COURT OF APPEALS
DECISION
DATED AND FILED

December 27, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1666 **Cir. Ct. No. 2006FA114**

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

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

PAULA MANSHOLT,

PETITIONER-RESPONDENT,

V.

MEHRDAD (MIKE) KAJIAN,

RESPONDENT-APPELLANT,

BMO HARRIS BANK,

GARNISHEE.

APPEAL from an order of the circuit court for Winnebago County: BARBARA H. KEY, Judge. *Affirmed*.

¶1 GUNDRUM, J.[1] Mehrdad (Mike) Kajian appeals from an order finding him in contempt of court for failing to make payments of child support, equalization, and attorney fees, and issuing a judgment against him in the amount of $106,717.60. He argues that the circuit court erred in finding him in contempt because (1) he was entitled to, but did not receive, personal service of the notice of contempt hearing and (2) his failure to make the ordered payments was not willful or intentional. He also contends the court erred in awarding his ex-wife, Paula Mansholt, $106,717.60 for attorney and accounting fees. We affirm.

Background

¶2 Kajian and Mansholt divorced in September 2008. As part of the original judgment of divorce, Kajian was ordered to make several different recurring payments. These payments included $3000 per month for child support, $500 per month to be held in trust for his minor child, and $9000 per month to Mansholt related to an aggregate equalization payment of $3 million. Over the next few years, Kajian and Mansholt were in and out of court for various reasons related to the judgment of divorce. On November 14, 2012, they entered into an on-the-record stipulation that reduced the aggregate equalization payment Kajian was obligated to make to $2.4 million but required him to pay $28,000 towards Mansholt's professional fees. The fee payment was to be made in installments, with the first installment of $7500 due on December 15, 2012, and remaining payments to follow every two months thereafter.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶3 Based upon an affidavit of Mansholt's counsel, on April 12, 2013, the circuit court issued an "Order to Show Cause for Contempt." Counsel averred, among other things, that Kajian made the first payment toward Mansholt's fees but failed to make the second payment even after a delayed payment plan had been negotiated; that Mansholt declined to agree to further extension due to Kajian's "previous, repeated failure to make timely payments"; and that, based upon information and belief, Kajian had engaged in "expensive travel and substantial personal spending" since the November stipulation and order. On April 17, 2013, Mansholt filed a motion and affidavits of her own and of her counsel seeking appointment of a receiver and a temporary restraining order freezing various entities and accounts held in part by Kajian due to concerns, based upon past experience, about Kajian inappropriately transferring his assets. Mansholt averred that Kajian had not paid required child support or the $9000 per month equalization-related payment, had resigned very recently from his position as CEO of a company and, upon information and belief, had relocated to Iran.

¶4 The circuit court granted Mansholt's request for a temporary restraining order, and a related review hearing was held on April 24, 2013, which Kajian did not attend. At that hearing, Kajian's counsel informed the court that Kajian had left the country, and counsel read an e-mail purported to be from Kajian which referenced the "contempt from [Mansholt's counsel]." The e-mail further stated that Kajian is unable to meet his financial obligations due to "paying [Mansholt] and absorbing hundreds of thousands of dollars of needless spending defending myself in court," the recession harming his business, and financial hardships related to other assets. The e-mail also expressed Kajian's concerns about possibly going to jail and that Kajian was departing the country because it

was "[t]he only option to preserve my freedom and mental health and physical well-being."

¶5 The first hearing on the order to show cause for contempt was held on May 9, 2013, which Kajian also did not attend. At the hearing, Mansholt's counsel requested that the court issue a bench warrant for Kajian's arrest and award Mansholt $79,236.14 in attorney fees and $27,481.46 in accounting fees, indicating she had the invoices with her to support those amounts. The court declined to proceed on the matter at that time due to concerns raised by Kajian's counsel regarding the lack of personal service upon Kajian and inadequate notice of Mansholt's requests for a bench warrant and professional fees. The court continued the hearing, in part to allow Kajian's counsel time "to address the new issues or requests that have been made. Motions with regard to entry of judgment and for the amounts involved." At the conclusion of the hearing, counsel for Mansholt provided Kajian's counsel with a copy of, as Mansholt's counsel described it, Mansholt's "proposed order on the fees and the bench warrant and things."

¶6 The continued hearing on the order to show cause, which Kajian again failed to attend, was held on May 23, 2013. At that hearing, the circuit court determined that Kajian had actual notice of the contempt proceedings and that personal service was not required, found Kajian in contempt, and ordered a civil bench warrant and payment of the requested professional fees. Kajian appeals. Additional facts are included as necessary.

