

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 1, 2003

Cornelia G. Clark
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. 02-3251-FT

Cir. Ct. No. 98-FA-77

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE FINDING OF CONTEMPT IN RE THE
MARRIAGE OF DANA J. MIGNOGNIA V. SALVATORE
MIGNOGNIA:**

DANA J. MIGNOGNIA,

PETITIONER-RESPONDENT,

v.

SALVATORE MIGNOGNIA,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Juneau County:
JOHN W. BRADY, Judge. *Affirmed in part and reversed in part.*

¶1 DYKMAN, J.¹ Salvatore Mignogna appeals from an order finding him in contempt of court for failing to pay four debts which his ex-wife, Dana Wiegele, asserted were assigned to him in their divorce judgment or in post-judgment proceedings. We affirm the trial court's order as to three of the debts and reverse as to one.

¶2 The trial court described these divorce proceedings as “bitter” and, unfortunately, the record shows this to be correct. The parties had jointly operated an automotive repair business called “Interstate Truck Repair, Inc.” At various times during the divorce proceeding, each party was responsible for operating the business. Both parties brought repeated motions asking that the other be held in contempt of court for a variety of asserted misconduct. The order appealed from finds Salvatore Mignogna in contempt of court for failing to pay \$2,411.38 (plus interest) for attorney's fees incurred by Dana in a previous contempt hearing, and failing to pay debts to Peterbilt of Winona, Wilson Law Group, and Thomas Roesler.

¶3 The pertinent part of the parties' divorce judgment provides: “Salvatore Mignogna is assuming all responsibility of the corporation and business known as Interstate Truck Repair, Inc. and agrees to indemnify and hold Dana J. Mignogna harmless for any liability for debts and obligations of the corporation and business.”

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(h) (2001-02), and expedited under WIS. STAT. RULE 809.17 (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

ATTORNEY'S FEES OF \$2,411.38

¶4 After a June 3, 1999 post-judgment contempt hearing, the trial court ordered Salvatore to pay Dana's attorney's fees incurred in bringing the contempt motion. Though the divorce was heard on March 5, 1999, by June 3, Salvatore had not paid a \$31,000 cash settlement to Dana due on March 20, 1999.² The trial court found Salvatore in contempt of court for failing to make the payment, and ordered him to pay that sum plus twelve percent interest from March 5, 1999. The parties' attorneys negotiated the payment of the settlement. Eventually, Salvatore's attorney sent his trust account check to Dana's attorney. The amount of the check was \$33,068.57.

¶5 Salvatore asserts that the difference between the \$31,000 settlement and the \$33,068.57 check represents the disputed attorney's fees, and contends that he has therefore paid them. Dana argues that the difference represents interest, and that the attorney's fees are unpaid. Dana produced a letter from her attorney dated September 16, 1999, addressed to Salvatore's attorney, in which her attorney wrote: "According to my calculation, if the amount is paid in full by Tuesday, September 21, 1999 the total amount due is \$33,068.57." The check in that amount is dated September 24, 1999.

¶6 We agree with Salvatore that Dana was required to prove by a preponderance of the evidence that the contemnor is guilty of a misconduct. *Mohr v. Milwaukee*, 106 Wis. 2d 80, 88-89, 315 N.W.2d 504 (1982). But that evidence existed. Twelve percent interest on \$31,000 from March 5 until September 21

² The parties' marital settlement agreement shows a \$30,000 payment. The parties do not dispute the \$31,000 figure.

equals \$2,038.36. Thus the total amount due to Dana would be \$33,038.36, or \$30.51 less than amount of the check sent to Dana's attorney. The attorney's fees were in a very different amount, \$2,411.38, a difference of \$342.81. Dana's attorney's letter of September 16 tied the amount owed to the date on which it was paid. These facts are evidence that the check did not include attorney's fees, but instead included interest. Salvatore does not explain why the trial court could not rely on this evidence to conclude that he did not pay the fees he was ordered to pay.

¶7 Whether or not an act is a contempt of court is one which the trial court has far better opportunity to determine than the reviewing court. *Oliveto v. Crawford County Circuit Court*, 194 Wis. 2d 418, 427, 533 N.W.2d 819 (1995). We will not reverse a trial court's finding of contempt unless that finding is clearly erroneous. *Id.* at 428. While Salvatore contends that he did not willfully fail to pay the attorney's fees, he was as able as we are to calculate the interest due on the \$31,000 owed to Dana. He cannot avoid the conclusion that he either failed to pay the interest the trial court ordered him to pay or the attorney's fees he was ordered to pay. Either way, he failed to do what was ordered, and the trial court could therefore hold him in contempt of court.

PETERBILT DEBT

¶8 This claim also has its genesis with the paragraph of the divorce judgment we have quoted. At the June 3 hearing, the trial court considered Salvatore's motion for relief from the divorce judgment on the basis of fraud and also heard Dana's contempt motion. The trial court denied Salvatore's motion, reasoning that Salvatore could have examined the books of Interstate Truck Repair, Inc. to determine its true financial status, but declined to do so. Noting

that Salvatore had agreed to assume responsibility for the debts of Interstate, the trial court wrote: “Respondent is also ordered to assume the defense of the current litigation involving Peterbilt of Winona because that claim involves products purchased by Interstate Truck Repair, Inc. for resale and for use in the business.”

