**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**October 18, 2011**

**A. John Voelker**
**Acting 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 Nos. 2009AP3006**
**2010AP2590**
**2011AP354**

**Cir. Ct. No. 1995PA27**

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

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**IN RE THE PATERNITY OF E.D.:**

**STATE OF WISCONSIN,**

**PETITIONER,**

**MELISA E. RONGSTAD,**

**RESPONDENT,**

**V.**

**MICHAEL A. DILLON,**

**APPELLANT.**

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APPEALS from judgments and an order of the circuit court for Dunn County: ROD W. SMELTZER, Judge. *Affirmed*.

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Michael Dillon, pro se, appeals judgments and an order requiring him to pay his share of guardian ad litem fees pursuant to WIS. STAT. § 767.407(6).[1] Dillon contends that because he was found indigent under the criteria set forth in WIS. STAT. § 814.29, the trial court erred by ordering him to pay the fees. We reject his argument and affirm the judgments and order.

## BACKGROUND

¶2 In May 2009, the court ordered payment of guardian ad litem fees arising from post-paternity proceedings between Dillon and Melisa Rongstad. Responsibility for the invoiced fees was split equally between the parties. Dillon petitioned for waiver of the fees based on his alleged indigency, and the court held an evidentiary hearing on the matter. In a July 31, 2009 order, the court recounted that Dillon had moved out of the home he shared with his wife, Sharon, and their four children. Dillon testified that he moved into a rental property so that Sharon could file her taxes as "head of household," thereby preventing any tax return from being intercepted to satisfy Dillon's obligations arising from the post-paternity proceedings.

¶3 The court consequently found that Dillon had not minimized his expenditures but, rather, expanded them "by incurring additional and unnecessary expenses associated with maintaining multiple households." The court noted that Dillon had approximately $20,000 in home equity, two vehicles, monthly SSI payments of $804, and monthly household contributions of "$5 to $700" from Dillon's adult son, Mikey. Although Dillon testified that both Sharon and the

[1] All references to the Wisconsin Statutes are to the 2009-10 version.

couple's adult daughter, Savannah, had health issues, the court found Dillon had failed to prove that their health problems prevented them from "at least minimal gainful employment and contribution to the household income and payment of expenses." The court's July 31 order ultimately determined that Dillon had failed to establish his indigency and ordered him to pay his share of the existing guardian ad litem fees at a reduced level of $30 per month.

¶4 Dillon, however, did not timely appeal the July 31 order. Rather, he appealed a December 14, 2009 "Judgment for Unpaid Fines, Forfeitures and Other Financial Obligations," indicating that Dillon owed $498.75 toward guardian ad litem fees. By order dated July 6, 2010, this court necessarily concluded that our jurisdiction was limited to reviewing only the December 14 judgment—"specifically, the court's determination that the total obligation not paid and still owed was $498.75." *See* WIS. STAT. RULE 809.10(1)(e); *see also* ***LaCrosse Trust Co. v. Bluske***, 99 Wis. 2d 427, 299 N.W.2d 302 (Ct. App. 1980) (court of appeals has no jurisdiction over an appeal that is not timely taken). Dillon was, therefore, precluded from challenging any issues arising from the July 31, 2009 order. Dillon ultimately filed notices of appeal from a subsequent judgment for unpaid guardian ad litem fees and an order for payment of guardian ad litem fees. All three matters were consolidated on appeal.

## DISCUSSION

¶5 As noted above, we have no jurisdiction to review the circuit court's July 31, 2009 order determining that Dillon was not indigent and ordering him to pay his share of the fees. Because Dillon does not dispute the amount of guardian ad litem fees due pursuant to the December 14 judgment, he has abandoned the only issue preserved for appeal from that judgment. *See* ***Reiman Assocs., Inc. v.***

***R/A Advertising, Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981) (issues not briefed are deemed abandoned). In objecting to the subsequent judgment and order regarding guardian ad litem fees, Dillon does not allege his circumstances have changed since the court's July 31 determination and, again, takes no issue with the amount of fees due. Rather, citing ***Olmsted v. Circuit Court for Dane County***, 2000 WI App 261, 240 Wis. 2d 197, 622 N.W.2d 29, Dillon argues that because he is indigent under the criteria set forth in WIS. STAT. § 814.29, the court erred by requiring him to pay his share of guardian ad litem fees.

¶6 ***Olmsted***, however, is distinguishable on its facts. There, the court held that an order requiring an indigent party to pay guardian ad litem fees at the inception of the litigation infringed on the party's due process right of access to the courts and, therefore, constituted an erroneous exercise of the trial court's discretion. ***Id.***, ¶11. The court specifically stated, however, that it was not reviewing "whether a court may, in its discretion, order reimbursement at the conclusion of litigation" for the payment of guardian ad litem fees made by the other party or by the county. ***Id.***, ¶11, n.6. In the present case, Dillon was required to pay his share of guardian ad litem fees for past, not future, services.

¶7 Moreover, although the party in ***Olmsted*** had been found indigent pursuant to WIS. STAT. § 814.29, nobody disputed her indigence. Therefore, the ***Olmsted*** court declined to address "the proper standard for determining indigence for purposes of paying guardian ad litem fees." ***Id.***, ¶3, n.3. WISCONSIN STAT. § 814.29(1)(a) provides that any person may "commence, prosecute or defend any action … in any court … without being required to … pay any service or fee, upon order of the court based on a finding that because of poverty the person is unable

to pay the costs of the action ….” In turn, WIS. STAT. § 767.407(6), which governs guardian ad litem compensation, provides in relevant part: “The court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem. … If both parties are indigent, the court may direct that the county of venue pay the compensation and fees.” Section 767.407(6) neither refers to nor references § 814.29, and Dillon fails to establish that a finding of indigency pursuant to § 814.29 precluded the circuit court from ordering Dillon to pay his share of the guardian ad litem’s compensation under § 767.407(6).

*By the Court.*—Judgments and order affirmed.

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