Discussion

Personal Service

¶7 Kajian argues that the circuit court erred in holding him in contempt because WIS. STAT. § 801.14(2) requires that he be personally served with the order to show cause and supporting affidavit, and he was not. Mansholt counters that § 801.14(2) is inapplicable and that WIS. STAT. § 785.03, which requires only "notice and hearing" prior to a finding of contempt, controls. This issue requires interpretation of the statutes, which is a matter of law we review de novo. *See* ***Frisch v. Henrichs***, 2007 WI 102, ¶29, 304 Wis. 2d 1, 736 N.W.2d 85.

¶8 We agree with Mansholt's reading of the statutes. WISCONSIN STAT. ch. 785 addresses "Contempt of Court." WISCONSIN STAT. § 785.03, entitled "Procedure," governs the procedure applicable here. That statute provides:

> **(1)** NONSUMMARY PROCEDURE. (a) *Remedial sanction.* A person aggrieved by a contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, *after notice and hearing*, may impose a remedial sanction authorized by this chapter.

Id. (second emphasis added). As the circuit court noted at the May 23 hearing on Mansholt's contempt motion, § 785.03 only required that Kajian receive notice and a hearing before the court could properly sanction him for contempt and "nothing in [§ 785.03] indicates that there has to be personal service."

¶9 This reading of WIS. STAT. § 785.03(1)(a) is consistent with our supreme court's holding in ***Joint School District No. 1, City of Wisconsin Rapids v. Wisconsin Rapids Education Ass'n***, 70 Wis. 2d 292, 234 N.W.2d 289 (1975), relied upon by Mansholt. In that case, the court held that while actual notice of

contempt proceedings is required, personal service of the order to show cause is not. ***Id.*** at 317-19. The court further held that actual notice satisfied due process requirements because the "primary reason for the requirement [of notice] is that the contemnor have an opportunity to appear and present whatever defense he might have to that charge." ***Id.*** at 317. Since then, Wisconsin courts have echoed this conclusion that actual notice satisfies due process. *See*, *e.g.*, ***Dennis v. State***, 117 Wis. 2d 249, 261, 344 N.W.2d 128 (1984) ("The statutory requirements and due process require that the defendant be aware of what he must answer to so that he can be prepared to offer proof and explanation showing his good faith efforts to comply with the court's orders."); ***Noack v. Noack***, 149 Wis. 2d 567, 577, 439 N.W.2d 600 (Ct. App. 1989) ("[Section] 785.03(1) … requirements of 'notice and hearing' do no more than codify for remedial contempt situations the due process requirements of notice and an opportunity to be heard.").

¶10 Relying upon WIS. STAT. § 801.14(2), Kajian contends personal service of the order to show cause for contempt and related affidavit was required before he could be held in contempt. He reads too much into subsec. (2). Section 801.14(2) provides:

> Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last-known address, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this section means: handing it to the attorney or to the party; transmitting a copy of the paper by facsimile machine to his or her office; or leaving it at his or her office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion

> then residing therein. Service by mail is complete upon mailing. Service by facsimile is complete upon transmission. The first sentence of this subsection shall not apply to service of a summons or of any process of court or of any paper to bring a party into contempt of court.

Kajian contends that the first and last sentences of this provision require that a contempt motion be served upon Kajian himself. We disagree. As Mansholt points out, this subsection deals with limitations on substitute service. The first sentence states: "Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court." ***Id.*** The nonapplication of this first sentence to service "of any paper to bring a party into contempt of court" (as indicated by the last sentence) does not create a *requirement* that service be made personally upon the party. More significantly, as Mansholt also points out, "nowhere in [§] 801.14(2) does it require personal service of a contempt motion."

¶11 Kajian concedes that he had actual notice of the contempt proceedings and does not dispute that two hearings were held on the matter, both of which his counsel attended but he did not. We agree with Mansholt and the circuit court that personal service upon Kajian was not required. The requirements of notice and a hearing were met.

Contempt Finding

¶12 Kajian contends that the circuit court erred in holding him in contempt because his "failure to make the ordered payments was not willful or intentional." Again, the circuit court did not err.

¶13 In a remedial contempt proceeding, the burden of proof is on the person against whom contempt is sought to show that his or her conduct is not contemptuous. ***State v. Rose***, 171 Wis. 2d 617, 623, 492 N.W.2d 350 (Ct. App. 1992). While it is true that an inability to make support or maintenance payments alone cannot support a finding of contempt, where the failure to pay is willful and with the intent to avoid payment a finding of contempt may be appropriate. ***Van Offeren v. Van Offeren***, 173 Wis. 2d 482, 498, 496 N.W.2d 660 (Ct. App. 1992). Moreover, even though a "person may disagree with an order … he or she is bound to obey it until relieved therefrom in some legally prescribed way." ***Rose***, 171 Wis. 2d at 623. On review, we must determine whether the circuit court properly exercised its discretion in holding Kajian in contempt. ***Benn v. Benn***, 230 Wis. 2d 301, 308, 602 N.W.2d 65 (Ct. App. 1999). We will not reverse the court's finding of contempt unless the court clearly erred. ***Rose***, 171 Wis. 2d at 623.

