COURT OF APPEALS DECISION DATED AND FILED

September 10, 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. 2014AP813

Cir. Ct. No. 2000FA317

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

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

TULGA Q. OZBAKI,

PETITIONER-APPELLANT,

V.

SYLWIA M. ALTASS, F/K/A SYLWIA M. OZBAKI,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Sheboygan County: ANGELA W. SUTKIEWICZ, Judge. *Affirmed*.

¶1 BROWN, C.J.[1] Tulga Ozbaki appeals from a circuit court order finding him in contempt for failure to report substantial changes in his income as required by his divorce judgment and ordering him to purge the contempt by the payment of an amount compensating his ex-wife for the lost opportunity to seek increased child support and for her attorney fees. Ozbaki points out that the divorce judgment failed to inform him, as the statutes mandate, that he and his ex-wife should annually exchange financial information and that he should inform his ex-wife of substantial changes in his income within ten days. *See* WIS. STAT. §§ 767.27 and 767.263 (2003-04).[2] He claims that he cannot be held in contempt for something he did not know he had to do. We reject that argument. Even though the omission was contrary to the clear import of the statutes, the judgment did order him "to notify the Sheboygan County Clerk of Courts of any change of employer or any change in the amount of income such that his ability to pay child support is affected, within ten (10) days of such change." Ozbaki was not entitled to sit on his hands and tell no one about his increased income. His responsibility was to let the court know, through the clerk of courts. It is no answer that he claims not to have willfully violated this order. The order was as plain as day. We conclude that the underlying order imposed a clear obligation to inform the court of his changed income, that Ozbaki willfully violated that portion of the order, and that there was no error in the court's exercise of its discretion in exercising its contempt power here. We affirm.

---

[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.

[2] The relevant statutes were renumbered and slightly amended in 2005. *See* 2005 Wis. Act 443, §§ 113, 122. WISCONSIN STAT. § 767.27(2m) is now WIS. STAT. § 767.54 (2011-12) and WIS. STAT. § 767.263 (2003-04) is now WIS. STAT. § 767.58 (2011-12). These amendments are immaterial to this appeal.

¶2 Ozbaki and his ex-wife Sylwia Altass divorced in 2001. They are the parents of one child, who was born in 1999. Ozbaki and Altass were married in Denmark, and Altass and the child live in Poland. Ozbaki visited Altass and the child in Poland during the marriage but resides in Sheboygan county, where he filed the divorce action.

¶3 Child custody and placement issues were resolved by stipulation and order in the Sheboygan County Circuit Court in 2005. That 2005 order directed Ozbaki to pay child support arrears and to pay $700 per month for child support going forward. The order also directed Ozbaki to

> notify the Sheboygan County Clerk of Courts of any change of employer or any change in the amount of income such that his ability to pay child support is affected, within ten (10) days of such change pursuant to WIS. STAT. § 767.263.

The record does not contain a transcript of the hearing at which this stipulation was approved, but the minutes of the hearing note that Ozbaki was ordered to "notify of change of employment or wages."

¶4 In June 2013, Altass filed a motion to review or modify child support and served Ozbaki with a subpoena demanding copies of his 2011 and 2012 financial records. Ozbaki's documents showed that his income was over $116,000 in 2011 and over $112,000 in 2012, almost double his $62,000 base income at the time of the 2005 stipulation and order. Altass filed her own financial disclosure on Ozbaki on September 3, 2013.

¶5 On September 4, 2013, Altass served Ozbaki with a request for copies of Ozbaki's tax returns for 2005-2010. The following week Altass sought an order to show cause for contempt "for failure to timely exchange financial

disclosure information under Wisconsin law and that [Ozbaki] pay respondent the difference between" the child support amounts Ozbaki paid and what he would have owed had he disclosed his increased income. In an affidavit supporting the order to show cause for contempt, Altass attached the 2005 order and quoted from WIS. STAT. § 767.54, which provides as follows:

> In an action in which the court has ordered a party to pay child … support ..., the court shall require the parties annually to exchange financial information…. A party who fails to furnish information required by the court under this section may be proceeded against for contempt of court under [WIS. STAT.] ch. 785. If the court finds that a party has failed to furnish information required under this section, the court may award to the party bringing the action costs and … reasonable attorney fees.

Sec. 767.54.[3] The hearing on Altass's motion order to show cause for contempt was scheduled for Monday, October 7, 2013.

¶6 On October 3, 2013, the Thursday before the contempt hearing, Ozbaki filed a brief arguing for deviation from the child support guidelines due to the lower cost of living in Poland. Ozbaki also responded to the pending document request with an unsigned, one-page document objecting to the request for documentation of income for the years 2005-2010 on the grounds that the documents had "no relevance to [the] … pending child support modification motion."

