COURT OF APPEALS
DECISION
DATED AND FILED

November 29, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1221 **Cir. Ct. No. 2015CV735**

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

MARGARET BACH,

PLAINTIFF-APPELLANT,

V.

ST. VINCENT HOSPITAL, LIFE NAVIGATORS, DENICE MADER AND LYNN WAGNER,

DEFENDANTS-RESPONDENTS.

APPEAL from orders of the circuit court for Brown County: THOMAS J. WALSH, Judge. *Affirmed and cause remanded for further proceedings with directions.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Margaret Bach, pro se, appeals orders dismissing her claims for a restraining order/injunction against St. Vincent Hospital, Life Navigators, Denice Mader, and Lynn Wagner (collectively "St. Vincent") and

requiring her to pay $245 in guardian ad litem fees.[1] We reject Bach's arguments and affirm. We also conclude Bach's appeal is frivolous and sanctions are appropriate under WIS. STAT. RULE 809.25(3).[2] Accordingly, we remand to the circuit court for a determination of the costs, fees, and reasonable attorneys' fees incurred by the respondents as a result of this appeal. Due to Bach's continued aggressive litigation tactics, we also bar Bach from future circuit court or court of appeals filings until the costs, fees, and reasonable attorneys' fees determined by the circuit court have been paid.

¶2 According to the complaint, Bach's adult son, Aaron, suffers from a rare brain tumor known as a hypothalamic hamartoma that causes seizures and aggressive behavior requiring twenty-four-hour, supervised care. Bach alleges she has "saved Aaron's life numerous times by knowing when to challenge physicians and nurses who often do not understand all the ramifications their usual protocols would have on [Aaron's] rare tumor."

¶3 Bach was appointed Aaron's guardian in 2007. ***Margaret B. v. Milwaukee Cty.***, No. 2008AP2653, unpublished slip op. (WI App Sept. 15, 2009) (hereinafter ***Bach I***). She was removed as guardian in 2009 upon a finding that she had not acted in Aaron's best interest. ***Margaret B. v. Milwaukee Cty.***, Nos. 2009AP2450/2010AP1558, unpublished slip op. (WI App Oct. 12, 2011) (hereinafter ***Bach II***). In 2010, Aaron was placed in a community-based residential facility. ***Aaron B. v. County of Milwaukee***, No. 2011AP2287-FT,

[1] Although Bach is representing herself, it appears she is a member of the Wisconsin State Bar in good standing.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

unpublished slip op. ¶6 (WI App May 16, 2012) (***Bach III***). Life Navigators is now Aaron's corporate guardian. In 2012, Bach unsuccessfully sought to remove Life Navigators from that position. ***Bach v. County of Milwaukee***, No. 2012AP1176, unpublished slip op. ¶4 (WI App June 12, 2013) (hereinafter ***Bach IV***). By order dated September 22, 2014, this court dismissed on its own motion another of Bach's appeals on the grounds that Bach failed to present an arguably meritorious issue for review. Bach has also filed numerous federal lawsuits regarding Aaron's guardianship and custody. *See* ***Bach v. Milwaukee Cty. Circuit Court***, 565 F. App'x 531, 532 (7th Cir. 2014), *cert. denied sub nom.* ***Bach v. Circuit Court of Wis., Milwaukee Cty.***, 135 S. Ct. 410 (2014), and *cert. dismissed sub nom.* ***Bach v. Circuit Court of Wis., Milwaukee Cty.***, 135 S. Ct. 1553 (2015).

¶4 On May 14, 2015, Bach filed a complaint in the Brown County Circuit Court alleging Aaron had been admitted to St. Vincent Hospital in Green Bay and was scheduled for surgery the following day. She believed Aaron's care was best handled by Dr. Wade Mueller at Froedtert Hospital in the Milwaukee area, and she sought an emergency order to transport Aaron there for a second opinion. Bach also requested that she be allowed "to communicate with all parties and have a say in this life-threatening decision that affects her son." Bach's filing did not advise the Brown County Circuit Court that, in connection with the guardianship proceedings, the Milwaukee County Circuit Court, by Judge Jane Carroll, had entered an order dated October 16, 2012, which enjoined Bach from making further state or federal court filings without its approval and from interfering or communicating with Aaron's care providers.

