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DISTRICT II

September 28, 2022

To:

Hon. Daniel J. Bissett
Circuit Court Judge
Electronic Notice

Karla Z. Keckhaver
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Larry L. George, #88022
Sand Ridge Secure Treatment Center
P.O. Box 800
Mauston, WI 53948

You are hereby notified that the Court has entered the following opinion and order:

2021AP474

Larry L. George v. David H. Schwarz (L.C.#1999CV451)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹

Larry L. George, pro se, appeals an order denying his motion to convert a money judgment to community service, as well as an order denying his motion for reconsideration. He argues the court was required to hold a hearing on his motions and grant the requested relief. We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

We have previously described “this case’s lengthy and knotty history and George’s prodigious motion-filing.” See *State ex rel. George v. Schwarz*, Nos. 2012AP2320 and 2013AP969, unpublished slip op. ¶17 (WI App Feb. 19, 2014). This portion of the case concerns only George’s recent attempt to overturn a money judgment for attorney fees entered in 2012.

George filed this certiorari action in 1999, challenging an administrative determination sustaining a decision revoking George’s parole. In 2011, the defendant in this action, David Schwarz, represented by the Wisconsin Department of Justice, filed a motion to clarify or vacate orders entered in this certiorari proceeding relating to George’s sentence in Brown County Circuit Court case No. 1996CF163. George requested the appointment of counsel, which was granted. The appointment order found that George was indigent despite the Wisconsin State Public Defender Office’s conclusion that he was ineligible for appointed counsel. Accordingly, an attorney was appointed for him at county expense. The “[n]o reimbursement required” box was checked on the order form.

Following a hearing in September 2012, the circuit court granted the State’s request for clarification over George’s objection. George then stipulated to the withdrawal of his attorney, and the court entered an order approving attorney fees in the sum of \$2,953. Critically, the order provided that Winnebago County “shall have the right to take a civil Judgment against the Defendant for the amount of the attorney fees paid, and the Court reserves the right to Order the Defendant into Court to explain his/her failure to pay as required by the Order Appointing the Attorney.”

George was sent a “reminder notice” regarding payment of the attorney fees on November 7, 2012. He wrote to the circuit court requesting that the court vacate the attorney fee

reimbursement order, among other reasons because he earned only \$6.80 every two weeks in prison. The court summarily denied that motion on December 14, 2012. The clerk of circuit court then entered a money judgment against George in the amount of the unpaid attorney fees. George sought reconsideration, but that motion, too, was summarily denied in a January 29, 2013 order. George sought to appeal, but his notice of appeal was only timely as to the January 29 order. *Schwarz*, Nos. 2012AP2320 and 2013AP969, ¶16. We did not address the attorney fee issue he sought to raise because his motion for reconsideration did not present any new issue as to the validity of the money judgment. *Cf. id.*, ¶¶16-17.

In January 2021, George filed a motion asserting inability to pay and requesting that the circuit court “VACATE the monetary portion of the Judgment in this case and order community service in an amount the Court deems appropriate.”² The motion did not identify the judgment at issue and was filed under the wrong case caption. The circuit court denied the motion because it appeared to be filed under the wrong case. George submitted a motion for reconsideration, this time attaching the December 2012 money judgment. That motion, too, was summarily denied.

George now argues he was entitled to a hearing on his motion and the circuit court erred by denying his motion to vacate the money judgment.³ We agree with Schwarz that George’s motion is properly construed as a motion for relief from judgment under WIS. STAT. § 806.07,

² In the interim, George had been placed in the Sand Ridge Secure Treatment Center on a WIS. STAT. ch. 980 commitment.

³ George represents that he advised the circuit court that the money judgment is preventing him from obtaining a bank account, which is necessary as part of his treatment plan. George’s motions contain no such assertion. Rather, George asserted before the circuit court that he needed the money judgment vacated so that he could sell some items he had made in prison. George, for the first time, raised the notion of vacatur being necessary for treatment purposes in a procedurally improper motion for emergency relief pending appeal before this court.

the denial of which we review for an erroneous exercise of discretion. *See Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. Although the court provided scant reasoning, we will search the record for reasons to sustain its exercise of discretion. *See id.*

George's appellate arguments fail, both procedurally and on their merits. Procedurally, he provides no compelling authority for the proposition that a circuit court was required to hold a hearing on his motion to vacate the money judgment. His citation to *State v. Kuechler*, 2003 WI App 245, ¶14, 268 Wis. 2d 192, 673 N.W.2d 335, is inapposite because that case deals with the absence of a hearing regarding a defendant's ability to pay, not a hearing regarding a WIS. STAT. § 806.07 motion. To the extent George attempts to claim the 2012 money judgment is invalid because the court failed to hold an ability-to-pay hearing, the opportunity to raise such an argument has long passed.

Relatedly, George provides no compelling reason why the circuit court should have vacated the money judgment over eight years after its entry. A WIS. STAT. § 806.07 motion generally must be brought within a reasonable time. Sec. 806.07(2). It was George's burden to prove that extraordinary circumstances existed justifying relief. *Sukala*, 282 Wis. 2d 46, ¶12. He raised his inability to pay the money judgment years ago when he first requested vacatur. The circuit court here could reasonably conclude that George's claimed continuing inability to pay the money judgment did not justify relief.

Finally, even if we were to construe George's 2020 transfer to a secure treatment facility as an extraordinary circumstance rendering his WIS. STAT. § 806.07 motion timely, he has not provided any authority on appeal supporting the proposition that a circuit court has authority to convert a money judgment to community service. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492

N.W.2d 633 (Ct. App. 1992) (“Arguments unsupported by references to legal authority will not be considered.”). We deem his mere assertion that it would be equitable to do so insufficient.

Based on the foregoing,

IT IS ORDERED that the orders of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals