶7 ACCESS TO THE COURTS. An individual has a due process right of access to the courts, ***Piper v. Popp***, 167 Wis. 2d 633, 644, 482 N.W.2d 353 (1992), however, that right is not absolute and may be curtailed where a litigant abuses the court system. *See* ***Support Sys. Int'l, Inc. v. Mack***, 45 F.3d 185, 186 (7th Cir. 1995) (prohibiting prodigious litigator from filing noncriminal motions). A trial court has "inherent power to protect itself against any action that would unreasonably curtail its powers or materially impair its efficiency." ***Jacobson v. Avestruz***, 81 Wis. 2d 240, 245, 260 N.W.2d 267 (1977) (citation omitted).

¶8 Our opinion in ***Parkland I*** details Gerard's vexatious filings before and after Parkland voluntarily dismissed its attempt to collect $258. ***Parkland I***, No. 2007AP2147, ¶¶2-10. Review of the electronic court records maintained by the Consolidated Courts Automation Project (CCAP) shows 300 entries in the case

file, 235 entries after Judge Reilly affirmed the court commissioner's dismissal of the action. After the circuit court awarded Parkland its frivolous fees and costs, Gerard filed a notice of appeal, entry 185 in the docket, and there are 115 events entered since then. The notice of appeal for this case was filed on April 24, 2009, entry 220 and there have been an additional 80 events memorialized in the docket.[4]

¶9 We agree with the trial court's finding that Gerard's vast and vexatious filings in this case establish Gerard has "a history of non-compliance with court orders, prosecution of frivolous motions, [and] reckless disregard of court orders." A court faced with a litigant who has engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's access to the court. ***Minniecheske v. Griesbach***, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991). Such restrictions may include barring the litigant from filing further civil actions, aside from habeas corpus, until the litigant has paid fees or costs imposed in the same case or a prior case. ***Puchner v. Hepperla***, 2001 WI App 50, ¶¶6, 10 and n.7, 241 Wis. 2d 545, 625 N.W.2d 609. We are satisfied the trial court's restriction on future filings by Gerard was appropriately crafted to be a bar only until she paid the sanction previously imposed and well within its discretion given Gerard's pattern of abusing the court system.[5]

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[4] http://wcca.wicourts.gov/courtRecordEvents.xsl;jsessionid=6E84E7E85BC872342AF83ADA7C8ACEEE.render6?caseNo=2007SC001608&countyNo=67&cacheId=6D3B48570CF6D8C382021E83AA86C5D8&recordCount=1&offset=0&linkOnlyToForm=false&sortDirection=ASC (last visited Oct. 27, 2009).

[5] Limiting a litigant's access to the court system as a sanction for vexatious and abusive litigation is used in the federal courts. We adopt the Seventh Circuit's recent summarization of the law barring a vexatious and abusive litigant from further filings.

(continued)

[T]he right of access to federal courts is not absolute. ***In re Chapman***, 328 F.3d [903, 905 (7th Cir. 2003)]; *see also* ***United States ex rel. Verdone v.*** [***Circuit Court***] ***for Taylor County***, 73 F.3d 669, 674 (7th Cir. 1995). Courts have ample authority to curb abusive filing practices by imposing a range of restrictions. *See* ***In re Anderson***, 511 U.S. 364, 365-66, 114 S. Ct. 1606, 128 L.Ed.2d 332 (1994); ***Baum*** [***v. Blue Moon Ventures, LLC***, 513 F.3d 181, 187 (5th Cir. 2008)]; ***Andrews v. Heaton***, 483 F.3d 1070, 1077 (10th Cir. 2007); ***Support Sys. Int'l v. Mack***, 45 F.3d 185, 186 (7th Cir. 1995); ***In the Matter of Davis***, 878 F.2d 211, 212 (7th Cir. 1989); ***Procup v. Strickland***, 792 F.2d 1069, 1071 (11th Cir. 1986). A filing restriction must, however, be narrowly tailored to the type of abuse, *see* ***Miller***; 541 F.3d at 1096-1100; ***Andrews***, 483 F.3d at 1077; ***Support Sys. Int'l***, 45 F.3d at 186, and must not bar the courthouse door absolutely, *see* ***Ortman v. Thomas***, 99 F.3d 807, 811 (6th Cir. 1996); ***Davis***, 878 F.2d at 212; ***Procup***, 792 F.2d at 1071. Courts have consistently approved filing bars that permit litigants access if they cease their abusive filing practices. *See* ***Molski v. Evergreen Dynasty Corp.***, 500 F.3d 1047, 1061 (9th Cir. 2007), *cert. denied*, __ U.S. __, 129 S. Ct. 594, 172 L.Ed.2d 455 (2008) (upholding order that prevented plaintiff from filing complaints under the ADA without prior approval from district court); ***Riccard v. Prudential Ins. Co.***, 307 F.3d 1277, 1299 (11th Cir. 2002) (approving district court's order that enjoined plaintiff from filing suits against a particular defendant without first obtaining leave from court); ***Davis***, 878 F.2d at 212-13 (upholding order restricting plaintiff from filing any suit without permission from district court); *see also* ***Support Sys. Int'l***, 45 F.3d at 186 (noting that "perpetual orders are generally a mistake" and enjoining plaintiff, with some exceptions, from filing papers until he paid sanctions). On the other hand, courts have rejected as overbroad filing bars in perpetuity. *See* ***Miller***, 541 F.3d at 1096-99 (injunction permanently preventing plaintiff from obtaining in forma pauperis status was overbroad); ***Cromer*** [***v. Kraft Foods N. Am. Inc.***, 390 F.3d 812, 819 (4th Cir. 2004)] (striking down as overbroad order preventing plaintiff from ever again filing documents in a particular case); ***Ortman***, 99 F.3d at 810-11 (order permanently preventing plaintiff from filing civil suits arising from same facts as current suit was overbroad); ***Cok v. Family Ct. of Rhode Island***, 985 F.2d 32, 34-35 (1st Cir. 1993) (finding overbroad injunction preventing plaintiff

