

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 29, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2008AP1095
2008AP1730
STATE OF WISCONSIN**

Cir. Ct. No. 2007FA30

**IN COURT OF APPEALS
DISTRICT II**

No. 2008AP1095

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

PAMELA S. SCHUH,

PETITIONER-RESPONDENT,

V.

HAMED A. AL-OTHMAN,

RESPONDENT-APPELLANT.

No. 2008AP1730

IN RE THE MARRIAGE OF:

PAMELA S. SCHUH,

PETITIONER-RESPONDENT,

V.

HAMED A. AL-OTHMAN,

RESPONDENT-APPELLANT.

APPEALS from an order and a judgment of the circuit court for Ozaukee County: PAUL V. MALLOY, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Hamed Al-Othman appeals from an order of contempt and a judgment of divorce and raises three issues. Hamed argues the circuit court: (1) denied procedural due process when it expedited the divorce trial date; (2) erroneously exercised its discretion by refusing to adjourn the trial; and (3) erroneously found him in contempt of the court's orders. We reject his arguments and affirm.

¶2 Hamed and Pamela Schuh were married in 1984. The couple had two children, one of whom was a minor when the divorce petition was filed on January 25, 2007. Hamed is a professional consultant in the construction industry. Pamela is a registered nurse working three to four days a week.

¶3 A temporary order found Hamed did not cooperate with providing financial information before the court commissioner. The circuit court subsequently granted a motion to compel discovery and ordered Hamed to pay family support in lieu of child support and maintenance in the sum of \$19,772 monthly. The court provided that Hamed could seek reconsideration upon compliance with the discovery requests.

¶4 On January 3, 2008, Pamela filed a motion for contempt after Hamed failed to comply with the circuit court's orders. A hearing on this motion was held on January 14, 2008, together with a motion by Hamed for reconsideration of the court's order regarding family support.¹

¶5 During this hearing, Hamed testified he had no sources of income other than \$6,000 to \$8,000 monthly from two rental properties in Kuwait. He asked the court to eliminate the spousal maintenance component of the support obligation or he would have "to keep continuing to taking [sic] loans from my family." Hamed testified he took loans from his family in 2007 of "[f]our to five hundred thousand dollars."

¶6 Pamela testified at the hearing that: (1) Hamed boasted about making \$500,000 per year; (2) Hamed's properties in Kuwait included an eight-story apartment building and a large shopping mall that had two sixteen-story twin tower apartment buildings, all of which generated substantial revenues; (3) Hamed purchased land in Kuwait for \$800,000 and sold it shortly thereafter for a profit of \$300,000; (4) Hamed owned land in Lebanon; (5) Hamed travelled to Kuwait three to four times a year and returned with substantial sums of cash, including \$50,000 in one trip; (6) Hamed used to make large wire transfers in either the parties' joint account or his business account; (7) in 2002, Hamed transferred \$234,203 in cash into the parties' joint account; (8) in 2003, Hamed transferred \$530,000 into his business account; (9) the parties purchased everything with cash, including their home in Mequon and various other properties in Wisconsin;

¹ A pretrial conference was also held at this time, and the court scheduled a three-day trial commencing on August 20, 2008.

(10) when the parties needed cash Hamed contacted his foreign banks and had money transferred; and (11) Hamed purchased a \$40,000 vehicle for the parties' daughter when she turned sixteen.

¶7 The circuit court found Hamed's testimony incredible and found him in contempt of court. The court ordered Hamed to spend forty-five days in jail as punishment for his contempt; however, he could purge his contempt by fulfilling various obligations on or before March 14, 2008. The court also denied reconsideration of the family support order.

¶8 On March 26, 2008, Pamela filed an emergency ex parte motion for an order freezing all accounts and a motion for an order freezing all accounts. The affidavits attached to the motions stated that Hamed had vacated his office and residence and fled the country. The affidavit also stated it was discovered Hamed had attempted to sell to a relative two properties belonging to the parties and, further, that it was believed Hamed "will liquidate all of the accounts in the parties' names, his business names, and the parties' children's names if this order is not entered." Pamela also filed a motion for contempt in response to Hamed's attempt to sell the parties' properties.

¶9 That same day, the circuit court entered an order freezing all accounts in which Hamed had an interest, all accounts in the names of the parties' children, and all accounts in the name of Hamed's businesses until further order of the court.