¶9 Salvatore argues that because he caused Interstate Truck Repair, Inc. to file a petition in bankruptcy, he had, in effect, assumed the defense of the Peterbilt claim and had the debt discharged. Thus, he did not disobey the requirements of the divorce judgment, and could not be held in contempt of court.

¶10 The trial court determined that Salvatore was liable for the Peterbilt claim in its August 23 order determining the outcome of the June 3, 1999 hearing. Salvatore did not appeal that order, and his notice of appeal was too late to do so. Thus, Salvatore is bound by the trial court’s determination that the divorce judgment required him to assume the responsibility of Interstate Truck Repair, Inc.

¶11 Salvatore’s theory that Interstate’s bankruptcy petition satisfied the requirements of the divorce judgment fails because the judgment required him to indemnify and hold Dana harmless for “any liability for debts and obligations of the corporation and business.” Dana would only be liable for Interstate’s debts if she had guaranteed an Interstate debt or was otherwise responsible for the debt. The judgment provision therefore was meant to apply, not just to Interstate debts, but Interstate debts which Dana might be required to pay. The Peterbilt debt is exactly that. Salvatore was aware of the Peterbilt debt because it was discussed at the June 3, 1999 hearing. Nonetheless, he failed to hold Dana harmless because Peterbilt was pursuing Dana for payment of the debt. The trial court could therefore hold Salvatore in contempt of court for failing to hold Dana harmless.

WILSON LAW GROUP DEBT

¶12 The issue here is similar to the Peterbilt issue though the result is different. Dana testified that she and her mother consulted with the Wilson Law Group. Exhibit 6 shows that they incurred attorney's fees for issues having to do with Interstate Truck Repair, Inc. However, the exhibit shows that the attorneys were not representing Interstate. The exhibit, a letter with a billing attachment reads:

I am enclosing copies of the billing statements for services rendered on behalf of Patricia and Dana Wiegele. As we discussed, at the client's request we billed Interstate Truck Repairs, Inc. for the services, however, we were retained by Pat and Dana to sever the corporate relationship with Sal...

... Since Pat was my client, I am not obligated to litigate through a divorce action for payment since I can look to the client directly.

¶13 This debt is different. First, it is apparent that it is not a debt of Interstate. Whether Salvatore is liable for a particular debt under the terms of the divorce judgment presents a question of law, which we review de novo. *See Washington v. Washington*, 2000 WI 47, ¶26, 234 Wis. 2d 689, 611 N.W.2d 261. A plain reading of the divorce judgment establishes that Salvatore did not agree to be responsible for Dana's debts. Thus, the quoted portion of the divorce judgment is inapplicable to the Wilson Law Group bill. A second impediment exists. The bill was paid, but not by Dana. Her mother, Patricia Wiegele, negotiated with the Wilson Law Group because it was asking her to pay her bill. She obtained a settlement of the account by paying about fifty percent of the billing, or \$1,225.28. Dana therefore is not liable for the bill. Salvatore did not agree to hold Patricia Wiegele harmless from Interstate's debts and Dana has not been harmed. Thus, even if the Wilson Law Group bill were an Interstate debt, the divorce judgment

did not obligate Salvatore to pay the bill. The trial court erred by holding Salvatore in contempt of court for failing to pay the Wilson Law Group bill.

ROESLER DEBT

¶14 Salvatore testified that he knew nothing about the Roesler debt. He was emphatic: “I don’t know the man.” Dana testified that she was served with a summons and complaint by Thomas Roesler for work done prior to the date of her divorce. The complaint named her and Interstate as defendants. Dana testified that the bill had something to do with a broken furnace, and that Salvatore handled the matter with Mr. Roesler.

¶15 “Where the trial court is the finder of fact and there is conflicting evidence, the trial court is the ultimate arbiter of the credibility of witnesses.” *Fidelity & Deposit Co. of Maryland v. First Nat’l Bank of Kenosha*, 98 Wis. 2d 474, 485, 297 N.W.2d 46 (Ct. App. 1980). The trial court could have believed Salvatore, and concluded that the Roesler debt was personal to Dana. But it did not. It obviously disbelieved Salvatore’s testimony that he knew nothing of Roesler or Roesler’s debt. The trial court could have concluded that the debt was for a furnace belonging to Interstate because Interstate was listed as a defendant. It could have believed Dana when she testified that she did not do anything with the Roesler summons and complaint. The trial court was entitled to infer that Roesler obtained a judgment against Dana. By disbelieving Salvatore, the trial court could have concluded that he knew of the debt for the furnace problem, knew that it was connected with Interstate, knew of the divorce judgment’s requirement that he hold Dana harmless for obligations of Interstate but did not pay the debt. That is enough to support a finding that Salvatore was in contempt of court for failing to pay the Roesler judgment.

CONCLUSION

¶16 We affirm the trial court's order as to three of the four debts. We reverse the order as it pertains to the Wilson Law Group debt. No costs to either party.

By the Court.—Order affirmed in part and reversed in part.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