[3] Altass quoted the renumbered and amended version of the statute, WIS. STAT. § 767.54 (2011-12) in her 2013 motion, but at the time of the child support order in this action virtually identical obligations were imposed by WIS. STAT. § 767.27(2m) (2003-04). As already discussed, the amendment is immaterial to the issues at hand.

¶7 Upon receiving that response, Altass filed a motion for sanctions for overtrial and for failing to respond to the discovery request. In that motion, Altass argued that the requested information was relevant to the pending motion for contempt and sought both compensatory and punitive damages against Ozbaki, as well as an order that the tax returns be produced and the contempt hearing rescheduled.

¶8 At the October 7, 2013 hearing, Ozbaki appeared in person and Altass appeared from Poland via Skype. The court expressed concern that the brief filed by Ozbaki on the cost of living issue was untimely. The court further expressed concern with Ozbaki's "last minute" contention that the 2005-2010 tax returns were not relevant, given the pending contempt motion and the timing of the hearing. Altass argued that under ***Frisch v. Henrichs***, 2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85, Ozbaki was in contempt for failing to provide the financial information "therefore depriving [Altass] of the ability to seek modification of child support earlier." Altass argued that in addition to the contempt, sanctions were appropriate because Ozbaki "had time to file the brief … and … to hire an expert but … hasn't had the time to properly answer our request for production" of the tax records.

¶9 Ozbaki argued that there were no grounds for the contempt motion because the 2005 order contained no "specific[] order … that says the parties are to give … financial information." He argued that his response to the request for production of documents was timely and that the 2005 stipulation and order provided no basis for contempt. In particular he argued that he did not "intentionally or willfully" violate the 2005 order because he paid $700 every month as agreed and the order only required him to give notice if there was a change "such that his ability to pay support is affected."

¶10 The court concluded that the contempt and sanctions hearings would have to be postponed. A new hearing date was set, and Ozbaki was ordered to produce the 2005-2010 tax returns by October 18, 2013.

¶11 At the new hearing, Altass argued that Ozbaki should be ordered to contribute toward her attorney fees as well as pay an amount to compensate her for the lost opportunity of obtaining additional child support that she could have received if Ozbaki had disclosed his increased earnings in the years 2007-2012. Ozbaki repeated his argument that the 2005 order did not direct him to disclose his increased earnings.

¶12 The court determined that Ozbaki's interpretation of the 2005 stipulation and order "is just not reasonable and … is very self-serving." Under the ***Frisch*** case and a reasonable interpretation, the court concluded, it was clear that the "payor" had "an affirmative duty" to update his income information so that the custodial parent could seek increased support. Just as in ***Frisch***, the court observed, the payor's failure to disclose the financial information "allowed [him] to evade exposure to the possibility of a modification of his child support obligation." The court imposed on Ozbaki the obligation to pay Altass $27,000 as a condition to purge the contempt. The court also ordered Ozbaki to pay the requested attorney fees "due to the problems we had with discovery," as an additional purge condition. Ozbaki appeals from the order finding Ozbaki in contempt and imposing these purge conditions.

¶13 On appeal Ozbaki argues that the circuit court erred in finding Ozbaki in contempt and imposing purge conditions because "there was no court order requiring [Ozbaki] to provide financial information to [Altass]." Ozbaki also contends that there was no authority to impose remedial contempt because

there was insufficient evidence to establish a willful violation of the 2005 order. These arguments raise questions of the circuit court's authority to employ remedial contempt under particular circumstances, which are questions of law that this court reviews de novo. ***Frisch***, 304 Wis. 2d 1, ¶29.

¶14 In addition, Ozbaki argues that even if remedial contempt was authorized here, the circuit court erroneously exercised its discretion in calculating and imposing the particular purge conditions in his case. In reviewing a circuit court's exercise of its contempt power, we affirm if "the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach." ***Benn v. Benn***, 230 Wis. 2d 301, 308, 602 N.W.2d 65 (Ct. App. 1999).

¶15 The record refutes Ozbaki's first argument, that the contempt finding was made "in the absence of an underlying court order." To the contrary, a significant portion of the testimony at the hearing concerned the language of the 2005 order that specifically directed Ozbaki to "notify the Sheboygan County Clerk of Courts of any change … in the amount of income such that his ability to pay child support is affected within ten days of such change." Ozbaki acknowledged that provision of the order and acknowledged his failure to disclose any change in income over the years despite the fact that that his income increased by as much as fifty percent in the years after 2005. Ozbaki claimed that he interpreted the provision as referring to any change in his ability to pay his "current" support. In response to questioning by the court, Ozbaki acknowledged that the word "current" did not appear in the provision.

