COURT OF APPEALS
DECISION
DATED AND FILED

November 30, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-2172

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

IN THE INTEREST OF CALLY A.C., A PERSON UNDER THE AGE OF 18:

DAVID A.C.,

PETITIONER-APPELLANT-CROSS-RESPONDENT,

V.

VERONICA L.D.,

RESPONDENT-RESPONDENT-CROSS-APPELLANT,

ATTORNEY HOWARD EGLASH,

CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Monroe County: MICHAEL J. McALPINE, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 VERGERONT, J. This appeal concerns an award of attorney fees under WIS. STAT. § 802.05 (1997-98)[1] and arises in the context of a dispute between David A.C. and Veronica L.D. over custody and physical placement of their daughter Cally. The trial court determined that David's motion for an ex parte temporary change of custody and physical placement violated § 802.05 and ordered David to pay $10,000 for Veronica's attorney fees. The court also determined that the attorney who filed the motion and supporting affidavit on David's behalf, based on information provided by David, did not violate the statute. David appeals, contending that Veronica's motion for sanctions under § 802.05 was not timely; his filings did not violate § 802.05; and, the court erred in ordering him to pay $10,000 without findings based on evidence of actual attorney fees and of the portion attributed to the alleged § 802.05 violation.

¶2 Veronica cross-appeals, contending that the trial court erroneously exercised its discretion in deciding that David's attorney did not violate WIS. STAT. § 802.05 and should not be sanctioned, and erred in limiting the sanction to $10,000 without allowing her to show the actual amount of her attorney fees.

¶3 We conclude Veronica's motion was timely and the court's determination that David's filings violated WIS. STAT. § 802.05 was supported by

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

the record and based on a proper exercise of discretion. We also conclude that the court properly exercised its discretion in deciding that David's attorney did not violate § 802.05 and should not be sanctioned. However, we agree with both parties that the court's determination that $10,000 is an appropriate sanction is not adequately supported or explained in this record. We therefore affirm in part and reverse in part on the appeal, affirm in part and reverse in part on the cross-appeal, and remand for further proceedings on the amount of the sanction.

BACKGROUND

¶4 This proceeding began as a paternity matter in 1992. David and Veronica stipulated to joint legal custody and equal placement of Cally, born March 8, 1990. The equal placement was to begin on December 1, 1992. The court entered an order approving and incorporating the stipulation on October 21, 1992. On November 30, 1992, Attorney Howard Eglash, on behalf of David, filed a motion for an order to show cause for ex parte relief, accompanied by Attorney Eglash's affidavit, which was based on information given him by David. The affidavit conveyed that an emergency situation existed because Veronica was attempting to devise a plan to return to Mexico, her home, with Cally. The court signed an ex parte order granting temporary custody and physical placement of Cally to David and allowing Veronica limited periods of supervised visitation. Cally was immediately placed with David. At the same time, the court scheduled a hearing for December 17, 1992. At that hearing, the parties stipulated to a temporary order pending further scheduled hearings.

¶5 A trial on David's motion for permanent change of custody and physical placement did not occur until May 1994. As a result of some agreements by the parties, the trial was not completed at that time. Instead, the court entered

an order based in part on the parties' agreements and in part on rulings the court made. Under this order, entered on September 22, 1994, David had sole legal custody and primary physical placement, with provisions for changes in the future. However, because of disagreements between the parties on the terms of the order, the trial court vacated this order on December 15, 1994. A trial was finally held over several days from June to August 1996, and the Findings of Fact, Conclusions of Law and Judgment were entered on April 21, 1997, granting joint legal custody and primary physical placement to Veronica.

¶6 In December 1996, prior to the entry of that judgment, Veronica brought the motion for attorney fees under WIS. STAT. § 802.05, which is the subject of this appeal. In her motion, she claimed that David's attorney, Howard Eglash, had not conducted a reasonable investigation of David's allegations before relying on them in the affidavit he submitted in support of the order to show cause for ex parte relief, and if he had done so, he would have determined that the allegations were false. Veronica expanded the motion to include the contention that David had also violated § 802.05. After a hearing and briefing on the motion, the court issued a decision on February 11, 1998, denying Veronica's motion for an award of attorney fees against Attorney Eglash, but granting it as to David and ordering that he pay $10,000.