¶14 Kajian does not dispute that he failed to make the required payments or suggest that Mansholt failed to make a prima facie showing that he violated the court's order in this regard. Instead, he argues that he was unable to make the payments and therefore did not willfully and intentionally fail to pay.

¶15 At the May 23 contempt hearing, Kajian's counsel acknowledged: "[Y]ou have the facts presented before you as to how we're going to deal with this so he's either in contempt or not in contempt. If the question is, if he's in contempt or not, I would concede that the facts are before the Court." The circuit court implicitly found that Kajian's failure to pay was willful and intentional, stating that Kajian "was very aware of the issues with regard to the order to show cause and, specifically, … decided to leave the area and also, specifically, decided to no longer comply with the orders of the Court from everything from the

payment of child support to disposal of property" that was part of a "Collateralized Pledge Agreement." Though the court did not detail its reasons for implicitly concluding that Kajian was able to pay, we may search the record for facts supporting its ruling. *See* ***State v. Lock***, 2012 WI App 99, ¶43, 344 Wis. 2d 166, 823 N.W.2d 378.

¶16 In affidavits filed with the court in the weeks prior to the May 23 contempt hearing, Mansholt and/or her counsel averred that Kajian had resigned very recently from his position as CEO of a company; had relocated to Iran; and, on information and belief, had engaged in "expensive travel and substantial personal spending" since entering into the November 2012 stipulation and order. Further, the record reflects that throughout the postdivorce proceedings and in the weeks prior to the contempt hearing, the court was aware of substantial assets held by Kajian. Significantly, Kajian cites to nothing in the record suggesting he demonstrated to the court an inability to pay other than the e-mail read by his counsel to the court a month before the contempt hearing in which the e-mail, purported to be from Kajian, states in conclusory fashion that he is unable to pay. In addition, Kajian did not just choose to stop making some of the payments or only make partial payments, but it appears that by the time of the contempt hearing, he had stopped making all court-ordered payments. Based on this record, we cannot conclude that the circuit court erred in holding Kajian in contempt.

Professional Fees

¶17 Kajian argues that the circuit court erred in awarding Mansholt $106,717.60 in attorney and accounting fees. Specifically, he contends the court erred in not affording him a separate evidentiary hearing related to the fees; his November 2012 agreement with Mansholt to pay $28,000 for fees should control;

and because the order to show cause itself "only asked for 'costs and attorney's fees incurred in bringing this Order to Show Cause,'" awarding more fees was inappropriate. Again, the court did not err.

¶18 A circuit court is authorized to award attorney fees and other costs of litigation under the remedial contempt sanctions statute, WIS. STAT. § 785.04(1)(a). ***Town of Seymour v. City of Eau Claire***, 112 Wis. 2d 313, 320, 332 N.W.2d 821 (Ct. App. 1983). That statute provides that a court may impose "[p]ayment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court." Sec. 785.04(1)(a). Upon review, we will sustain a circuit court's award of fees and costs unless the court erroneously exercised its discretion. ***Standard Theatres, Inc. v. DOT***, 118 Wis. 2d 730, 747, 349 N.W.2d 661 (1984). We give deference to the circuit court's decision and do not substitute our judgment for that of the circuit court as it is more familiar with local billing norms, the quality of services provided to a party, and the events that transpired. *See* ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2004 WI 112, ¶22, 275 Wis. 2d 1, 683 N.W.2d 58.

¶19 On the issue of an evidentiary hearing, Kajian cites no law indicating he was entitled to such a hearing related to the fees. Indeed, the supreme court has indicated that, so long as sufficient documentation is presented, a hearing is not required.

> [W]e do not mean to imply that a hearing is always necessary or that a proper exercise of discretion will require courts to similarly focus on testimony if there is a hearing. We encourage the bar and judiciary to develop uniform procedures for determining attorney fees when appropriate, which may or may not include a hearing…. When the court is presented with reliable and accurate documentation as to the amount and nature of the time expended on the case, it would not be improper for the court to rely principally on that documentation.

Id., ¶34 n.6.

