

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 23, 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. 2009AP1895**

**Cir. Ct. No. 2007FA184**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**THOMAS WILLIAM BATTERMAN,**

**PETITIONER-APPELLANT,**

**v.**

**SHELLY RAE BATTERMAN,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Marathon County:  
JAMES R. HABECK, Judge. *Affirmed.*

¶1 BRUNNER, J.<sup>1</sup> Thomas Batterman appeals an order finding him in contempt for failure to pay his ex-wife's health insurance premiums as required by

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

their marital settlement agreement. We conclude the circuit court properly exercised its discretion and affirm.

### **BACKGROUND**

¶2 Thomas and Shelly Batterman were divorced on September 20, 2007. A marital settlement agreement required Thomas to pay Shelly's health insurance premiums until March of 2009 or until she became "eligible for coverage under a health plan offered by her employer," whichever occurred first. Shelly began working as a receptionist in a dental office in August of 2008, but her employer did not provide health insurance and she remained on her ex-husband's group plan. On August 28, 2008, Thomas informed his ex-wife her insurance would be terminated as of October 1, 2008.

¶3 On September 12, 2008, Shelly notified Thomas by letter that she was not eligible for health insurance offered by her employer. She requested confirmation that Thomas would cover her health insurance costs. Shelly eventually secured an individual policy effective October 1, 2008.

¶4 On October 3, 2008, Shelly filed a motion for contempt, requesting that Thomas pay her health insurance premiums. A letter from her employer accompanied the motion and stated, "Health insurance is not included in the benefit package for Shelly." Shelly also attached a letter from her health insurer dated October 1, 2008, indicating the monthly premium amount. Thomas was served with the motion on December 3, 2008.

¶5 Thomas refused to make any payments between October of 2008 and March of 2009. On February 27, 2009, Thomas subpoenaed Shelly's employer, Dr. William Skarie, seeking production of payroll records and

employment agreements and policies for all employees. Dr. Skarie’s deposition revealed Shelly was eligible to receive a \$250 per quarter medical reimbursement following her probationary period. Shelly had not been aware of the plan until her five-month review in December. Between October of 2008 and March of 2009, Shelly paid \$1,621.98 in health insurance premiums.

¶6 The circuit court found Thomas in contempt. Although it found he was not in contempt when the motion was filed because he did not know the cost of Shelly’s health insurance, the court concluded he possessed sufficient knowledge following service of the motion on December 3, 2008. The court imposed remedial sanctions requiring Thomas to reimburse Shelly’s health insurance expenses and awarded Shelly attorney fees.

## DISCUSSION

¶7 “A person may be held in contempt if he or she refuses to comply with an order made by a competent court.” *Monicken v. Monicken*, 226 Wis. 2d 119, 125, 593 N.W.2d 509 (Ct. App. 1999). We review a circuit court’s exercise of its contempt power for an erroneous exercise of discretion, but review underlying conclusions of law—such as the meaning of the marriage settlement agreement—independently. *Id.*; *Christiansen v. Sullivan*, 2009 WI 87, ¶43, 320 Wis. 2d 76, 768 N.W.2d 798. “We will affirm the trial court’s exercise of discretion where the decision reflects a reasoning process dependent on facts in, or reasonable inferences from, the record and a conclusion based on proper legal standards.” *Roberts v. Roberts*, 173 Wis. 2d 406, 408, 496 N.W.2d 210 (Ct. App. 1992) (quotation omitted).

¶8 Thomas claims the circuit court erroneously exercised its discretion because his violation of the marital settlement agreement was not deliberate. A

court must find a person's refusal to comply with a court order intentional. WIS. STAT. § 785.01(1). Thomas argues, without citation to authority, a person's failure to comply cannot be intentional "[w]hen a party does not have all of the information necessary to comply with a court order." Whatever the merit of Thomas's proposed rule, we are satisfied it would not cover this case. The circuit court determined Thomas possessed all necessary information when he learned the cost of Shelly's health insurance. It found Thomas simply refused to pay because he assumed Shelly was receiving some additional unspecified benefit. The circuit court's finding of intent is not clearly erroneous.

¶9 Thomas also argues the circuit court's decision must be reversed because Shelly failed to update her discovery answers after learning of the medical reimbursement plan. He claims a court erroneously exercises its discretion by finding contempt where the contemnor's violation is based upon his or her reasonable suspicion that the moving party has not been truthful. We disagree. While a person bound by a court order may disagree with the order, he or she is bound to obey it until relieved in some legally prescribed way. *Monicken*, 226 Wis. 2d at 125.

¶10 Thomas, citing *Sullivan*, also claims a party cannot obtain a remedial sanction where no willful violation of a court order existed at the time of the motion's filing. *Sullivan* does not support this proposition. In that case, our supreme court considered whether certain inmates at the Milwaukee County Jail were entitled to monetary damages as a remedial sanction where the contemptuous conduct undisputedly ceased several months before the motion was filed. *Sullivan*, 320 Wis. 2d 76, ¶3. The court held remedial sanctions cannot be imposed in the absence of a continuing contempt of court. *Id.*, ¶54. Although the court noted "none of the members of the plaintiff class had a complaint they were

being detained in violation of [the court order] at the time the motion for contempt was filed,” it also noted there were no subsequent violations. *Id.*, ¶74. *Sullivan* does not suggest the circuit court lacks authority to order remedial sanctions where, as here, contemptuous conduct first occurs while a contempt motion is pending and exists at the time of its resolution.

¶11 Finally, Thomas argues the unclean hands doctrine bars the circuit court’s contempt finding. The plaintiff may be denied relief under the doctrine only where “it ... clearly appear[s] that the things from which the plaintiff seeks relief are the fruit of [his or her] own wrongful or unlawful course of conduct.” *Security Pac. Nat’l Bank v. Ginkowski*, 140 Wis. 2d 332, 339, 410 N.W.2d 589 (Ct. App. 1987) (citing *S & M Rotogravure Serv. v. Baer*, 77 Wis. 2d 454, 467, 252 N.W.2d 913 (1977)). We are not persuaded Shelly is at fault for Thomas’s failure to abide by the terms of the settlement agreement. The circuit court found Thomas’s intentional disregard for the agreement began after he learned the cost of coverage on December 3, 2008. Although Shelly should have supplemented her discovery responses upon learning of her employer’s medical reimbursement plan, *see* WIS. STAT. § 804.01(5)(b), Shelly’s failure to do so did not negate Thomas’s contemptuous conduct.

¶12 Essentially, Thomas requests dismissal for Shelly’s failure to update her discovery responses.<sup>2</sup> The decision to impose sanctions for discovery violations—which can include dismissal—is within a circuit court’s discretion. *Industrial Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶¶ 39-41, 299 Wis. 2d

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<sup>2</sup> Thomas apparently did not formally request sanctions for Shelly’s discovery violation. Instead, Thomas asserted Shelly’s omission as a defense to his alleged contempt. Although the circuit court found Thomas in contempt, it reduced Shelly’s attorney fees for the violation.

81, 726 N.W.2d 898. Here, the circuit court reduced Shelly's attorney fees. We decline to second-guess the circuit court by imposing a more severe sanction for discovery violations under the guise of an equitable doctrine.

*By the Court.*—Order affirmed.

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