¶5 The Brown County Circuit Court appointed a guardian ad litem for Aaron and rescheduled its afternoon calendar on May 14 to hold an emergency

hearing on Bach's complaint. By the time of the hearing, Life Navigators' counsel had provided the court with an e-mail copy of the October 16, 2012 injunction order. The court began the hearing by asking Bach, "[W]hy on earth would you file a pleading and not advise me of the existence of this order?" Bach responded that it was "an urgent situation" and she "didn't have time to include absolutely everything" in her complaint. At the hearing, Bach confirmed she had not received authorization from Judge Carroll to file her Brown County action. The court also ascertained that Bach had never appealed the October 16, 2012 order.

¶6 The circuit court questioned Aaron's guardian ad litem, attorney James O'Neil, as to whether he had done any preliminary investigation into the situation. O'Neil represented he had just visited St. Vincent Hospital and had run into Aaron's neurosurgeon, Dr. Hoyt, who was scheduled to perform the surgery on May 15. Doctor Hoyt advised O'Neil that although the tumor was progressing, there was not an emergency and that he had no objection to a consultation with Dr. Mueller, who was, in fact, Dr. Hoyt's partner. Doctor Hoyt also told O'Neil he would be postponing Aaron's surgery in light of Bach's filing.

¶7 The circuit court dismissed Bach's complaint. At the conclusion of the hearing, it determined most of the issues brought to it for emergency resolution were mooted by the surgery's rescheduling. Further, the court found Bach had "deceived" the court by failing to notify it of the October 16, 2012 order enjoining further filings. As a sanction, the court ordered Bach to reimburse Brown County $245 for the guardian ad litem fees, and it stated it would be forwarding the case materials to Judge Carroll so she was aware of the violation of her order.

¶8 The circuit court correctly deemed Bach's requests for surgery postponement and emergency transport mooted based on the guardian ad litem's

representations to the court that the surgery had been postponed and that Dr. Hoyt would be consulting with Dr. Mueller. "[A] case is moot when a determination is sought upon some matter which, when rendered, cannot have any practical legal effect upon a then existing controversy." ***G.S., Jr. v. State***, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984) (per curiam). By the time of the hearing, Bach had prevailed at having the surgery postponed for a consultation with her desired physician. Bach has not presented any compelling reason why these matters are of great public interest or likely to recur such that they should be addressed despite the issue's mootness. *See* ***Outagamie County v. Melanie L.***, 2013 WI 67, ¶80, 349 Wis. 2d 148, 833 N.W.2d 607.

¶9 Moreover, all issues, including those of surgery postponement and emergency transport, were properly denied based on Bach's failure to abide by the terms of Judge Carroll's October 16, 2012 order. The order's provisions fall into three categories, relating to: (1) court filings; (2) picketing; and (3) communication with Aaron's care providers. The section pertaining to court filings enjoined Bach from filing, without Judge Carroll's approval, "any complaint, petition, motion, or other request for relief … in this guardianship proceeding, or in any other proceeding before any other state or federal court or other tribunal (including appellate courts), regarding Aaron" or his caregivers, except that Bach was permitted to appeal the order to the Wisconsin Court of Appeals.[3] The order also

[3] Bach alludes to the notion that the Milwaukee County Deputy Register in Probate orally advised her that the October 16, 2012 order was not meant to refer to federal matters, only matters in Judge Carroll's court. Bach contends she testified to this fact at the emergency hearing, but no party had a response. Bach has provided no evidence beyond her own self-serving statements at the emergency hearing to support her desired interpretation of the October 16, 2012 order, the meaning of which is plain on its face as encompassing state courts and any "other tribunal." Moreover, Bach has not established any authority on the part of the Deputy Register in Probate to amend or clarify otherwise clear language in a circuit court order.

prohibited Bach from communicating with Aaron's health care providers on matters related to his care and treatment, except in emergency situations when Bach was present with Aaron. Bach does not dispute that she did not appeal the October 16, 2012 order.

¶10 In this appeal, Bach raises nine issues, many of which pertain to the validity of the October 16, 2012 order.[4] For example, Bach contends that order was "void" and "illegal," that Life Navigators is judicially estopped from enforcing the order, and that the order violates her due process rights. Our review of the emergency hearing transcript confirms St. Vincent's argument that these matters were either not raised before the lower court or were not raised with sufficient prominence to warrant a response. *See* ***Shadley v. Lloyds of London***, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838 ("It is well-established law in Wisconsin that those issues not presented to the trial court will not be considered for the first time at the appellate level."). Indeed, Bach did not bother to alert the circuit court to the existence of the October 16 order, and her meager responses at the emergency hearing as to why she should not be bound by it do not constitute developed legal arguments.

