

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 4, 2010

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 No. 2010AP997

Cir. Ct. No. 2006FA1158

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE FINDING OF CONTEMPT IN RE THE MARRIAGE OF
BETH ANN LOVERN AND RONALD FRANK KUKA:**

BETH ANN LOVERN,

JOINT-PETITIONER-APPELLANT,

v.

RONALD FRANK KUKA,

JOINT-PETITIONER-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
DAVID T. FLANAGAN, III, Judge. *Reversed.*

¶1 BLANCHARD, J.¹ Beth Ann Lovern appeals from an order in a postjudgment divorce case finding her in contempt of court for failing to pay guardian ad litem (GAL) fees as previously ordered, and ordering forty days' jail as a remedial sanction, to be purged by making ongoing and past-due GAL payments. Lovern contends that the circuit court's order violated Lovern's rights to due process and equal protection of the law and that the court failed to make a proper finding that Lovern was capable of complying with the GAL fee payment order. Because neither her former husband, Ronald Frank Kuka, nor the GAL have filed a brief despite orders of this court to Kuka, we summarily reverse.

Background

¶2 Following a series of placement disputes, a Dane County Court Commissioner appointed an attorney to act as GAL for the daughter of Lovern and Kuka. The order of appointment, and amendments to the order, established contributions to be paid by Lovern and Kuka for the GAL's fee. On February 1, 2010, the GAL moved for an order of contempt based on the alleged failure of Lovern to make any of the ordered contributions. Following a hearing, the court commissioner ordered Lovern to make payments at a set rate beginning March 5, 2010, together with twelve percent on the unpaid balance. Lovern sought de novo review of this order.

¶3 After a hearing on March 1, 2010, the circuit court concluded that Lovern had the capacity to pay \$250 per month toward the GAL fee and that her "persistent refusal even to attempt to comply with" four prior court orders on this

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

topic “has been willful and contemptuous.” The court ordered Lovern to report to the Dane County Jail on April 16, 2010, to serve a term of forty days as a remedial sanction, to be purged through compliance with the order regarding payment.

¶4 Lovern appealed. On June 24, 2010, the GAL wrote to this court to take the following position: “I do not intend to participate in the appeal but ask that all decisions be forwarded to me.” Kuka failed to file a response brief within the time required by WIS. STAT. § 809.19(3)(a)1., which provides that a respondent shall file a brief.

¶5 On September 2, 2010, this court informed Kuka and the GAL that Kuka’s response brief had not been filed, nor had we received any correspondence from Kuka. On September 22, 2010, we informed Kuka and the GAL that we were ordering the clerk to submit the case to this court to determine whether the case may be decided based solely upon Lovern’s brief and the record. On September 30, 2010, we sent an order to Kuka (copying the GAL) requiring Kuka to file his brief within fifteen days, stating that if he failed to do so “the judgment or order appealed from will be summarily reversed.” Kuka has not responded to any of these orders in any manner.

Discussion

¶6 Summary reversal is appropriate where a party “abandon[s] its position on appeal by not responding to numerous requests by the court of appeals to file a brief.” *Raz v. Brown*, 2003 WI 29, ¶¶28-32, 260 Wis. 2d 614, 660 N.W.2d 647 (approving summary reversal on those grounds in *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 500 N.W.2d 339 (Ct. App. 1993)); *see also* WIS. STAT. RULE 809.83(2) (summary reversal is potential grounds for failure of a person to comply with a court order or with a requirement of rules). In this case,

neither Kuka nor the GAL has provided any argument in response to any claim made in the brief filed by Lovern, despite repeated orders of this court to Kuka, which have included clear notice that summary reversal would likely result from silence.

¶7 We decline to address the merits of the appeal under these circumstances. We conclude only that Kuka has abandoned the appeal and that summary reversal is appropriate.

By the Court.—Order reversed.

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

