COURT OF APPEALS DECISION DATED AND FILED

February 4, 2014

Diane M. Fremgen
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. 2012AP2804

Cir. Ct. No. 2010FA805

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

IN RE THE MARRIAGE OF:

LARRY DAVID ANDERSON,

PETITIONER-APPELLANT,

V.

CINDY LOU ANDERSON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Brown County: KENDALL M. KELLEY, Judge. *Affirmed and cause remanded with directions*.

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Larry Anderson, pro se, appeals from an oral ruling in which the circuit court denied several of his post-divorce motions.[1] However, Mr. Anderson fails to present any comprehensible appellate arguments. Accordingly, we grant Cindy Anderson's motion for costs, court fees, and attorney fees incurred for responding to a frivolous appeal. *See* WIS. STAT. RULE 809.25(3). Because Mr. Anderson has repeatedly used the judicial system to make vague, malicious, and unsupported accusations against virtually every person involved in his divorce action—including the circuit court judge and numerous attorneys—we also deem it appropriate to limit Mr. Anderson's access to the courts until those costs, court fees, and attorney fees have been paid. We remand to the circuit court for a determination of the amount of costs, fees, and attorney fees to which Ms. Anderson is entitled.

¶2 Since the judgment of divorce was orally granted on May 9, 2012, Mr. Anderson has engaged in repetitive, overly burdensome, and non-meritorious motion practice. On June 4, 2012, Mr. Anderson filed a motion seeking relief from the judgment, contempt sanctions against Ms. Anderson, and various other orders. The motion was accompanied by an eighty-four-page affidavit. When Ms. Anderson's attorney reduced the oral judgment to writing, Mr. Anderson responded with a letter "object[ing] to the existence of the finding and conclusions" and alleging that Ms. Anderson and various unspecified officers of

[1] The judgment of divorce was entered on August 30, 2012, with an effective date of May 9, 2012. The majority of Mr. Anderson's appellate arguments are directed toward that judgment. However, he did not appeal from that judgment. Instead, Mr. Anderson filed a notice of appeal on December 20, 2012, purporting to appeal the denial of his "Motion to Set Aside All Orders and Judgments Based Upon Fraud Upon the Court and Lack of Jurisdiction of the Court to Enter any Judgments or Subsequent Orders," and unspecified "Findings, Decisions and Orders of the Court." Mr. Anderson's reply brief clarifies that he seeks review of a November 2, 2012 motion to set aside the judgment of divorce, and various other filings relating to that motion.

the court perpetuated and profited from an unexplained "Fraud upon the Court." On November 2, 2012, Mr. Anderson filed a motion in the circuit court seeking to set aside the judgment for fraud. He supplemented this motion with a filing on December 11, 2012. Mr. Anderson also filed several motions objecting to an October 9, 2012 hearing on an order to show cause why he should not be held in contempt for failure to make maintenance payments.

¶3 Despite these filings, Mr. Anderson has effectively abandoned the adjudication process since the May 9, 2012 decision. Mr. Anderson did not respond to several court requests in June 2012 to schedule a hearing. When a hearing was scheduled in his absence, Mr. Anderson did not appear. Ms. Anderson's attorney represented at the hearing he had attempted to serve notice ten to twenty times. A process server unsuccessfully attempted eight times to serve Mr. Anderson with the order to show cause associated with the contempt motion, finally remarking, "It appears that the target is avoiding service." Ms. Anderson accomplished service by publication and Mr. Anderson did not appear at the hearing.

¶4 Rather than meaningfully engage in the proceedings below, Mr. Anderson turned to other forums. He filed a petition for a writ of mandamus in the United States District Court for the Eastern District of Wisconsin, asserting Ms. Anderson, her attorney, Judge Kelley, and various others had colluded and engaged in fraud. He has filed several complaints with the Office of Lawyer Regulation against attorneys involved in the litigation. He has also petitioned the

Wisconsin Supreme Court for habeas and other relief, and sought a supervisory writ from this court.[2]

¶5 At the October 9, 2012 hearing on the motion to find Mr. Anderson in contempt, the circuit court remarked that it was "mystified" by the federal action, but the filing was

> not inconsistent, sadly, with other things that [Mr. Anderson] has submitted, evidently, on his web site and elsewhere, and it seems to reflect a combination of, perhaps, his frustration, but frankly, his ignorance of the law, coupled with his … it's really difficult to describe it as anything other than his paranoia associated with the proceedings. It is, as I say, difficult to figure out what it is that he is trying to do. The only thing that was interesting is [the federal action] reflected at least some general awareness of the progress of the case, so … I'm accepting your position that he seems to have an operating knowledge of what we're doing. He certainly has an ability, at a minimum, to understand how CCAP works and the document shows … some level of sophistication with respect to understanding the mechanics of the legal process ….