¶7 Meanwhile, David appealed the April 21, 1997 Findings of Fact, Conclusions of Law and Judgment to this court. That appeal was still pending when the February 11, 1998 decision on the WIS. STAT. § 802.05 motion was issued. David successfully moved the trial court to vacate the decision on the ground that the court did not have authority to decide the motion while the appeal was pending. After this court affirmed the trial court's Findings of Fact, Conclusions of Law and Judgment in an unpublished decision on August 20,

1998,[2] Veronica renewed the § 802.05 motion. After more hearings, and various motions by David, which the court denied,[3] the court entered a decision and order resolving Veronica's § 802.05 motion.

¶8 The court first decided the motion was timely because it was filed prior to the entry of the judgment of April 21, 1997. The court's discussion of the merits of the motion is lengthy. The court quoted the statements in Attorney Eglash's November 1992 affidavit that it relied on in issuing the ex parte order, and we summarize them here: **(1)** Since her arrival in the United States in May 1991, Veronica threatened to take Cally and return to Mexico, and David fears she will do that and disappear in Mexico and there is no extradition treaty that would force the Mexican authorities to return the child to him. In early November 1992, David discovered a letter from a friend of Veronica's, a former prostitute from Mexico now living in Wisconsin, to Veronica stating that she was attempting to devise a plan so Veronica and Cally could flee the country, which involved this friend hiding Veronica and the child until Veronica could obtain documents to leave the country. **(2)** David fears for his child's safety because Veronica told him she has performed sexual acts with her boyfriend in front of the child. **(3)** Veronica is dating a convicted drug dealer who may still be dealing drugs. **(4)** Veronica "is capable of virtually anything." One example occurred in

[2] ***In re paternity of Cally A.C.***, No. 97-1679, unpublished slip op. (Wis. Ct. App. Aug. 20, 1998).

[3] David filed a motion asking the court to consider new evidence, which the court denied. He also filed a motion to reconsider that denial and for a jury trial on Veronica's motion, both of which the court denied. The court granted Veronica's motion under WIS. STAT. § 802.05 for an award of attorney fees against David for his latter two motions, which the court determined were frivolous, and ordered him to pay $500 in attorney fees. Later, the court ordered David to pay $1,500 as a sanction for a subsequent motion to vacate an order on Veronica's § 802.05 judgment, which the court determined was frivolous. On this appeal, David presents no arguments concerning these sanctions.

December 1990 while David and Veronica were both in Mexico. Veronica began to deny him visitation, which he was entitled to under a stipulation. Veronica and David's ex-wife then fabricated a story and filed a complaint against him with the district attorney. David received a warning that he was going to be put in jail and so he left Mexico. Veronica and her family attempted to lure him back to Mexico and have him arrested either for a false rape charge or a false drug charge. Her attorney offered to drop these false charges and allow visitation if he paid her and her family $10,000. However, David taped the conversation and gave the tape to his attorney to charge Veronica and her family with extortion. As a result Veronica retracted the false allegations, confessed to lying, and signed a stipulation granting him joint physical custody.

¶9 The court found these averments in Attorney Eglash's affidavit were "embellished at best, and significantly false at worst." The court then summarized the evidence that formed the basis for this finding. The court also found that David had knowledge of facts that were contrary to those contained in Attorney Eglash's affidavit and the court summarized those. The court made these additional findings of significance to this appeal: David was not justified in making the allegations to Attorney Eglash that Eglash then put in his affidavit. Attorney Eglash did not know the allegations were false or embellished. Given the allegations David made, Attorney Eglash's actions in accepting David's allegations and immediately filing a request for an ex parte order based on them were justified. The allegations in the affidavit "in large part, but by no means alone … set the stage for [the extensive litigation that] followed." Had the facts been fully and accurately presented to the court, the court would not have issued an ex parte order, and the court can "reasonably assume that the litigation that followed would have taken a less costly and destructive course." David also

raised legitimate issues and therefore is not responsible for all of Veronica's attorney fees.

¶10 With respect to the amount of fees, the court stated:

> I am very aware from my participation in this proceeding, the record, and the guardian ad litem's statement for services, that [Veronica's] legal expenses are well into the tens of thousand of dollars. Her counsel has appeared numerous times in Monroe County Circuit Court, traveling from his Madison office. It is with that knowledge that I determine it unnecessary to require [Veronica's counsel], to submit statements for his services proper [sic] to my determination of the contribution [David] must make to her legal expenses, as a sanction.
>
> Given the facts of this proceeding, I conclude [David] must contribute the sum of Ten Thousand ($10,000) Dollars to Veronica to be used toward the payment of her legal expenses.

