

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 1, 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 No. 2010AP2923

Cir. Ct. No. 2008SC1841

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STEPHANIE M. PRZYTARSKI, P/K/A STEPHANIE M. KRAMSCHUSTER,

PLAINTIFF-APPELLANT,

v.

MARK J. ACKERMAN, PHD,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
CHARLES F. KAHN, JR., Judge. *Affirmed.*

¶1 FINE, J. This case has its genesis in an action Stephanie M. Przytarski, p/k/a Stephanie M. Kramschuster, brought against Marc J. Ackerman, Ph.D., in connection with her retention of Ackerman for a then-pending paternity action. Przytarski sued Ackerman, claiming that he breached the contract of retention. The circuit court dismissed Przytarski's suit. Subsequently, the circuit

court (a different judge presiding as the result of judicial rotation), found that Przytarski's suit against Ackerman was frivolous. Although Przytarski did not timely appeal the circuit court's dismissal of her action against Ackerman, she did timely appeal the judgment entered on the circuit court's finding that Przytarski's action against Ackerman was frivolous. We reversed the judgment that directed Przytarski to pay Ackerman frivolous-action costs. See *Kramschuster v. Ackerman*, No. 2009AP1002, unpublished slip op. ¶18 (WI App Jan. 26, 2010).

¶2 As is its normal practice, the Clerk of the Wisconsin Court of Appeals sent a remittitur to the Clerk of the Circuit Court for Milwaukee County. The remittitur was dated March 9, 2010, and recited:

This cause was an appeal to review the order(s) of the Circuit Court of Milwaukee County.

IT IS ORDERED AND ADJUDGED by this court in an opinion filed on January 26, 2010, that: Judgment reversed.

(Bolding and uppercasing in original.) The remittitur noted that Przytarski, as the successful appellant, was entitled to costs on the appeal.

¶3 On May 26, 2010, Przytarski filed a motion in the circuit court seeking: (1) an "Order for Entry of Judgment pursuant to the Remittitur"; and (2) an order, in essence, vacating "Entry" of the circuit court judgment awarding frivolous-action fees against Ackerman. The circuit court held a hearing on the motion, and entered an order dated September 3, 2010, which was corrected by the circuit court on September 28, 2010. It ordered:

- That "[a]ll claims" brought by Przytarski against Ackerman "are hereby dismissed on the merits consistent with the previous

decisions and judgment” of the original circuit court judge and the court of appeals;

- Vacatur of the frivolous-action-fees judgment, “consistent with the Court of Appeals decision granting [Przytarski]’s appeal of the cost and attorney fee assessment ordered by” the second circuit court judge;
- The Clerk of the Circuit Court for Milwaukee County “to so note the dismissal of [Przytarski]’s claims in the Circuit Court Access Project ... record for this case, which was vacated by the Court of Appeals; and”
- Ackerman’s lawyers pay Przytarski what she was owed as a result of the reversal of the frivolous-action-costs award, as well as the appellate costs noted by the remittitur.

The Clerk of the Circuit Court for Milwaukee County entered the court of appeals judgment on September 28, 2010. The judgment recited the following: “On 9-3-2010 per Court Order[,] Judgment previously entered 2-20-2009 against Stephanie Kramschuster for costs and attorney fees is vacated in its entirety[.]”

¶4 Przytarski does not dispute that she has been paid in full, pursuant to the circuit court’s order. Yet, she appeals, *pro se*, claiming that the circuit court should have ordered “the entry of a judgment pursuant to Wis. Stat. § 808.09 in accordance with the mandate of a decision and order of the Court of Appeals.” She also claims that the circuit court should not have dismissed her claims against Ackerman. Her appellate contentions are without merit, and we affirm.

1. *Entry of judgment.*

¶5 As material, WIS. STAT. § 808.09 provides: “In all cases an appellate court shall remit *its judgment* or decision to the court below and thereupon the court below shall proceed in accordance with the judgment or decision.” (Emphasis added.) As material, WIS. STAT. RULE 809.25(1)(d) provides: “The clerk of circuit court shall enter *the judgment* for costs in accordance with s. 806.16.” (Emphasis added.) Finally, as material, WIS. STAT. § 806.16 provides: “If the court of appeals or supreme court *remits its judgment for the recovery of money or for costs to the lower court, the judgment shall be entered by the clerk of the lower court and shall have the like force and effect as judgments of the circuit court that are entered.*” (Emphasis added.)

¶6 As we have seen, the Clerk of the Circuit Court for Milwaukee County entered the court of appeals judgment on September 28, 2010. That is all that it was required to do; Przytarski’s contention that there had to be a separate circuit-court judgment reifying the court of appeals judgment is without merit. Also without merit is her contention that she “has a clear legal right for an entry of judgment against Ackerman ... identifying Stephanie Przytarski as the creditor” for the appellate costs assessed in the appeal where we reversed the circuit court’s award of frivolous-action fees against her. Ackerman paid those fees before the Clerk of the Circuit Court for Milwaukee County entered the court of appeals judgment transmitted by the remittitur. Accordingly, Przytarski would not be a judgment “creditor.”

2. *Dismissal of Przytarski’s claims against Ackerman.*

¶7 As noted, Przytarski’s claims against Ackerman were dismissed by the first circuit court to hear her dispute with Ackerman. She did not timely

appeal. It appears from the Record that Przytarski complained about the scope of the stipulation Ackerman sought in return for his full payment of what he owed her. The circuit court wisely finessed that potential problem by recounting that Przytarski's claims against Ackerman arising out of her retention of him in connection with the paternity matter were (and remain) dismissed. Przytarski has not shown how she has been prejudiced since she could not in any event resurrect those claims now. *See* WIS. STAT. RULE 809.10(1)(e) ("The notice of appeal must be filed within the time specified by law. The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal."); *Kriesel v. Kriesel*, 35 Wis. 2d 134, 138–139, 150 N.W.2d 416, 418 (1967) (unappealed circuit court order is final).

¶8 Based on the foregoing, we affirm.

By the Court.—Order affirmed.

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

