

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 29, 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. 2013AP624

Cir. Ct. No. 2011FA632

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

MARGARET C. VONFRICK,

PETITIONER-RESPONDENT,

v.

ROBERT H. VONFRICK,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for St. Croix County:
EDWARD F. VLACK III, Judge. *Affirmed.*

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

¶1 PER CURIAM. Robert Vonfrick appeals three orders: an order denying his motion for reconsideration of a divorce judgment, a qualified domestic

relations order (QDRO), and a contempt order. Robert argues the circuit court erroneously exercised its discretion regarding the reconsideration motion, the QDRO implemented prior court error, and the contempt order lacked evidentiary support. We affirm.

BACKGROUND

¶2 Robert and Margaret Vonfrick were granted a written divorce judgment in October 2012. Both parties were sixty-five years old and retired at the time. The circuit court awarded Margaret \$430 monthly maintenance for eight years. Further, the court ordered she was to receive monthly payments from Robert's pension, in perpetuity, as part of the property division.

¶3 On November 15, Robert moved for reconsideration. On November 19, Margaret filed a contempt motion alleging Robert violated the divorce judgment because, among other things, he failed to pay the fixed amount from his pension payment.

¶4 In January 2013, the court orally denied Robert's motion for reconsideration. The contempt hearing was held two days later. Robert argued it was reasonable for him to not make any payments from his pension because he had moved for reconsideration of the judgment, and now intended to appeal. The court found Robert in contempt for failing to make the monthly pension payments. The written order stated: "The Judgment of Divorce required that [Margaret] receive \$2,019.00 per month from [Robert's] pension, commencing in October of 2012. The undisputed evidence was that [Robert] has not made any payment from the pension, despite receiving the full monthly pension benefit each month." The court also issued a QDRO in February 2013, identifying Margaret as an alternate payee on Robert's pension and awarding her set monthly payments.

¶5 Robert initially appealed the divorce judgment, order denying reconsideration, QDRO, and contempt order. However, Margaret moved to dismiss the appeal. We granted Margaret’s motion in part and denied it in part, in an order dated September 26, 2013.

¶6 We held Robert’s appeal was untimely as to the divorce judgment and we consequently lacked jurisdiction to review it. Regarding the reconsideration motion, we left the matter open because Robert contended the motion had raised new issues. Accordingly, we ordered, “Robert may only raise issues arising from the denial of his reconsideration motion that could not have been raised in an appeal from the underlying divorce judgment.” We also ordered the parties to address the scope of review of any issues raised regarding the reconsideration motion. Finally, we rejected Margaret’s motion to dismiss with respect to the QDRO and the contempt order.

DISCUSSION

Order denying reconsideration motion

¶7 Robert presents numerous issues under the guise of “new issues” that were raised in his reconsideration motion. Without supporting authority, Robert asserts: “The scope of review of this appeal extends to all of those issues initially raised on Robert’s motion and does not arbitrarily exclude appellate review of those issues.” He next emphasizes we are to apply a liberal application of the “new issues test.” Robert then concludes his scope of review argument as follows:

Robert’s motion for reconsideration/new trial raised novel issues and made new arguments not disposed of by the original Judgment for Divorce. Appellate review of those new issues, which were not previously argued and not

previously disposed of, is proper under the required liberal application and cannot be precluded. While certain issues raised in Robert's motion for reconsideration/new trial relate to findings originally made in the Divorce Judgment, Robert only seeks review of the circuit court's abuse of discretion in denying his motion, not review of the original Judgment for Divorce.

Upon concluding his scope-of-review argument, Robert transitions to his arguments that the court erroneously denied his motion for reconsideration. Robert does not, however, assert, much less explain how, any of the individual arguments concern new issues that could not have been raised in a direct appeal from the divorce judgment. Rather, he merely argues the court erred in each instance by failing to remedy the errors it made in the original divorce judgment.

