COURT OF APPEALS
DECISION
DATED AND FILED

November 6, 2026

Samuel A. Christensen
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. 2026AP256 **Cir. Ct. No. 2023FA836**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:

ALEXANDER LIAM LENNON,

JOINT-PETITIONER-APPELLANT,

V.

TANYA MARIE ANDERSON,

JOINT-PETITIONER-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: STEPHANIE R. HILTON, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] In this divorce case, Alexander Liam Lennon, pro se, appeals an order of the circuit court finding him in contempt of court and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

providing that jail time could be imposed as a remedial sanction. The contempt order followed Lennon's failure to timely pay Tanya Marie Anderson's attorney fees in this case, as required by an earlier circuit court order imposing sanctions for overtrial. The court entered the contempt order after Lennon failed to appear at a hearing presided over by a circuit court commissioner to address Lennon's alleged contempt. In a separate order, the circuit court also rejected Lennon's request for a de novo hearing regarding the contempt order. Lennon makes four arguments on appeal.

¶2 Lennon contends that the contempt order lacks adequate findings of his ability to pay the amount ordered as an overtrial sanction. I reject this argument because it was Lennon's burden to prove that his failure to pay the ordered sanction was due to his inability to pay, and Lennon did not meet this burden when he failed to appear at the contempt hearing.

¶3 Lennon separately argues that the contempt order is void because it imposes confinement, even though it was not "issued by a judge" as required by WIS. STAT. § 785.07. I reject this argument, because the record reflects that the circuit court judge issued the contempt order, and Lennon fails to show that the manner in which the court issued the order was improper under the circumstances.

¶4 Lennon also contends that the contempt proceedings violated his procedural due process rights in the following ways: the contempt hearing was held after he was given defective service of notice for the hearing; he was effectively excluded from the contempt hearing when the circuit court denied his request to appear telephonically; the contempt order relied on findings of fact made at an unrecorded hearing; and Lennon's request for de novo review of the

contempt hearing was denied due to his absence from the hearing. I conclude that Lennon fails to establish that his due process rights were violated.

¶5 As another grounds for reversal of the contempt order, Lennon argues that the purge condition imposed is impossible for him to meet, rendering the sanction impermissibly punitive as opposed to remedial. I reject this argument because Lennon concedes the issue by failing to address Anderson's arguments on the issue in his reply brief, and in any event Lennon fails to show that the circuit court clearly erred.

¶6 Accordingly, I affirm.[2]

BACKGROUND

¶7 Lennon and Alexander were married in 2021, and the circuit court entered a judgment of divorce dissolving the marriage in May 2024.[3]

¶8 About one year later, Lennon, pro se, moved to vacate or alternatively to reopen the divorce judgment under WIS. STAT. § 806.07. Lennon made numerous other filings in support of this and other motions. This included an affidavit of indigency, which he filed in May 2025 for the purpose of obtaining

[2] Lennon requests oral argument. I decline to exercise my discretion to grant this request. *See* WIS. STAT. § 752.31(3).

Separately, Lennon moves this court to certify this appeal to our supreme court under WIS. STAT. RULE 809.61 based on what he contends is the novelty of the issue regarding WIS. STAT. § 785.07. This court declines Lennon's motion to certify, because none of the issues raised in this appeal weigh in favor of certification.

[3] The Hon. Frank D. Remington entered the judgment of divorce. The Hon. Stephanie R. Hilton issued the order sanctioning Lennon for overtrial, the order finding him in contempt, and the order denying Lennon's request for a de novo hearing.

a waiver of fees and costs in the litigation. Lennon averred that he received multiple forms of means-tested public assistance and could not afford to pay court costs due to poverty.

¶9 Anderson moved the circuit court to dismiss Lennon's WIS. STAT. § 806.07 motion. Anderson further requested that the court find that Lennon had engaged in overtrial and, on that basis, to impose sanctions.

