

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 20, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 97-1120**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**JOHN MCCLELLAN,**

**PETITIONER-APPELLANT,**

**v.**

**MARY L. SANTICH, A/K/A MARY L. MCCLELLAN,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
PATRICK T. SHEEDY, Judge. *Reversed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. John McClellan appeals an order directing the clerk of the trial court not to accept further motions from McClellan or set court dates unless one of four conditions is met: (1) the guardian ad litem approves; (2) the attorney for Mary Santich approves; (3) McClellan evidences good faith by paying \$1,000 toward his support obligations within thirty days of the proposed

hearing date on the motion; or (4) McClellan make a \$500 payment toward attorney's fees for the opposing party and guardian ad litem within thirty days of the proposed hearing date. McClellan argues that the court violated his due process and equal protection rights when it deprived him of reasonable notice and an opportunity to be heard on these sanctions. Because we conclude that the order does not identify specific grounds for the sanction and that McClellan is entitled to notice and an opportunity to be heard before sanctions are imposed in this instance, we reverse the order.

The order on appeal was signed by "Judge Patrick T. Sheedy for Judge Raymond E. Gieringer." The record on appeal<sup>1</sup> does not disclose the basis for Judge Sheedy's involvement in this case. It contains no document showing that Judge Sheedy may have been merely entering an order to effectuate a decision that Judge Gieringer had previously made. It also contains no official assignment of Judge Sheedy to the case and suggests no basis for Judge Sheedy to act in his capacity as Chief Judge of the Judicial Administrative District.

The trial court may impose serious sanctions, including sanctions that limit access to the court, upon a finding of flagrant abuse of the legal process by filing frivolous actions or motions when other, more traditional sanctions have failed. See *Support Systems Int'l Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995), reviewed and approved in *In re Skupniewitz*, 73 F.3d 702 (7th Cir.) cert. denied, 116 S.Ct. 1360 (1996). The court might also have imposed a sanction for contempt of court based upon McClellan's failure to comply with previous court orders and the ineffectiveness of lesser sanctions. Before imposing a penalty

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<sup>1</sup> The record submitted to this court is only a small fraction of the entire record.

based on a contempt finding, however, the court must afford the contemnor the right of allocution. *See Oliveto v. Circuit Court for Crawford County*, 194 Wis.2d 418, 433-34, 533 N.W.2d 819, 825 (1995).

The order in this case does not find any pending motion frivolous, does not find McClellan in contempt of court, and does not state any ground for imposition of the sanction. While a hearing specifically directed to the question of frivolousness might not be necessary in every case, the court must afford some opportunity to be heard on the merits unless an action or a motion is patently frivolous on its face. Because the record does not disclose that the trial court has neither found the motion frivolous nor found McClellan in contempt, we can only speculate as to the basis for the present order. Under these circumstances, we conclude that McClellan was entitled to notice and an opportunity to be heard before the court could limit his access to the courts.

The trial court's order was made on the court's own motion. Mary Santich was made a respondent on appeal, defending an order she did not request. In addition, the appellant's brief raises issues that are not properly before this court and recites facts outside the record. Under these circumstances, it would be unfair to require Mary to pay costs on appeal. McClellan is therefore not entitled to costs.

*By the Court.*—Order reversed. No costs on appeal.

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