DISCUSSION

¶11 We consider first David's contention that Veronica's motion under WIS. STAT. § 802.05 was not timely filed. This presents a question of law, which we review de novo. ***Northwest Wholesale Lumber, Inc. v. Anderson***, 191 Wis. 2d 278, 283, 528 N.W.2d 502 (Ct. App. 1995). We conclude the trial court was correct in concluding that the motion was timely. We held in ***Northwest*** that, although there is no time limit specified in the statute, it must be filed before entry of the final judgment. ***Id.*** at 292-93. Veronica's motion challenged David's pleadings filed in November 1992 requesting a change of custody and placement. Her motion was filed in December 1996 prior to the April 21, 1997 entry of the Findings of Fact, Conclusions of Law and Judgment. David's contention that the October 11, 1994 order was the final judgment has no merit. The court vacated that order because it was not based on a full trial of the issues and the parties

continued to dispute the terms they had stipulated to. The proceedings that followed, finally concluded by the April 21, 1997 Findings of Fact, Conclusions of Law and Judgment, were all conducted in order to resolve David's November 1992 motion.

¶12 We next consider David's contention that the trial court erred in determining that he violated WIS. STAT. § 802.05 because information he provided Attorney Eglash, which Eglash repeated in his affidavit, was false and David had knowledge of facts contrary to that information.

¶13 Pursuant to WIS. STAT. § 802.05,[4] a person who signs a pleading makes three warranties:

> First, the person who signs a pleading, motion or other paper certifies that the paper was not interposed for any improper purpose. Second, the signer warrants that to his or her best 'knowledge, information and belief formed after

[4] WISCONSIN STAT. § 802.05 provides in part:

> The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the attorney's or party's knowledge, information and belief, formed after reasonable inquiry, the pleading, motion or other paper is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that the pleading, motion or other paper is not used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If the court determines that an attorney or party failed to read or make the determinations required under this subsection before signing any petition, motion or other paper, the court may, upon motion or upon its own initiative, impose an appropriate sanction on the person who signed the pleading, motion or other paper, or on a represented party, or on both. The sanction may include an order to pay to the other party the amount of reasonable expenses incurred by that party because of the filing of the pleading, motion or other paper, including reasonable attorney fees.

> reasonable inquiry' the paper is 'well grounded in fact.' Third, the signer also certifies that he or she has conducted a reasonable inquiry and that the paper is warranted by existing law or a good faith argument for a change in it.

Jandrt ex rel. Brueggeman v. Jerome Foods, Inc., 227 Wis. 2d 531, 548, 597 N.W.2d 744 (1999). If the circuit court finds that any one of the three requirements has been disregarded, it may impose an appropriate sanction on the person signing the pleading or on a represented party or both. ***Id.***

¶14 In determining whether an action has been commenced frivolously, the circuit court is to apply an objective standard of conduct for litigants and attorneys. ***Id.*** at 549. To apply this objective standard to determine whether an attorney made a reasonable inquiry into the facts of a case, the circuit court should consider:

> whether the signer of the documents had sufficient time for investigation; the extent to which the attorney had to rely on his or her client for the factual foundation underlying the pleading, motion, or other paper; whether the case was accepted from another attorney; the complexity of the facts and the attorney's ability to do a sufficient pre-filing investigation; and whether discovery would have been beneficial to the development of the underlying facts.

Id. at 550.

¶15 The circuit court is to make its analysis from the perspective of the attorney and client with a view of the circumstances that existed at the time of filing the challenged paper, asking what was reasonable to believe at the time the pleading, motion, or other paper was submitted; the court is to avoid using the wisdom of hindsight. ***Id.*** at 551. A claim is not frivolous merely because there was a failure of proof or because a claim was later shown to be incorrect, nor are

sanctions appropriate merely because the allegations were disproved at some point during the course of litigation. ***Id.***

¶16 Our review of a circuit court's decision under WIS. STAT. § 802.05 is deferential. ***Id.*** at 549. Determining what and how much prefiling investigation was done are questions of fact, and we uphold these and all other factual findings of the trial court unless they are clearly erroneous. ***Id.*** Determining how much investigation should have been done, however, is a matter within the trial court's discretion because the amount of research necessary to constitute "reasonable inquiry" may vary, depending on such things as the particular issue involved and the stakes of the case. ***Id.*** at 548-49. A circuit court's discretionary decision will be sustained if it examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. ***Id.*** at 594.

¶17 When reviewing the trial court's findings of fact, we may search the record for evidence to support the trial court's findings of fact. ***Estate of Becker v. Zoschke***, 76 Wis. 2d 336, 347, 251, N.W.2d 431 (1977). It is the role of the trial court, not this court, is to determine the credibility of witnesses, and we do not reverse a trial court's factual findings based on credibility. ***Rivera v. Eisenberg***, 95 Wis. 2d 384, 388, 290 N.W.2d 539 (Ct. App. 1980).

¶18 David's challenge to the court's determination on the WIS. STAT. § 802.05 motion is, in large part, to these four factual findings, which the court made in the April 21, 1997 Findings of Fact, Conclusions of Law and Judgment:

> (1) There is no evidence, other than David's testimony, to support the claims that [Veronica] and/or her family tried to extort $10,000 from [him].

> (2) There is no evidence that there was inappropriate sexual misconduct on the part of [Veronica] in front of the child [].
>
> (3) There is no evidence to support the allegation that [Veronica's] relationship with a convicted drug dealer did in fact exist beyond mere introduction by the [David].
>
> ….
>
> (6) [David's] affidavit alleged that there was a threat of [Veronica]taking the child to Mexico, thereby denying [David's] right to physical placement of the child. At the trial in this matter the evidence established, however, that respondent's passport was in the possession of the petitioner during the period of time in question, thereby rendering the possibility of carrying out such threat null.

¶19 However, the April 21, 1997 Findings of Fact, Conclusions of Law and Judgment are not properly before us. For purposes of appellate review, that was a final judgment, which David has already appealed and which we affirmed. On this appeal we have jurisdiction over only the decision and order on attorney fees and all prior non-final judgments, orders, and rulings that have not already been appealed and ruled on. WIS. STAT. § 809.10(4). We recognize David did not challenge the trial court's factual findings in his appeal of the April 21, 1997 Findings of Fact, Conclusions of Law and Judgment but challenged only the court's statutory authority to make a change in physical placement. Nevertheless, his failure to ask us to review the court's April 27, 1997 factual findings on that appeal precludes him from doing so now.

¶20 Therefore, on this appeal we will not consider David's arguments that the above four findings of fact are erroneous. However, we will consider whether the trial court erroneously found that David knew or should have known the following allegations were false at the time David made them to his attorney and authorized his attorney to file an ex parte motion based on them: Veronica and/or her family tried to extort $10,000 from him; Veronica had sex with a man

in front of their child; Veronica was dating a convicted drug dealer suspected of still dealing drugs; and Veronica might flee with their child to Mexico and disappear. As the trial court correctly recognized at the hearing on the WIS. STAT. § 802.05 motion and explained to David at that time, the issue on the § 802.05 motion is not whether David's allegations were true; the trial court had already determined they were not true. The issue is whether David knew or reasonably should have known they were not true. In resolving this issue, the court heard testimony from David, Veronica, and Attorney Eglash, considered evidence previously admitted at trial, and other submissions of the parties.

¶21 We conclude the trial court's findings that David knew or should have known that each of these four allegations was false are not clearly erroneous. Before analyzing each allegation, we refer to evidence that the court could reasonably consider to bear on David's credibility. First, David testified that about two weeks before he gave Attorney Eglash the information, and shortly after he had entered into the stipulation with Veronica that formed the basis for the October 21, 1992 order, he learned that Veronica had filed a report with the police because she had discovered he was wiretapping her conversations and had placed a tape recorder in her residence. Second, there was evidence that David exercised control over significant aspects of Veronica's life, apart from those concerning their child, and that she was dependent on him because she was not born and raised in the United States and did not speak much English. We also observe that in this case there is particular validity to the general rule that a trial court acting as a fact finder is in the best position to assess the credibility of the persons appearing before it. The trial court had extensive opportunity to judge the motives and credibility of both David and Veronica during the more than six years of litigation that occurred since the original stipulation on joint custody and equal placement.

¶22 With respect to the extortion allegation, the tape-recorded conversation between David and Attorney Raul Rivera that took place on January 11, 1991, and admitted into evidence at the custody trial, supports the court's finding that David knew Veronica was not attempting to extort $10,000 from him.

¶23 With respect to Veronica's alleged sexual misconduct in front of their child, David asserts that the affidavit does not say that Veronica engaged in such conduct, only that she *told* him she did, and, he points out, she admitted to the conduct in her deposition. Veronica did testify to this in her deposition. However, she also testified that she told David this even though it was not true because he kept insisting on it. David testified that Veronica told him about the conduct sometime before he agreed to the stipulation that was entered by the court on October 21, 1992. And David knew when he gave Attorney Eglash the information for the affidavit that the man with whom Veronica supposedly had sex in front of her child had denied it. This evidence, together with other evidence forms a reasonable basis to suspect David's motives and doubt his credibility, and supports a finding that David knew Veronica had not performed sex acts with a man in front of their child. David's protestation that he did not tell his attorney that she had, only that she *said* she had, does not undermine this finding: a reasonable person knows or should know that what Veronica told him about her sexual misconduct is significant, in the context of seeking an ex parte order, only if what she said is true. Therefore, the court had a proper evidentiary basis for finding that David provided misleading or false information on this point, even though he phrased the information in terms of what Veronica said.

¶24 With respect to the convicted drug dealer, the evidence was that David introduced this man to Veronica; Veronica denied a dating or romantic relationship with him, and denied any knowledge that he was dealing drugs now or

had been convicted of that; and David did not produce any evidence to the contrary. The court had the opportunity to evaluate whether, when David gave this information to Attorney Eglash, he reasonably believed Veronica was dating this man and knew the man was or had been involved in drug dealing. The court's determination that David did not reasonably believe this is not clearly erroneous.

¶25 Finally, we reach the same conclusion regarding David's allegation that Veronica was involved in a plan to escape to Mexico with the child. David points to evidence that Veronica made threats to take the child to Mexico in 1991. He also contends the court's finding that she could not leave because he had her passport is not supported by the evidence because she had once gone to Mexico in 1989 without a passport, using her birth certificate. The translation of the letter David relied on to prove Veronica's "plan" makes no mention of an escape to Mexico with the child. That fact, plus the fact that the prior incidents David relies on long predate the stipulation he made in October 1992, and the evidence indicating that David controlled many aspects of Veronica's life in this country, provide an evidentiary basis for its conclusion that David knew or should have known there was not an immediate danger of Veronica fleeing with the child to Mexico and disappearing there.

¶26 Since the trial court's findings that David knew or should have known the claims he made to his attorney concerning Veronica were misleading or false are not clearly erroneous, we conclude the court properly exercised its discretion in deciding that sanctions against David were warranted. WISCONSIN STAT. § 802.05(1)(a) permits the court to impose a sanction "on the person who signed the pleading, motion, or other paper, or on a represented party, or on both." Although Attorney Eglash, not David, signed the motion for ex parte relief and the affidavit, the record supports a finding that David gave Attorney Eglash the

information knowing it would be presented to the court as a basis for the ex parte relief he authorized his attorney to seek. As for the amount of sanctions the court imposed, before considering David's challenge we address Veronica's challenge on her cross-appeal to the court's decision not to impose sanctions on Attorney Eglash.

¶27 Veronica contends the court erred in determining that Attorney Eglash acted reasonably in accepting David's allegations and immediately seeking ex parte relief without investigating them. Veronica points to the fact that much of what David told Attorney Eglash related to events that had occurred before David entered into the stipulation, and Attorney Eglash knew of some of those events. Therefore, argues Veronica, a reasonable attorney would not accept David's word for the urgency of the situation without first undertaking some investigation.

¶28 The trial court found that Attorney Eglash did not know David's allegations about Veronica were false or "embellished" and we are satisfied that finding is not clearly erroneous. The question whether Attorney Eglash acted reasonably in not investigating David's accusations before filing the motion is committed to the trial court's discretion, ***Jandrt***, 227 Wis. 2d at 548-49, and we conclude the trial court properly exercised that discretion.

¶29 The court correctly recognized that it was to evaluate Attorney Eglash's conduct in light of the circumstances at the time of the filing, not based on the subsequent events and proceedings, which, the court found, revealed that David's allegations were not true. Judging Attorney Eglash's conduct in the correct context requires consideration of an attorney's duties when presented with a client's assertions that his or her child's other parent has plans to flee the country with the child in order to keep the child from the client, and that the other parent is

not caring for the child's safety and well-being. The attorney in such a situation has the duty to act promptly to protect the client from losing access to the child and to protect the child, as well as a duty to comply with WIS. STAT. § 802.05. The trial court recognized this and applied the correct law to the facts of record in a rational and thoughtful manner. Its conclusion that Attorney Eglash acted reasonably in immediately filing a request for ex parte relief, based on David's allegations, is a reasonable one.