[4] Many of the arguments Bach puts forth in her appellate briefing are not developed legal arguments, but rather are apparently designed to tug at the reader's heartstrings. For example, Bach argues she has a constitutional right to see (and "associate with") her son, but then cites cases concerning the termination of parental rights and the rights of a parent to raise his or her child. Aaron, however, is an adult. Even if, as Bach contends, "[t]here can be no debate [that she] is aggrieved [by] not being able to see her son for over three years, and not even before her son undergoes a life-threatening brain surgery," this provides no basis to overturn either the October 16, 2012 order or the orders in this case.

Other relief Bach requests in connection with this appeal ranges well beyond our review of the orders in this case. Bach, for example, asks this court to "consider Aaron's best interests and remand the case to an impartial circuit court to make the proper investigation." However, Aaron's best interests have already been determined by an impartial tribunal, which found that Bach was not acting consistent with those interests as guardian.

¶11 Bach is simply attempting to use appellate review of the orders in this case as an opportunity to mount a collateral attack on the validity of the October 16, 2012 order. When the time for direct appeal of a judgment or order has passed, a party cannot obtain review by appealing a later ruling that simply enforces the judgment or order. *See generally* ***Ver Hagen v. Gibbons***, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972); *see also* ***Kellogg-Citizens Nat'l Bank of Green Bay v. Francois***, 240 Wis. 432, 435-36, 3 N.W.2d 686 (1942) ("This Court has held from the earliest day that where no appeal is taken from an order (or judgment) within the time limited, mere error in an order cannot be reached by appealing from an order denying a motion to set it aside.").

¶12 The one "new" issue we are able to review in connection with the orders in this case is the assessment of guardian ad litem fees against Bach, which she argues was "contrary to the statutes and cases on who must pay guardian ad litem fees." Bach observes the circuit court in this case appointed the guardian ad litem on its own initiative. She further notes that the purpose of the guardian ad litem is to aid the court and county, and that typically the county of venue is responsible for paying the associated fees absent a statutory provision for fee payment. *See* ***Romasko v. City of Milwaukee***, 108 Wis. 2d 32, 36-37, 321 N.W.2d 123 (1982).

¶13 Bach's required reimbursement of guardian ad litem fees in this case was not, however, simply an exercise in statutory interpretation and application. Rather, the circuit court imposed the reimbursement as a sanction for Bach's filing the lawsuit in direct violation of another court's order and for Bach's failure to disclose the existence of the October 16, 2012 order. Circuit courts possess inherent authority to sanction parties for their misconduct. ***Schultz v. Sykes***, 2001 WI App 255, ¶10, 248 Wis. 2d 746, 638 N.W.2d 604. "[W]e review a circuit

court's decision to impose sanctions, as well as the particular sanction it chooses, for an erroneous exercise of discretion." ***Id.***, ¶8. In this case, the guardian ad litem fees Brown County incurred were a direct result of Bach's violation of the October 16 injunctive order. The circuit court did not erroneously exercise its discretion in assessing those fees against Bach for the violation.[5]

¶14 St. Vincent argues Bach should be sanctioned for filing a frivolous appeal. If an appeal is found to be frivolous, the successful party is entitled to costs, fees, and reasonable attorney fees under WIS. STAT. RULE 809.25(3)(a). To find an appeal frivolous, we must conclude either that the appeal was "filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another;" or that the party "knew, or should have known, that the appeal … was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." Subsec. 809.25(3)(c). We conclude the latter scenario applies here, and that Bach should have been aware, for the reasons previously articulated, that the issues she raises on appeal have no merit and are not even properly before this court.

[5] Bach argues she is indigent and therefore the court erred in assessing the guardian ad litem fees against her. Bach has not directed us to an affidavit or order establishing her indigency, and she ignores the fees were imposed as a sanction. In any event, Bach relies on ***Olmsted v. Circuit Court for Dane County***, 2000 WI App 261, 240 Wis. 2d 197, 622 N.W.2d 29. However, ***Olmsted*** concluded that, to preserve access to the courts, an indigent petitioner in a post-divorce motion could not be required to pay guardian ad litem fees "at the inception or during the pendency of an action." ***Id.***, ¶¶10-11. Here, however, the circuit court ordered payment at the conclusion of the case, after the parties had presented their arguments. *See* ***Salim v. Salim***, No. 2012AP70, unpublished slip op. ¶12 (WI App Oct. 8, 2013); *see also* WIS. STAT. RULE 809.23(3)(b) (authored but unpublished opinions issued on or after July 1, 2009, may be cited for persuasive value). Thus, Bach's indigency status would have no effect on the court's ability to order the payment of guardian ad litem fees, even if they were not awarded against Bach as a sanction.