¶8 Robert's scope-of-review argument is inadequately developed because he never identifies any new issues or provides authority for his broad assertion that he may appeal all issues raised in his reconsideration motion. We therefore reject this thinly-veiled argument. *See State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) ("We will not decide issues that are not, or inadequately, briefed."). As we explained in our order dismissing Robert's appeal of the divorce judgment, "No right of appeal exists from an order denying a motion to reconsider which presents the same issues as those determined in the order or judgment sought to be reconsidered." *Silverton Enters., Inc. v. General Cas. Co. of Wis.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). We therefore reject all of Robert's arguments based on the circuit court's denial of the reconsideration motion.¹

¹ Robert asserts throughout his arguments that the circuit court abused its discretion. The proper argument is that the court erroneously exercised its discretion. Wisconsin jettisoned the phrase "abuse of discretion" decades ago. *See City of Brookfield v. Milwaukee Metro. Sewerage Dist.*, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

QDRO

¶9 Robert argues the QDRO was improper because it was based on the purportedly erroneous divorce judgment. He does not contend the QDRO itself was erroneous. The QDRO could not expand Robert’s appellate rights any more than the reconsideration motion could. We already held that Robert lost his right to appeal issues related to the underlying divorce judgment. The issue merits no further attention.

Contempt order

¶10 Robert argues the circuit court erroneously found him in contempt because it failed to make the necessary findings of fact. A circuit court’s use of its contempt power is an exercise of judicial discretion.² *Krieman v. Goldberg*, 214 Wis. 2d 163, 169, 571 N.W.2d 425 (Ct. App. 1997). A circuit court properly exercises its discretion when it “considers the facts of record and reasons its way to a rational, legally sound conclusion.” *Prosser v. Cook*, 185 Wis. 2d 745, 753, 519 N.W.2d 649 (Ct. App. 1994). The principal factual findings a court must make in the context of a motion for remedial contempt are that the person is able to pay and that the refusal to pay is willful and with intent to avoid payment. *Krieman*, 214 Wis. 2d at 169. The court’s findings underlying its conclusion that

² In their contempt arguments, the parties each cite a per curiam court of appeals decision. Additionally, Robert cites a one-judge decision authored in December 2008. These citations to unpublished opinions violate WIS. STAT. RULE 809.23(3), and interfere with our ability to operate efficiently. We caution counsel that future violations will not be tolerated and are likely result in monetary sanctions. *See* WIS. STAT. RULE 809.83(2).

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

a person has committed contempt will not be set aside unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶11 Robert argues the contempt order must be reversed because the court failed to determine that he had an ability to pay and that the nonpayment was willful and intentional. We disagree. The court made implicit findings that were supported by the record.

¶12 Robert's failure to make the monthly pension payments commenced immediately after the divorce judgment. At that time, the court was already well aware of Robert's financial circumstances. Robert never asserted his financial situation had changed during the few intervening months. Further, the contempt order indicated it was undisputed that Robert had received the pension every month since the divorce. Since the payment to Margaret was to come from the pension check, it is evident that Robert had the funds available to pay. Indeed, at the hearing, Robert argued he did not pay because he had moved for reconsideration of the divorce judgment. That explanation supports an inference that Robert did not withhold payment because he lacked the funds.

¶13 Robert's nonpayment explanation also supports a finding that his failure to pay was willful and intentional. At the contempt hearing, Robert conceded he was aware of the judgment requiring him to make the pension payment to Margaret. Yet, Robert never sought a stay of the judgment pending the outcome of his reconsideration motion or subsequent appeal. "[A] person may disagree with [an] order, but he or she is bound to obey it until relieved therefrom in some legally prescribed way." *State v. Rose*, 171 Wis.2d 617, 623, 492 N.W.2d 350 (Ct. App. 1992); *see also* WIS. STAT. § 806.08(2) (titled, "Stay of

proceedings to enforce a judgment.”). Self-righteousness is no defense to contempt.

By the Court.—Orders affirmed.

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

