

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 29, 2003

Cornelia G. Clark
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 No. 02-2690

Cir. Ct. No. 99-FA-666

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE FINDING OF CONTEMPT IN
IN RE THE MARRIAGE OF:**

JAYNE L. SUHR, N/K/A JAYNE L. BECKER,

PLAINTIFF-RESPONDENT,

v.

DANIEL S. SUHR,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
RALPH M. RAMIREZ, Judge. *Affirmed.*

¶1 BROWN, J.¹ Daniel S. Suhr appeals from an order holding him in contempt for violating a valid divorce judgment and imposing a purge condition

¹ This case is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

that required him to pay Jayne L. Suhr, n/k/a Jayne L. Becker, his former wife and the mother of his child, \$1000 to compensate her for the attorney's fees she incurred as a result of his contemptuous behaviors. On appeal, Daniel presents two challenges to the circuit court's order—that the circuit court erred in finding him in contempt of the judgment and that the purge condition requiring him to pay a portion of Jayne's attorney's fees is unreasonable. We conclude that the circuit court's finding of contempt is supported by the record and is therefore not clearly erroneous. We also hold that the circuit court properly exercised its discretion in establishing the purge condition. We affirm.

¶2 The facts for purposes of this appeal are brief. On June 14, 1999, Jayne filed a petition for divorce against Daniel. A Judgment of Divorce was granted on April 4, 2001, by the circuit court. In July 2002, after conducting a review hearing, the circuit court found Daniel in contempt of court.

¶3 In its written decision issued in August 2002, the court stated that Daniel had failed to comply with the following portions of the divorce judgment: (a) complete a parenting class focusing on children under five years old, (b) complete an anger management course of therapy, (c) cooperate in all ways with the recommendations of the anger management therapist, (d) transfer the minor child for exchange of placement within a twenty-minute period, and (e) behave in a courteous and civil manner towards Jayne. The court then provided that Daniel could purge himself of the contempt order by complying with the conditions set forth below and by providing proof to the court of compliance with the conditions: (1) enroll in and complete a parenting class for children under five years of age, (2) enroll in an anger management course of therapy with a specific doctor at Cornerstone Counseling, (3) cooperate in all ways with the recommendations of the doctor, (4) be prompt at all times in the transfer of the minor child for purposes

of exchanging placement, (5) behave in a civil and courteous manner towards Jayne at all times, and (6) pay the amount of \$1000 directly to Jayne.

¶4 We begin with a point of clarification. As to this last purge condition requiring the payment of \$1000, the circuit court stated in its written order that Daniel was “to pay the amount of \$1000 directly to [Jayne] as part of his child support obligation to compensate her for the loss suffered by her as a result of [Daniel’s] contemptuous behavior.” However, at the review hearing, the court specifically stated that the \$1000 was to compensate Jayne for her attorney’s fees because Jayne did not have the means to pay them and she had only incurred the fees because of Daniel’s contemptuous behaviors. To the extent that the written order may be interpreted to conflict with the unambiguous hearing transcript, the transcript governs. *See State v. Perry*, 136 Wis. 2d 92, 114, 401 N.W.2d 748 (1987) (Where a conflict exists between a court’s unambiguous oral pronouncement and its written verification, the oral pronouncement controls.). We will therefore construe the \$1000 payment as compensation for Jayne’s attorney’s fees.

¶5 We now turn to Daniel’s challenge to the circuit court’s finding of contempt. He argues that he complied with the requirements of the divorce judgment and therefore was not in contempt. We will not set aside a circuit court’s findings of fact that a person has committed a contempt of court unless they are clearly erroneous. *Haeuser v. Haeuser*, 200 Wis. 2d 750, 767, 548 N.W.2d 535 (Ct. App. 1996). A person may be found in contempt of court if that person refuses to abide by a valid court order. *See id.* After hearing testimony and arguments, the court found that Daniel had not complied with the divorce judgment because he had failed to complete the parenting classes, to cooperate with his counselor, and to act civilly and courteously towards Jayne. The record

supports these conclusions and Daniel points us to no evidence demonstrating to the contrary. We therefore hold that the circuit court did not erroneously exercise its discretion in finding Daniel in contempt.

¶6 Next, we address Daniel's challenge to the purge condition requiring him to pay \$1000 to Jayne as partial compensation for her attorney's fees. We review a circuit court's use of its contempt power to determine if the circuit court properly exercised its discretion. *City of Wis. Dells v. Dells Fireworks, Inc.*, 197 Wis. 2d 1, 23, 539 N.W.2d 916 (Ct. App. 1995).

¶7 Daniel seems to argue that he should not have to pay the money because he has since completed the parenting and anger management classes. However, Daniel misunderstands that simply because he has now completed the classes, this does not mean that the contempt is erased from the record. By completing the classes, Daniel merely purged himself of his contempt for violating the divorce judgment's requirements that he attend anger management and parenting classes and, by doing so, he avoided spending thirty days in the Waukesha county jail. The purge conditions were his "keys to the jail house door." See *State ex rel. V.J.H. v. C.A.B.*, 163 Wis. 2d 833, 843, 472 N.W.2d 839 (Ct. App. 1991).

¶8 But avoiding jail by completing the classes did not obviate his having to pay the part of Jayne's attorney's fees for the contempt hearing. Here, the order that he pay attorney's fees came as a direct result of his failure to comply with the court-ordered divorce judgment. This necessitated Jayne having to go to court to enforce the judgment. The court required Daniel to pay Jayne the \$1000 to partially reimburse the attorney's fees she had incurred in connection with the contempt proceeding but did not have the means to pay. As the court noted at the

review hearing, the only reason Jayne had to hire an attorney in the first place was because of Daniel's contemptuous actions. A court may require payment 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 charge. *See Benn v. Benn*, 230 Wis. 2d 301, 311, 602 N.W.2d 65 (Ct. App. 1999). This payment must be "feasible *and* must be reasonably related to the cause or nature of the contempt." *Id.* (citation omitted). Certainly, this order to pay is feasible and reasonably related to the nature of the contempt. Accordingly, we conclude that the circuit court did not erroneously exercise its discretion in imposing this condition.

By the Court.—Order affirmed.

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