¶30 We now address the trial court's order that David pay Veronica $10,000 toward her attorney fees. David and Veronica both contend, with varying emphases, that the court erred because it did not make sufficient findings or have a sufficient evidentiary basis for its decision. For the reasons we explain below, we agree with the parties that a reversal and remand is necessary on the amount of the sanction.

¶31 WISCONSIN STAT. § 802.05(1)(a) authorizes, as a sanction, "an order to pay to the other party the amount of reasonable expenses incurred by that party because of the filing of the pleading, motion or other paper, including reasonable attorney fees." ***Jandrt***, decided after the circuit court made its decision on attorney fees in this case, discusses the proper considerations for a trial court in deciding the amount of attorney fees as a sanction for a violation of § 802.05. The court should bear in mind that the purpose of the statute is primarily deterrence and punishment, but it may, in a proper case, decide that full compensation for all costs and reasonable fees necessarily incurred in responding to sanctioned pleading or argument is appropriate. ***Jandrt***, 227 Wis. 2d at 576-77. If the court decides on this latter "but-for" approach, which it is not required to do, it should make findings as to what fees and expenses were reasonably generated by the sanctioned argument or pleading, ***id.*** at 577, which includes a determination of

what is a reasonable rate and what is a reasonable amount of time for necessary preparations, ***id.*** at 575. Whatever approach the court uses, it must take equitable factors into account, such as the assets of the sanctioned person and whether the party seeking fees caused the litigation to be more extensive than necessary. ***Id.*** at 577-78.

¶32 In reviewing the trial court's sanction of attorney fees under WIS. STAT. § 802.05, we apply a deferential standard. ***Id.*** at 575. We accept the court's findings on the prevailing rate as well as on the amount of preparation necessary, unless they are clearly erroneous. ***Id.*** Although the question of reasonableness is one of law, we give weight to the trial court's determination of what amount of fees are reasonable because of its superior position in making this determination. ***Id.*** at 576. And, although ***Jandrt*** did not expressly so state, we conclude that we are to review as a discretionary decision the trial court's ultimate decision on the amount of the sanction, after it has considered deterrence, punishment, compensation, and equitable factors; in other words, we are to affirm if the court applied the correct law to the facts of record and reached a reasonable result through a rational process. *See* ***id.*** at 549.

¶33 We are unable to determine the basis for the trial court's award of $10,000. If it intended to utilize a compensation "but-for" approach, its findings are insufficient to support the result of $10,000. Its findings that, had the facts been accurately and fully presented to the court, the court would not have issued an ex parte order and the proceedings would have been less extensive, are supported by the record. However, without more specific findings, we are unable to tell what percentage or portion of the proceedings were unnecessary, and, thus, what percentage or portion of Veronica's attorney's work and expenses were unnecessary, but for the sanctioned pleadings. It is true we may search the record

for evidence to support findings necessarily implicit in the trial court's decision. ***Moonen v. Moonen***, 39 Wis. 2d 640, 646, 159 N.W.2d 720 (1968); ***Schneller v. St. Mary's Hosp. Med. Ctr.***, 162 Wis. 2d 296, 311-12, 470 N.W.2d 873 (1991). However, in this case the court took no evidence on attorney fees, and we are unable to tell from this extensive record, without more indication from the trial court, what would likely not have occurred, but for the sanctioned pleadings.

¶34 It may be that the trial court determined the amount of reasonable fees under a compensation approach was greater than $10,000, and it was reducing the amount to $10,000 because of equitable factors, such as David's ability to pay, or Veronica's contribution to making the proceedings more extensive than necessary. Or the court may have decided that $10,000 was sufficient to deter and punish David, and no other factor that it was required to consider under ***Jandrt*** justified a different award. However, we are unable to tell whether the court took either of these approaches, and, if it did, whether either is reasonable based on the relevant facts.

¶35 Although we are keenly aware from our work on this case of the great amount of time, patience, and care the trial court has already expended on this matter, we are persuaded that we must reverse the award of $10,000 and remand for further proceedings consistent with this decision and ***Jandrt***. We emphasize that the court is not required under ***Jandrt*** to award as a sanction the total amount resulting from a "but-for" approach, and, even if it chooses to use that approach, it is not necessarily required to evaluate every entry on Veronica's attorney fee statement.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.