The court concluded that, given Mr. Anderson's continued filings, it was "satisfied that he is voluntarily absenting himself from these proceedings." The court later described Mr. Anderson's efforts to avoid communicating with Ms. Anderson on the sale of marital assets as "deliberate noninvolvement." It then granted her contempt motion, observing that Mr. Anderson's actions were "antagonistic to the process itself" and Mr. Anderson "was a very active participant in this process until he decided that he was … unhappy with the result …."

[2] Mr. Anderson has also corresponded with this court on several occasions, at one point complaining that an item in the appellate record was not sealed by use of adhesive and intimating that documents were added to the record item.

¶6 Mr. Anderson even failed to appear at proceedings relating to his present appeal. A hearing on Mr. Anderson's November 2 motion, the denial of which he purports to appeal from, was held on December 18, 2012. Mr. Anderson did not appear. Ms. Anderson appeared with counsel, prompting the court to note the excessive costs Mr. Anderson's conduct was imposing upon Ms. Anderson:

> [Mr. Anderson] has failed to prosecute those motions by voluntarily absenting himself from these proceedings, so I am concluding that all of his motions are withdrawn or denied for want of prosecution of the motions themselves …. I am also finding specifically that this is his day in court to make those arguments, so that he is now waiving … these arguments …. I just need the record to reflect that so that we don't find ourselves back in this very same position at some point in which he has caused the respondent to incur the expense of not only responding to the motions, but actually physically appearing for that purpose.

¶7 Mr. Anderson's appellate brief is a confusing maze of arguments that we deem inadequately developed. He completely ignores the circuit court's reasoning for denying his motions, which was that he failed to personally appear to prosecute them. To the extent he suggests he was not properly notified, he does not explain why notice was improper. His brief simply does not pass muster. *See* ***Block v. Gomez***, 201 Wis. 2d 795, 811, 549 N.W.2d 783 (Ct. App. 1996) (amorphous and inadequately developed arguments will not be addressed).

¶8 In any event, Mr. Anderson's brief principally consists of conclusory statements without any substance. For example, we discern one of Mr. Anderson's primary arguments to be that the circuit court in some way deprived him of due process. In support of this argument, Mr. Anderson cites ***In re Murchison***, 349 U.S. 133, 136 (1955), for the proposition that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." Mr. Anderson then provides, with no analysis, the

conclusive statement that Judge Kelley "was clearly 'judging his own actions' and had an 'interest in the outcome.'" What is lacking is an explanation of how or why this was so. Without such an explanation, we have no obligation to address Mr. Anderson's claims. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court need not address arguments supported only by general statements).

¶9 This is not an isolated example of Mr. Anderson failing to develop an appellate argument. In another argument section, Mr. Anderson alleges that Judge Kelley "acted in concert with [Ms. Anderson] and her attorneys to commit a fraud upon the court." Mr. Anderson provides precisely one sentence of argument in support of this allegation: "It is undisputed that Judge Kelley knowingly violated [WIS. STAT. § 767.127(1) and (2)], amongst other statutes[,] by not enforcing such with knowledge that such failure to enforce resulted in fraud upon the court …."[3] Despite labeling these assertions as "undisputed," Mr. Anderson provides no record citations for them, contrary to WIS. STAT. RULE 809.19(1)(e). We need not consider arguments unsupported by references to the record. ***Lechner v. Scharrer***, 145 Wis. 2d 667, 676, 429 N.W.2d 491 (Ct. App. 1988). Similarly, we need not address Mr. Anderson's contention because he does not explain how the circuit court's actions constituted fraud. *See* ***Post v. Schwall***, 157 Wis. 2d 652, 657, 460 N.W.2d 794 (Ct. App. 1990).