¶20 In ***Kolupar***, the supreme court adopted the "lodestar" approach for determining the reasonableness of fees. ***Id.***, ¶30. Under that approach, "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." ***Id.***, ¶28 (quoting ***Hensley v. Eckerhart***, 461 U.S. 424, 433 (1983)). From there, the circuit court may adjust the fees up or down to account for any factors not embodied in the lodestar figure. ***Id.***, ¶29. The party seeking fees bears the burden of demonstrating the reasonableness of the amount of fees submitted. ***Id.***, ¶34. When the reasonableness of requested fees is challenged, the circuit court "need give only a 'concise but clear explanation of its reasons for the fee award.'" ***Id.***, ¶52 (quoting ***Hensley***, 461 U.S. at 437).

¶21 Here, the record reflects that Mansholt met her burden of establishing the reasonableness of the fees. Mansholt submitted a draft invoice for services provided by her attorneys as well as a spreadsheet documenting services provided by the accountants. The invoice detailed the services rendered, the date on which they were rendered, the billing rate of the attorney rendering the services, and the amount of time spent on each task. Attorney fees ranged from $210 to $260 per hour and paralegal services were $100 per hour. The invoice also detailed the individual disbursements. The spreadsheet from the accountants, while not as detailed, did list the specific services rendered, the date on which the services were rendered, a fee in association with the specific service, and the individual invoice numbers for each bill.

¶22 At the May 23 hearing, Kajian's counsel took issue with the fact that Mansholt's bill for attorney fees was substantially larger than the services for which he billed Kajian. The court responded:

> Well, they had to track him down, right? They were constantly trying to find out what was happening to the assets. Certainly, the Court was sceptical on some of it as to what the motives or motivation were but as long as the payments were being made and—but they also put in evidence along the way that questioned [Kajian's] motivations in terms of where the money was being shifted from entity to entity.

Responding to Kajian's counsel's challenge to the accounting fees, counsel for Mansholt explained that the fees

> were necessary in order to know exactly what is owed.
>
> The accountants have also been working on the business entities. In terms of what has occurred since the [November 2012] agreement was entered, Mr. Kajian demonstrated that he had no intention of acting in good faith because a month after the agreement was entered into by the parties he was transferring assets already without notifying Ms. Mansholt and advising her of it.

The record reflects that at the May 9 hearing, counsel for Mansholt had also explained that the accountants had "done the work … tracking down what Mr. Kajian has done with the money with the transfers of assets and so on."

¶23 The documentation submitted by Mansholt allowed the circuit court to reach a lodestar figure and from there it affirmed the figure's reasonableness after considering the entirety of the case. The court did not err in declining to afford Kajian a separate evidentiary hearing related to the professional fees.

¶24 Kajian also contends that his November 2012 stipulation with Mansholt to pay $28,000 for fees should control. We disagree. To begin, that

$28,000 amount would not account for attorney or accounting fees incurred by Mansholt after the stipulation was made in court on November 14, 2012, and thus would not account for fees incurred related to the contempt motion itself. Further, when counsel for Kajian argued to the circuit court that Mansholt's request for attorney fees in excess of that $28,000, which included fees dating back several years, was "[not] appropriate," the court explained why it disagreed.

> I think it is [appropriate] under all the circumstances here. The agreement was violated. Everything about even the original agreement now in terms of the property division settlement. It's all—certainly, the fact that [Kajian] has not complied with the terms of the agreement that go all the way back now.
>
> I think that's, certainly—and any agreement that was entered into in the meantime is meaningless because [Kajian] hasn't followed through here so the Court is going to find for attorney's fees.
>
> ….
>
> Again, all the efforts that were taken to ensure that the order be complied with have all been to no avail here to extensive costs to [Mansholt].

The court gave a "concise but clear explanation of its reasons for the fee award." *See* ***id.*** As previously noted, WIS. STAT. § 785.04(1)(a) gives the circuit court the authority to award attorney fees and other costs of litigation as a sanction for remedial contempt, ***Town of Seymour***, 112 Wis. 2d at 320, and that is precisely what the court did. We decline to hold that the circuit court's unwillingness to limit Mansholt's recovery to the amount stipulated in November 2012 was an erroneous exercise of discretion when Kajian breached that agreement, precipitating the contempt action.

¶25 Lastly, Kajian briefly complains that the order to show cause for contempt "only asked for 'costs and attorney's fees incurred in bringing this Order

to Show Cause,'" but "[a]t the hearing … Ms. Mansholt asked the Court order Mr. Kajian to pay all of her attorney's fees from 2010 moving forward" and the circuit court ordered the fees sought by Mansholt. Again, we see no error. To begin, the order to show cause also sought "other and further relief as may be deemed just and reasonable under the circumstances." Second, Kajian's counsel was specifically given notice at the May 9 hearing of the attorney and accounting fees sought by Mansholt. Indeed, the circuit court continued the hearing to May 23 for the express purpose of affording Kajian's counsel time to address Mansholt's requests.

By the Court.—Order affirmed.

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