

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 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. 2013AP2879

Cir. Ct. No. 2004FA82

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

THERESA MARIE CLARK,

PETITIONER-RESPONDENT,

V.

JEFFREY DAVID CLARK,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Ozaukee County:
SANDY A. WILLIAMS, Judge. *Affirmed.*

¶1 REILLY, J.¹ Jeffrey Clark appeals from a contempt order for his failure to pay guardian ad litem (GAL) fees as required by his judgment of

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.

divorce. We affirm as Clark's refusal to pay was willful and with the intent to avoid payment.

¶2 In a 2005 judgment of divorce, Clark was made responsible for paying GAL fees. Clark did not pay, and the court ordered Ozaukee county to pay. Ozaukee county subsequently obtained a judgment against Clark for the amount it paid the GAL plus interest.

¶3 In 2010, the Ozaukee county child support agency initiated contempt proceedings against Clark for noncompliance with his child support obligations. The court held a series of contempt hearings. At one of the hearings, the court inquired into Clark's payment of the GAL fees. Clark stated that he had not made any payments, that he "believe[d] that was dismissed in bankruptcy court," and that he would bring documentation to the next hearing. The court ordered Clark to start paying down the GAL debt in increments of \$50 per month, stating "I have never seen anyone try and manipulate and shirk their responsibility as much as [Clark]."

¶4 Clark did not start paying \$50 per month for the GAL fees and continued to justify his noncompliance by asserting, without documentation, that the debt had been discharged in bankruptcy proceedings. At a contempt hearing, the court also heard evidence that Clark was not following up on employment opportunities, although Clark represented that he had recently started a minimum-wage job and was making nominal child support payments. The court found Clark in contempt and imposed a ninety-day term in jail with a purge condition that Clark pay half of what was owed in GAL fees and \$50 per month going forward. Clark appeals.

¶5 A circuit court may use its discretion to find a person in remedial contempt of court if he or she has the ability but refuses to comply with an order. *Benn v. Benn*, 230 Wis. 2d 301, 308-09, 602 N.W.2d 65 (Ct. App. 1999). Failure to pay support provides grounds for a contempt finding if the person has the ability to pay and his or her refusal to pay is willful and with the intent to avoid payment. *Id.* at 310. A circuit court's findings that a person has an ability to pay and has committed a contempt of court by not paying will not be reversed on appeal unless clearly erroneous. *State v. Rose*, 171 Wis. 2d 617, 623, 492 N.W.2d 350 (Ct. App. 1992). The burden is on Clark to show that he is not in contempt. *Id.*

¶6 The only reason that Clark presented at the contempt hearing for not making the court-ordered GAL payments was that he thought the obligation had been discharged by the federal bankruptcy court. Clark did not provide any documentation to back up his assertion. Clark also did not present any evidence to show that he was unable to pay the \$50 per month as ordered by the court.

¶7 The court found that Clark had the ability to pay but was intentionally shirking his responsibility by not paying. As the record contains evidence to support this finding and as Clark has failed to meet his burden to show he was not in contempt, the court's decision was not clearly erroneous.

By the Court.—Order affirmed.

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