¶10 On March 28, 2008, Pamela filed two further motions: a motion for contempt and a motion for an immediate trial date. The latter motion requested the court award Pamela all of the marital assets located in the United States and

hold open for division the marital assets located outside the country until such time as Hamed returned.

¶11 On April 10, 2008, a hearing was held, at which time Hamed's third lawyer filed a motion to withdraw. The court set a hearing for April 18 to address the withdrawal motion. The court also moved the trial date up to April 23, 2008. A stipulation and order dated April 14 was subsequently entered and the April 18 hearing was withdrawn from the court's calendar.

¶12 On April 23, Pamela appeared at trial in person and with counsel. Hamed did not appear, but an attorney appeared on his behalf and represented to the court that his firm was retained at 4:30 p.m. on the previous day. The attorney indicated he was not prepared to litigate the matter and requested an adjournment. The court denied the adjournment, stating as follows:

I am concerned that if I don't proceed, the financial high jinks and shenanigans that will [sic] continue....

....

It's clear to me that Mr. Al-Othman, from his testimony in court and then his conduct thereafter, does not intend to abide by the jurisdiction of this Court.

And although the default is not – It is not something that is favored in the law.

I think I have to balance the damage to the marital estate and against Ms. Pamela Schuh's right to receive a divorce against the disfavor of the default.

And I'm going to deny the motion to adjourn the trial and then we can proceed.

¶13 The court granted Hamed's attorney's request to be excused from the proceeding, and then heard testimony from Pamela. At the conclusion of her

testimony, the court again discussed its decision to proceed without Hamed present:

I'm also satisfied that it is reasonable to proceed today without Mr. Al-Othman.

First, he clearly knows of this hearing as he retained the law firm of Gimbel, Reilly, Guerin, and Brown late yesterday afternoon.

Moreover, there has been a pattern of conduct in reviewing the file that clearly he has delayed the proceedings or to ignore the jurisdiction of this Court.

....

He has the utmost contempt for this Court's orders.

And, as I indicated earlier, he failed to appear at this hearing despite knowing that it was scheduled for today's date.

....

Mr. Al-Othman has, I think, established a pattern of being aggressive followed by being passive and finally just leaving and displaying the utmost contempt this Court has ever seen for ignoring its orders.

....

As I indicated earlier, I think if this divorce did not go through, it would be irreputable [sic] harm to the marital estate.

I think that he has the ability to pay. That certainly is my sense from his testimony. I did not find him to be credible in the least about his assets.

¶14 On April 25, 2008, an arrest-bench warrant/capias was entered by the court. On May 28, 2008, the court entered the findings of fact, conclusions of law and judgment of divorce. This appeal follows.

¶15 Hamed first argues he was denied procedural due process. Due process requires that litigants be afforded “the opportunity to be heard in a meaningful time and in a meaningful manner.” *Town of East Troy v. Town & Country Waste Serv., Inc.*, 159 Wis. 2d 694, 704, 465 N.W.2d 510 (Ct. App. 1990).

¶16 Hamed received notice on April 10, 2008, that the court intended to proceed with trial on April 23, 2008. The fact that Hamed chose not to retain his fourth attorney until 4:30 p.m. on the day before trial and, further, that he chose not to attend his own trial despite having received notice, critically undercuts his argument that he was denied due process. Moreover, the court was justified in expediting the trial date so as to attempt to preserve what remained of the marital estate, given Hamed’s improper attempts to dispose of marital assets. Hamed was not denied due process.

¶17 Hamed also argues the circuit court erroneously exercised its discretion by ordering an expedited trial date and denying his request to adjourn the trial. A determination on a motion to grant a continuance lies within the discretion of the circuit court. *T & HW Enters. v. Kenosha Assocs.*, 206 Wis. 2d 591, 599, 557 N.W.2d 480 (Ct. App. 1996). A discretionary act will be upheld if the circuit court examined the relevant facts, applied a proper standard of law and reached a conclusion that a reasonable judge could reach. *Id.* Furthermore, a circuit court has inherent power to control its calendar and scheduling. *Neylan v. Vorwald*, 124 Wis. 2d 85, 94, 368 N.W.2d 648 (1985).