¶16 In reaching its determination that Ozbaki was in contempt, the circuit court began by observing that "the father's interpretation of the stipulation

[from 2005] is just not reasonable and … is very self-serving." The court rejected Ozbaki's "self-serving" interpretation and found instead that "[a]ccording to the ***Frisch*** case and a reasonable interpretation," Ozbaki had an affirmative duty to report the significant increase in income, so that child support could be increased to benefit his child. The specific conduct that the court found contemptuous here was that Ozbaki "was able to escape exposure to the possibility of his child support being increased" by failing to update his income as it increased.

¶17 The same portions of the record refute Ozbaki's second argument, that there was insufficient evidence to support a finding that he willfully violated the 2005 order because it was "ambiguous." We agree with the circuit court that Ozbaki found ambiguity where there was none. Ozbaki's interpretation of the relevant provision of the 2005 order was "not reasonable and … very self-serving."

¶18 With respect to these first two issues, Ozbaki attempts to frame the question as whether the circuit court could find him in contempt for failing to abide by his statutory obligations to exchange financial information annually, WIS. STAT. § 767.27 (2003-04), and update his financial information, WIS. STAT. § 767.263 (2003-04), when the 2005 order failed to set forth those obligations. While it is true that in its written order after the contempt hearing, the court stated that it was finding Ozbaki in contempt for failure to disclose his information on an annual basis and failure to report substantial changes in income to Altass, the written order also incorporates the oral decision by reference. The oral decision makes clear that at least one of the grounds for finding Ozbaki in contempt was his violation of the specific provision of the 2005 order requiring him to update his

financial information with the court if his ability to pay child support changed.[4] The court cited ***Frisch*** for the proposition that, while a court may not retroactively increase child support, it may formulate an alternative purge condition designed to compensate a child support payee for losses suffered as a result of a payor's contemptuous failure to update financial information. *See* ***Frisch***, 304 Wis. 2d 1, ¶78. Since the record supports the court's conclusion that Ozbaki violated the provision of the 2005 order requiring him to update his financial information with the court if his ability to pay changed, we need not decide whether the statutes provided an independent basis for contempt. ***Dalka v. Wisconsin Cent., Ltd.***, 2012 WI App 22, ¶66 n.10, 339 Wis. 2d 361, 811 N.W.2d 834 (noting that this court will decide cases on the narrowest possible grounds).

¶19 Ozbaki's final argument is that the circuit court's exercise of its contempt authority was not "the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." As already discussed, the court explained its rationale for finding Ozbaki in contempt, and at least in part that rationale was that a provision in the 2005 order explicitly directed

---

[4] In attempting to prove that the court found Ozbaki in contempt based upon a statutory obligation to exchange and update information, rather than based upon the 2005 order, Ozbaki cites in particular one portion of the hearing transcript in which the court rejected Ozbaki's argument that ***Frisch*** was distinguishable due to the absence of statutory language in the order in this case. In this part of the hearing, Ozbaki objected to any questioning of Altass concerning the financial situation of Altass and the parties' son in prior years, arguing that ***Frisch*** was irrelevant because "there was no underlying order in the [2005 order] that there be an exchange of financial information." While the court did at one point seem to suggest that it did not "need" the 2005 order to support a contempt finding, because of the independent statutory obligation, the court also pointed out that "the order," as well as the statutory requirement, was "in effect." In any event, in its final determination at the conclusion of the hearing, the court found Ozbaki in contempt at least in part due to his unreasonable interpretation of the 2005 order and failure to recognize that it imposed an affirmative duty to report his greatly increased income.

Ozbaki to report income changes that affected his ability to pay child support, which Ozbaki failed to do. As a result, Altass did not know that she would have had grounds to seek increased support, and she lost the chance to ask for it.

¶20 As far as the specific amount imposed as a compensatory purge condition, $27,000, the court had heard Altass's argument explaining why this amount approximated the lost opportunity Altass suffered due to Ozbaki's failure to update his financial information. Ozbaki did not contest Altass's calculation of her losses; he continued to argue that contempt was inappropriate because he did not willfully violate the underlying order. The same is true with respect to the attorney fees Altass was forced to incur due to Ozbaki's contemptuous failure to abide by his affirmative duty to update his income information on his own; Altass provided a detailed accounting of those fees. In short, there is nothing in the record or Ozbaki's appellate briefs that undermines the court's finding that $27,000 was an appropriate purge condition to compensate Altass for the lost opportunity at increased child support resulted from Ozbaki's contempt or its finding that the attorney fees were "reasonable."

By the Court.—Order affirmed.

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