¶15 In ***Bach I***, we advised Bach that "we have carefully reviewed the record and we are unconvinced that Margaret has raised any issue on appeal that entitles her to relief from the trial court's final and non-final orders." ***Bach I***, ¶21. We declined to address the "myriad issues and subissues" Bach raised, many of which were inadequately briefed, and commended the circuit court for its "attempts to explore Margaret's concerns and find the best and least restrictive placement for Aaron." ***Id.***, ¶21 & n.10.

¶16 In ***Bach II***, we admonished Bach as follows:

> As his mother, Margaret's deep and emotional investment in Aaron's welfare is understandable. Her fierce advocacy, however, while admirable to a point, now has crossed the line. We caution her that she must stop these scurrilous, unfounded allegations. Nothing in the record supports her claims and—mother or not, pro se or not—nothing excuses such invective and disrespect to the court, its officers and the other targets of her attacks. Beyond that, Margaret is now a lawyer herself. She would do well to acquaint herself with Supreme Court Rule 62 on the standards of courtesy and decorum that [are] expected of her.

Bach II, ¶38.

¶17 This admonishment was ineffective, as Bach continued to vociferously oppose Aaron's out-of-home placement and her removal as guardian, prompting this court to observe in 2013 that Bach "uses her appeal rights to revisit years' worth of already-litigated grievances." ***Bach IV***, ¶4. There, the respondents sought sanctions against Bach, but we decided to give her one last chance to terminate her abusive use of the judicial system:

> Lastly, the respondents ask that Bach be sanctioned for ignoring this court's admonitions against launching baseless claims, treating the court with disrespect, continuing to relitigate settled matters, and failing to follow court rules. While the request has merit, we will give Bach one final caution. Being Aaron's mother does not endow

> her with the right to sidestep, manipulate or disregard the rules by which all litigants must play. Further like behavior will result in sanctions.

Id., ¶7 (footnote omitted).

¶18 We believe sanctions are now warranted, as repeated cautions and admonitions have proven ineffective to cease the waves of litigation from Bach that continually batter this court's shores. We observe that the United States Court of Appeals for the Seventh Circuit has already ordered monetary sanctions and a bar on filing in response to Bach's "[r]efusal to take no for an answer" and her "campaign of unending litigation." Accordingly, we sanction Bach under WIS. STAT. RULE 809.25(3)(a) and remand to the circuit court for a determination of the costs, fees, and reasonable attorneys' fees St. Vincent incurred in this appeal. To make these sanctions effective and meaningful—and in recognition that Bach has attempted to litigate the same matters repeatedly, unsuccessfully and frivolously—we also bar Bach from commencing proceedings in this court and the circuit court (*any* Wisconsin circuit court) arising from, relating to, or involving Aaron's custody, care or treatment until the costs, fees, and reasonable attorneys' fees as (determined by the circuit court) are paid in full. *See* ***Puchner v. Hepperla***, 2001 WI App 50, ¶6, 241 Wis. 2d 545, 625 N.W.2d 609.

¶19 The clerk of this court is instructed to return unfiled any document Bach submits relating to any matter arising from, relating to, or involving Aaron's

custody, care or treatment.[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 prohibition on future filings by Bach. The clerk of this court will resume accepting Bach's documents for filing if those documents are accompanied by an order of the circuit court indicating that Bach has paid the costs, fees, and reasonable attorneys' fees awarded by the circuit court on remand.

By the Court.—Orders affirmed and cause remanded for further proceedings with directions.

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

[6] Bach is not barred from filing documents in the circuit court and this court responding to any action commenced against her involving her son or in any criminal proceeding commenced against her, or seeking habeas corpus relief for herself or challenging incarceration. She is also not barred from filing documents relating to any matter in which she is acting as an attorney in a representative capacity, provided those matters do not arise from, relate to or involve Aaron's custody, care or treatment. In addition, Bach is not barred from petitioning the Wisconsin Supreme Court for review of this opinion.