¶18 Hamed demonstrated by his own conduct that he did not intend to abide by the court’s jurisdiction, and effectively obstructed the court’s ability to divide the full marital estate. He refused to comply with the court’s orders and

attempted to sell marital assets despite prohibitions from disposing of the marital assets,² and previously filed lis pendens. The court reasonably concluded that the harm caused to the marital estate, and the danger of additional harm, outweighed the consequences of not proceeding with an immediate trial.

¶19 The circuit court’s decision was not made in a vacuum, as Hamed contends. Hamed improperly relies upon *Peerenboom v. Peerenboom*, 147 Wis. 2d 547, 433 N.W.2d 282 (Ct. App. 1988). In that case, the court rejected the testimony of two expert witnesses and assigned an arbitrary value to the goodwill of a dental practice. We reversed the valuation because it was based on nothing more than “the court’s unsupported opinion after rejecting both experts.” *Id.* at 553. Conversely, the court’s decision here was based upon evidence Pamela presented and the court’s finding that Hamed’s testimony was incredible. The court’s findings are not clearly erroneous. WIS. STAT. § 805.17(2)³. Hamed also voluntarily chose not to appear at trial, unlike the situation in *Peerenboom*. We conclude the court did not erroneously exercise its discretion by ordering an expedited trial date and denying Hamed’s request to adjourn the trial.

¶20 Finally, Hamed argues the court erred by finding him in contempt. As a preliminary matter, he challenges the January 14, 2008 hearing on grounds that it did not meet due process standards. Hamed insists he “had no meaningful opportunity to be heard on both his reconsideration motion and [Pamela’s] contempt motion. That right was denied when the reconsideration motion was

² The March 7, 2007 temporary order restrained the parties from encumbering or disposing of property. *See also* WIS. STAT. § 767.225(1)(h) (2007-08).

³ References the Wisconsin Statutes are to the 2007-08 version.

subsumed into a contempt hearing.” He also claims the court, despite the significant issues involved, began by limiting the parties to fifteen minutes per witness. According to Hamed, the rushed attempt to put in the testimony led to a distorted view of the facts.

¶21 We reject these contentions. Hamed’s attorney stated at the hearing on the motions, “Well, if I may, I think that the motion to reconsider the financial orders and then the countermotion now for contempt for noncompliance are all interwoven.” Furthermore, Hamed concedes the court did not enforce the time limits on testimony and the record does not support Hamed’s contention the testimony was rushed. Hamed will not now be heard to argue he did not have a meaningful opportunity to present his positions.

¶22 Hamed also insists the court failed to make factual findings required to hold him in contempt. We disagree. The principal factual findings that a court must make in the context of a motion for remedial contempt are that the person is able to pay and the refusal to pay is willful and with intent to avoid payment. *Krieman v. Goldberg*, 214 Wis. 2d 163, 169, 571 N.W.2d 425 (Ct. App. 1997). The court’s findings underlying its conclusion that a person has committed contempt will not be set aside unless they are clearly erroneous. WIS. STAT. § 805.17(2); see also *Burger v. Burger*, 144 Wis. 2d 514, 523-24, 424 N.W.2d 691 (1988). The standard of review for remedial contempt is erroneous exercise of discretion. See *Krieman*, 214 Wis. 2d at 169.

¶23 The transcript from the January 14, 2008 hearing establishes that the court made sufficient findings regarding Hamed’s financial ability to comply with its prior orders and that he willfully intended to avoid payment. Among other things, the record reflects the following:

MR. KARP: You're not revising the July support order? You're holding him to that?

THE COURT: I am holding him to that. None of the material has been produced. And I think if you look at the lifestyle and try to correlate that lifestyle with what's being presented here today, that – and the financial documents that have been produced previously to me, that I think he has understated his ability to access money in Kuwait.

He didn't tell me anything about these buildings that he owns, and I find out the commercial buildings are similar to the Bay Shore Towne Square, things of that nature. Those are huge complexes. And in the past he has been able to access substantial amounts of money. I find Ms. Schuh's testimony more credible on that. And therefore, I am leaving him with that order until such time as the material[]s provided and you bring a motion and I change the order.

¶24 The evidence in the record supports the finding of contempt. The court's decision regarding the contempt motion was not erroneous.

By the Court.—Order and judgment affirmed.

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