(continued)

¶10 We have one minor concern with the filing restrictions imposed upon Gerard—they are not crystal clear as to whether she is barred from filing any documents or only documents relating to Parkland and its dismissed small claims action, circuit court No. 2007SC1608. A filing restriction must be narrowly tailored to the type of abuse that triggered it. ***Support Sys. Int'l Inc.***, 45 F.3d at 186. We will modify the circuit court's filing restrictions to clarify the limited nature of those restrictions.

> That the Clerk of Courts for Waukesha County shall no longer accept any filings or correspondence from Gerard or anyone on her behalf *related to or involving Parkland Plaza Veterinary Clinic, S.C.*;
>
> That any documents or filings that are received by mail are to be sent back to Gerard's last known address without review by the court or clerk;
>
> That only upon proof of payment in full ($2,538.82) to *Parkland Plaza Veterinary Clinic S.C.*, or its attorney Basil Loeb, shall any documents be accepted from Defendant Gerard.

¶11 Gerard's filings in this court have been as equally vexatious and abusive in the three separate appeals she has prosecuted since Parkland voluntarily dismissed its collection action. The records of this court establish that Gerard has needlessly invoked the scarce resources of this court seeking relief that she is not

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> from ever again filing pro se suits); ***De Long*** [***v. Hennessey***, 912 F.2d 1144, 1148 (9th Cir. 1990)] (order permanently preventing plaintiff from filing any papers in a particular district court was overbroad); ***Procup***, 792 F.2d at 1071 (injunction preventing plaintiff from filing suits pro se in perpetuity was overbroad).

Chapman v. Executive Comm. of U.S. Dist. Court for N. Dist. of Ill., 324 Fed. Appx. 500, 502-03 (7th Cir. 2009).

entitled to—she "won" when the circuit court affirmed the voluntary dismissal of the collection action against her. *See* ***Puchner***, 2001 WI App 50, ¶9.

¶12 The clerk of this court is instructed to return unfiled any document submitted by Gerard relating to any matter arising from, relating to or involving Parkland.[6] On remand, the circuit court shall enter whatever order is necessary to give direction to the clerk of the circuit court relating to this opinion's affirmation of its order prohibiting future filings by Gerard. The clerk of this court will resume accepting Gerard's documents for filing if the documents are accompanied by an order of the circuit court indicating that Gerard has complied with all orders issued by the circuit court on remand.

¶13 COURT ORDER. Gerard takes issue with a portion of the circuit court's order:

> As it relates to this case, Gerard has a history of non-compliance with court orders, prosecution of frivolous motions, reckless disregard of court orders, and fabrication of numerous allegations of inappropriate behavior by court officials without any factual basis.

She asserts that the statement is "blatantly *false*" and "unsubstantiated" "intended solely to malign and demean Gerard's character and reputation."

¶14 A trial court may impose serious sanctions, including sanctions that limit access to the court, upon a finding of flagrant abuse of the legal process by filing frivolous actions or motions when other more traditional sanctions have failed. *See* ***Support Systs. Int'l Inc.***, 45 F.3d 186. The portion of the order which

[6] Gerard is not barred from filing documents in the circuit court and this court responding to any action commenced by Parkland or any criminal proceeding commenced against her or seeking habeas corpus relief for herself or challenging incarceration.

Gerard takes offense at is a factual finding of flagrant abuse of legal process. We affirm the circuit court's factual finding unless it is clearly erroneous. WIS. STAT. § 805.17(2). This means that we review the record to determine whether there is any credible evidence to support the circuit court's finding. *See* ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. We have previously summarized the 300 events entered into the docket of the underlying small claims action and, without difficulty, conclude that the circuit court's findings are supported by the record.

¶15 OTHER ISSUES. As we acknowledged in ***Parkland I*** and ***Parkland II***, there may be some issues left which we did not address. We consider them to be so without merit that they do not bear mentioning. As the court quoted in Gerard's previous appeal, "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). To the extent that we have not addressed these other arguments, they are rejected.

By the court.—Order modified and, as modified, affirmed.

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