

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 25, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2582

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE FINDING OF CONTEMPT IN RE THE
MARRIAGE OF JOANNE L. STUCKEY N/K/A JOANNE L.
BORDEN V. DAVID H. STUCKEY:**

JOANNE L. STUCKEY N/K/A JOANNE L. BORDEN,

PETITIONER-RESPONDENT,

V.

DAVID H. STUCKEY,

RESPONDENT-APPELLANT.

APPEAL from order of the circuit court for Crawford County:
MICHAEL KIRCHMAN, Judge. *Affirmed.*

¶1 EICH, J.¹ David Stuckey appeals from an order finding him in contempt of court for failing to pay child support, and directing him to pay \$2000 in arrearages by a certain date and seek full-time employment. He argues that the court erroneously exercised its discretion in so ruling, and in failing to impose more severe remedial sanctions on his ex-wife, Joanne Borden, who was also found to be in contempt for failing to notify the clerk of court of her changes of address. We disagree with Stuckey's arguments and affirm the order.

¶2 Stuckey and Borden were married in May 1989, and divorced in December 1994. The divorce judgment awarded joint legal custody of the parties' two minor children, primary physical placement of the children with Borden (with periods of placement with Stuckey) and directed Stuckey to pay child support. Borden and her children moved residences several times between the time of the divorce and the commencement of this action. Being unable to locate Borden and the children, Stuckey moved in April, 1999, to have Borden held in contempt and charged with "domestic kidnapping." Borden responded with a motion for remedial contempt for Stuckey's failure to pay child support.

¶3 A hearing was held at which both parties testified. In a written decision, the court found Borden in contempt for failing to notify the clerk of court of her changes of address as required by the divorce judgment, and ordered her to reinstitute the visitation schedule set forth in the judgment. The court also found Stuckey in contempt for intentionally failing to meet his child support obligations and ordered him to: (1) find full-time employment and report all seek-work efforts to the Crawford County Child Support Agency; (2) pay \$2000 of the child support

¹ This appeal is decided by a single judge pursuant to WIS. STAT. § 752.31(2)(h) (1997-98).

arrearage no later than January 1, 2000; and (3) meet the remainder of his child support obligations under the judgment.² Stuckey appeals.

¶4 A trial court's use of its contempt power, and its decision as to the type of remedial sanctions to impose for contempt, are discretionary determinations. See *State ex rel. N.A. v. G.S.*, 156 Wis. 2d 338, 341, 456 N.W.2d 867 (Ct. App. 1990); see also WIS. STAT. §§ 785.02 and 785.04(1) (1997-98).³ The term "discretion" contemplates a reasoning process which considers the applicable law and the facts of record, leading to a conclusion a reasonable judge could reach. *Schneller v. St. Mary's Hosp.*, 155 Wis. 2d 365, 374, 455 N.W.2d 250 (Ct. App. 1990). "We will not reverse a discretionary determination by the trial court if the record shows that discretion was ... exercised and we can perceive a reasonable basis for the court's decision." *Prahl v. Brosamle*, 142 Wis. 2d 658, 667, 420 N.W.2d 372 (Ct. App. 1987). Because we generally look for reasons to sustain discretionary decisions, *Burkes v. Hales*, 165 Wis. 2d 585, 591, 478 N.W.2d 37 (Ct. App. 1991), "[w]here the trial court fails to adequately explain the reasons for its [discretionary] decision, we will independently review the record to determine whether it provides a reasonable basis for the trial court's ... ruling." *State v. Clark*, 179 Wis. 2d 484, 490, 507 N.W.2d 172 (Ct. App. 1993). A finding of contempt, of course, also rests on the court's factual determination that the person is able to pay and the refusal to do so is willful and with intent to avoid payment. *State v. Rose*, 171 Wis. 2d 617, 623, 492 N.W.2d 350 (Ct. App. 1992).

² The judgment required Stuckey to pay "25% of his net income exclusive of depreciation, less \$100.00 of support required in Crawford County Case No. 83-FA-54, but not less than \$200.00 per month."

³ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶5 Our review of the record satisfies us first that the court's decision finding both Stuckey and Borden in contempt for failing to fulfill their obligations as set forth in the divorce judgment is adequately supported by the evidence. The evidence supporting Stuckey's contempt finding includes: (1) a previous finding of contempt for his failure to pay child support; (2) his 1998 tax return which showed that he received \$12,726 in social security and \$10,000 from his income as a self-employed automobile mechanic that year; (3) his failure to make any child support payments during or since that time; (4) an equity in his home in the amount of \$42,000 to \$48,000; (5) a current support arrearage of \$8,283.62; (6) his failure to work since December 1997, and his failure to provide any medical evidence to support his claim of disability; (7) Stuckey's testimony that he has had little or no income since the end of 1997 and that his wife supports him; and (8) his failure to obtain other employment. In addition, Borden testified Stuckey either knew where she was living or had her telephone number at various times during his period of non-support, and still never paid support and never attempted to arrange to visit the children. This evidence amply support the court's factual findings as to non-payment and ability to pay; and, on those facts, we cannot say the court's discretionary decision finding Stuckey in contempt was unreasonable. We conclude, therefore, that the court properly exercised its discretion in finding Stuckey in contempt.

¶6 Stuckey also appears to challenge the circuit court's authority to impose jail time and a seek-work order as remedial sanctions for his contempt. As indicated above, the court also has the discretion to determine the remedial sanctions for contempt. Under WIS. STAT. § 785.04(1)(b), the court has authority to impose jail time as a remedial sanction as long as the contemnor is given the opportunity to purge the sanction through compliance with the court's order. *G.S.*, 156 Wis. 2d at

342 (citation omitted). “Satisfaction of the purge condition must be within the power of the contemnor [and] the purge conditions must reasonably relate to the cause or nature of the contempt.” *In re Marriage of Larsen*, 159 Wis.2d 672, 676, 465 N.W.2d 225 (Ct. App. 1990) (citation omitted). Here, the court gave Stuckey approximately six months to purge himself of the contempt by paying \$2000 of the child support arrearage and seeking employment. The court ordered that he be imprisoned for ninety days, *only in the event that he failed to purge himself*. We think this was an appropriate exercise of discretion.⁴

¶7 Stuckey also argues that the court erroneously exercised its discretion by failing to impose stricter sanctions on Borden. As indicated, the court found Borden in contempt for failing to notify the clerk of court of all changes in address in accordance with the divorce judgment, and ordered her to purge herself “by reinstituting the visitation schedule required by the judgment of divorce.” At the motion hearing, Borden testified that when she lived in Prairie du Chien (in 1994), Stuckey “continually harassed” her and her children. She testified: “He would drive up and down [the street]. In front of the house. In back of the alley. I had threats written on my garage windows.” She said that the reason she moved to Soldier’s Grove in 1997 was because she had received threats “through the grapevine” that Stuckey would make her miserable unless she moved away from Prairie du Chien. Borden testified that she reported her change of address to the child support agency and that, while she didn’t divulge her new address to Stuckey—“because of the past record of physical abuse toward [her]”—she did provide him with her phone number

⁴ We note that the court also had the discretionary authority to order Stuckey to seek employment. *In re Marriage of Dennis*, 117 Wis. 2d 249, 260, 344 N.W.2d 128 (1984). The court did not order Stuckey to obtain a specific, or different, type of employment; it only ordered him to find work and generate income—from a source other than his auto mechanic business—to enable him to support his two minor children.

and ask if he was interested in seeing the children. He never phoned her or visited with the children. When Borden moved to Vernon County, she said she eventually provided the child support agency with her new address, and that she wasn't trying to hide her or her children's whereabouts from Stuckey. Indeed, their address was listed on the children's public school records. Based on this evidence, the court found Borden in contempt. On this record, we believe the court could, in the exercise of its discretion, properly conclude that no further sanction was required to obtain the remedy to which Stuckey was entitled—i.e., resumption of visitation with his children.

By the Court.—Order affirmed.

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