¶10 Mr. Anderson's brief also violates a host of other appellate rules and principles. The required table of contents, *see* WIS. STAT. RULE 809.19(1)(a),

[3] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

identifies five issues, labeled "A" through "E." However, the statement of issues presented identifies ten issues (one with eleven different sub-issues). The brief's argument section—which totals just over six pages in a thirty-six page brief—only addresses the five issues mentioned in the table of contents. This is a violation of RULE 809.19(1)(e), which requires that the argument section be arranged in the order of issues presented. But more importantly, it is not even clear what—and how many—issues Mr. Anderson wishes to raise. What little argument there is contains but a few references to legal authorities, and Mr. Anderson fails to explain the relevance of, or apply, those authorities he does supply. Such haphazard organization and argument renders relief unavailable. *See* ***Pettit***, 171 Wis. 2d at 647 (relief unavailable when an appellant's brief is "so lacking in organization and substance that for us to decide his issues, we would first have to develop them").

¶11 In sum, Mr. Anderson's arguments "are not developed themes reflecting any legal reasoning." *See* ***id.*** at 646. Instead, his brief is merely a series of unsubstantiated allegations against nearly everyone involved in the divorce proceedings. Mr. Anderson's arguments are nothing more than statements without elaboration. *See* ***Riley v. Town of Hamilton***, 153 Wis. 2d 582, 588, 451 N.W.2d 454 (Ct. App. 1989). He has not developed any argument telling us why we should accept these conclusory propositions, nor has he explained how the scant legal authorities he cites support his claims. *See* ***id.***

¶12 Mr. Anderson's brief levels very serious accusations, which he does not explain or support. He claims the divorce proceeding "became a nightmare of chasing joint assets looted and hidden by [Ms. Anderson]" with the aid of her attorneys. He asserts Ms. Anderson lied in her submissions, converted assets, and committed fraud. He contends Judge Kelley was complicit in this scheme,

willfully violating the law and issuing an arrest warrant out of a sense of personal animosity toward Mr. Anderson. All of this is cleverly couched in an "Introduction" section not contemplated by the Rules of Appellate Procedure, *see generally* WIS. STAT. RULE 809.19(1), which we perceive as a bald attempt to circumvent appellate rules requiring record citations and legal authorities, *see* RULE 809.19(1)(e).

¶13 "We need not countenance scurrilous and inappropriate briefs, or briefs which are offensive in content." ***Puchner v. Hepperla***, 2001 WI App 50, ¶5, 241 Wis. 2d 545, 625 N.W.2d 609. Given the serious charges leveled by Mr. Anderson's brief, his failure to appear before the circuit court to prosecute his motions, and his corresponding failure to develop a cognizable appellate argument or comply with the Rules of Appellate Procedure, we conclude Mr. Anderson's appeal was filed "in bad faith, solely for purposes of harassing or maliciously injuring another." *See* WIS. STAT. RULE 809.25(3)(c)1. We therefore deem his appeal frivolous, and award Ms. Anderson costs, court fees, and reasonable attorney fees. *See* WIS. STAT. RULE 809.25(3)(a).

¶14 "If we determine that an appeal is frivolous, we also have the ability to bar the party in question from commencing further proceedings in this court and in the trial court until the costs, fees, and attorney fees that we award are paid in full." ***Schapiro v. Pokos***, 2011 WI App 97, ¶21, 334 Wis. 2d 694, 802 N.W.2d 204. We deem such relief warranted in this case, where Mr. Anderson has engaged in continuous litigation for purposes of harassment. *See* ***Puchner***, 241 Wis. 2d 545, ¶8.

¶15 We remand to the circuit court for a determination of the costs, court fees, and reasonable attorney fees to which Ms. Anderson is entitled under WIS.

STAT. RULE 809.25(3)(a). The clerk of this court is instructed to return unfiled any document submitted by Mr. Anderson relating to any matter involving Ms. Anderson. On remand, the circuit court shall enter whatever order is necessary to give direction to the clerk of the circuit court relating to this opinion's prohibition on future filings by Mr. Anderson. The clerk of this court will resume accepting Mr. Anderson's documents for filing if the documents are accompanied by an order of the circuit court indicating that Mr. Anderson has paid the costs, fees, and reasonable attorney fees awarded on remand. We believe this strikes the necessary balance among Mr. Anderson's access to the courts, Ms. Anderson's interest in finality, "the taxpayers' right not to have frivolous litigation become an unwarranted drain on their resources[,] and the public interest in maintaining the integrity of the judicial system." *See* ***Minniecheske v. Griesbach***, 161 Wis. 2d 743, 749, 468 N.W.2d 763 (Ct. App. 1991).

By the Court.—Order affirmed and cause remanded with directions.

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