

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 2, 2010

David R. Schanker
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. 2009AP825

Cir. Ct. No. 1993FA133

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

MARY STUCKENBERG, NOW KNOWN AS MARY HENRICKSEN,

PETITIONER-RESPONDENT,

v.

WILLIAM STUCKENBERG,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Oneida County:
PATRICK F. O'MELIA, Judge. *Affirmed; attorney sanctioned.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. William Stuckenberg appeals a remedial contempt order and order for commitment and a supplemental order that were entered due to

his failure to maintain the balance of his ex-wife Mary Henricksen's trust. Stuckenberg challenges both the court's contempt finding and the feasibility of the purge conditions. We reject Stuckenberg's various arguments and affirm.

BACKGROUND

¶2 A divorce judgment entered in 1993 required Stuckenberg to establish an irrevocable trust for Henricksen with a principal amount of \$150,000. In 2006, the circuit court entered a stipulated order reducing the principal amount of the trust to \$137,500 and mandating it be maintained at that amount. Again in 2008, the court ordered that Stuckenberg maintain the account at a value of at least \$137,500. Later that year, Henricksen moved for remedial contempt, alleging Stuckenberg failed to maintain the minimum principal.

¶3 In an oral ruling, after an evidentiary hearing, the court observed the devaluation was largely due to stock market conditions. Nonetheless, the court concluded the trust document anticipated such a contingency and required Stuckenberg to replenish the trust. Thus, the court found Stuckenberg in contempt and ordered him to replenish and maintain the trust within ninety days or be committed to jail for 120 days. The oral ruling was reduced to a written remedial contempt order and order for commitment, which was drafted by Henricksen's attorney.

¶4 Additionally, on the same date, the court issued a supplemental findings and order for contempt. The court found Stuckenberg "had the ability to replenish that fund or, at the very least, prevent the fund from being depleted further through his own actions." The court observed Stuckenberg had failed to mention during his testimony that he had been receiving monthly payouts of between \$400 and \$750 from the trust. The court further found Stuckenberg's

testimony regarding his limited income “disingenuous” because all of his assets had been placed either directly in his new wife’s name or in a new trust, and Stuckenberg “enjoys the fruits of those transactions.” Stuckenberg appeals.

DISCUSSION

¶5 Contempt of court is willful, intentional disobedience to the authority, process, or order of a court. WIS. STAT. § 785.01(1)(b).¹ Stuckenberg argues the circuit court’s finding that he intentionally failed to maintain the trust was clearly erroneous because he testified he did not have the means to do so. First, this argument ignores the portion of the court’s contempt finding based on Stuckenberg’s continued withdrawals from the devalued trust. Stuckenberg testified he continued receiving payments even after he knew the value had declined steeply. This alone would justify the court’s finding.

¶6 Second, the court rejected Stuckenberg’s testimony that his only income was from social security, noting the trust payouts Stuckenberg received. Further, on cross-examination, Stuckenberg acknowledged his current wife, with whom he shared a household, was a real estate broker and owned about seven parcels of land. When asked about the number of parcels owned, Stuckenberg testified “we move things in and out” and admitted one had recently sold for \$235,000. Stuckenberg’s argument, based solely on his self-serving testimony, fails to account for any of this other evidence. We must therefore reject it.

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶7 In related arguments, Stuckenberg asserts the circuit court erred because it made no finding whether he was able to satisfy the purge condition, and failed to adequately demonstrate Stuckenberg did have the ability to do so. However, it is the contemnor's burden to prove that the purge conditions are not feasible. *Meyer v. Teasdale*, 2009 WI App 152, ¶7, 775 N.W.2d 123 (citing *State ex rel. V.J.H. v. C.A.B.*, 163 Wis. 2d 833, 843-44, 846, 472 N.W.2d 839 (1991)). As discussed above, the circuit court did not find persuasive Stuckenberg's testimony about his income and assets. Because the court found Stuckenberg had the ability to replenish and maintain the account balance, the only potential issue with the purge condition is whether Stuckenberg could satisfy the ninety-day deadline. However, Stuckenberg does not represent that, after the court issued its orders, he challenged the feasibility of the purge condition by submitting further evidence or requesting a hearing. *See id.*, ¶11.

¶8 Stuckenberg also claims the circuit court violated his constitutional right to substantive due process by failing to set forth the evidence it relied on to conclude he intentionally failed to maintain the trust account balance. We need not address this argument because it is inadequately developed and lacks citation to legal authority. *State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994). In any event, it is simply a rehash of other arguments we already rejected.

¶9 In his reply brief, Stuckenberg asserts he never saw the circuit court's supplemental order until it appeared in the appendix to Henricksen's response brief. He then argues we should not rely on any of the court's findings therein because they cannot be found in the court's oral ruling. This argument apparently relies on the assumption Henricksen's counsel drafted the order and then submitted it to the circuit court without first presenting it to Stuckenberg for

review. Unlike the companion order, however, the supplemental order does not indicate it was drafted by opposing counsel. In any event, the supplemental order is part of the record on appeal, which counsel could have reviewed after the clerk of court compiled it and before it was delivered to this court. Further, the clerk's pagination of the record lists the supplemental order right below the primary contempt order. A simple review of that document would have revealed the existence of the supplemental order even if Stuckenberg or his counsel were truly unaware of it.

¶10 Stuckenberg also complains that he cannot replenish the trust because the circuit court's contempt order removed him as cotrustee. On remand, the court will have continuing authority over its existing orders, and therefore may make any orders it deems necessary to effectuate the replenishment and maintenance of the trust balance.

¶11 Finally, we observe Stuckenberg's counsel failed to provide any citations to the record. Rather, when citations are provided, they are to the brief's appendix. WISCONSIN STAT. RULES 809.19(1)(d)-(1)(e) require appropriate references to the record and legal authorities. The appendix is not the record. *United Rentals, Inc. v. City of Madison*, 2007 WI App 131, ¶1 n.2, 302 Wis. 2d 245, 733 N.W.2d 322. We further observe counsel's repeated reference to, and copying-and-pasting of definitions from, Law.com dictionary. This equates to neither adequate legal argument nor proper citation of authority.

¶12 Attorney Willett signed his appellate brief-in-chief in this case on July 16, 2009. Just weeks before, on June 30, 2009, we released a decision providing him the following warning:

The Willetts' briefs violate WIS STAT. RULES 809.19(1)(d)-(1)(e), because they fail to provide any citation to the record in either the fact or argument sections and repeatedly omit citation to legal authority. We therefore admonish Attorney Willett that future violations will result in sanctions. *See* WIS. STAT. RULE 809.83(2).

Willett v. DOR, 2008AP2273, unpublished slip op. ¶4 n.4 (WI App June 30, 2009). We therefore sanction Attorney Willett for his repeated violations and direct him to pay \$150 to the clerk of this court within thirty days of the date of this decision. Perhaps following Willett's lead, Attorney Katers Reilly also cites only to the briefs' appendices. Nonetheless, she had an independent responsibility to review and comply with the rules of appellate procedure. Future violations will result in sanctions.

By the Court.—Orders affirmed; attorney sanctioned.

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