¶10 The circuit court dismissed Lennon's WIS. STAT. § 806.07 motion, finding that Lennon had engaged in overtrial.[4] Based on this order, the court entered a judgment in Anderson's favor against Lennon in the amount of Anderson's attorney fees and costs that she incurred defending against the motion. Specifically, the court ordered that Lennon pay Anderson $12,990 by September 1, 2025. I refer to this as the "overtrial sanction" and to the order as "the sanctions order."[5]

---

[4] This court has explained the overtrial concept this way:

> Overtrial is a doctrine developed in family law cases that may be invoked when one party's unreasonable approach to litigation causes the other party to incur extra and unnecessary fees. It may also involve abuse of judicial resources through the unnecessary over-utilization of those resources. A party's approach to litigation is unreasonable if it results in unnecessary proceedings or unnecessarily protracted proceedings, together with attendant preparation time. A circuit court may sanction a party who has engaged in overtrial by ordering that party to pay the opposing party's attorney fees. A sanction furthers two objectives, providing compensation to the overtrial victim for fees unnecessarily incurred, and deterring unnecessary use of judicial resources.

Yu v. Zhang, 2001 WI App 267, ¶13, 248 Wis. 2d 913, 637 N.W.2d 754 (citations omitted).

[5] Lennon challenges the sanctions order, among other rulings, in a separate appeal that is currently pending before this court, ***Lennon v. Lennon***, No. 2025AP1427.

¶11 On September 22, Anderson moved the circuit court to find Lennon in contempt for failing to comply with the sanctions order. A hearing on this motion was scheduled to be heard on January 6, 2026, in front of a circuit court commissioner ("the contempt hearing").

¶12 Several days before the hearing, on January 2, Lennon filed a motion in the circuit court to adjourn the hearing based on several grounds, including an objection that the court lacked personal jurisdiction over him based on allegedly defective service. Anderson opposed Lennon's motion to adjourn and filed several exhibits that she contended demonstrated that Lennon had adequate notice of the contempt hearing before the court commissioner.

¶13 The court commissioner held the contempt hearing, and Lennon failed to appear.

¶14 On January 8, the circuit court issued an order that the court signed electronically that day, and which had been electronically signed by the court commissioner on January 7. I refer to this order as "the contempt order."

¶15 The contempt order contained the following findings regarding Lennon's notice of, and attendance at, the contempt hearing: Lennon had actual notice of the hearing; he called the clerk of the circuit court requesting to appear at the hearing by telephone; and he "chose not to attend the hearing" in person.

¶16 The contempt order also reflected findings regarding Lennon's ability to pay the amount required by the sanctions order. This included the findings that Lennon had recently retained private counsel in various court cases, and that he had posted cash bail in two matters totaling $5,500. The order further stated that Anderson's motion for contempt was granted "[b]y default."

¶17 The contempt order sentenced Lennon to 90 days of jail, without Huber privileges.[6] As a purge condition, the circuit court stated that Lennon had until February 26, 2026, to pay Anderson $14,365, which was the combined total of the unpaid overtrial sanction and Anderson's fees and costs for pursuing the motion for contempt. The contempt order further stated, regarding this purge condition:

> If [Lennon] does not pay, [Anderson] may submit a sworn statement describing the circumstances…. If [Lennon] does not submit a sworn detailed reply contesting whether he paid or describing any new circumstances showing an inability to pay, it is highly likely that a bench warrant and commitment will be issued. Any reply suggesting a newly found inability to pay must also include a description of any efforts to make partial payment.

The contempt order stated that a judicial lien in the amount of $14,365 "shall be placed" on any proceeds that Lennon may receive in a separate civil case then pending in federal court.[7]

¶18 Lennon filed in the circuit court what he styled as an "emergency motion" to vacate or stay enforcement of the contempt order. The circuit court construed this motion as a request for de novo review of the court commissioner's rulings, which the circuit court denied. The court relied on a local rule of the circuit court in Dane County that limits de novo appeals to parties who were

[6] "Huber release grants leave privileges to county jail prisoners for purposes such as employment." *See* ***State v. Rector***, 2023 WI 41, ¶49 n.22, 407 Wis. 2d 321, 990 N.W.2d 213 (citing WIS. STAT. § 303.08).

[7] The parties completed the briefing for this appeal after the passing of the deadline that was set in the contempt order for Lennon to pay the contempt sanction. As best I can discern from the briefing in this appeal, Lennon has not paid the contempt sanction, but he also has not served any portion of the jail sentence. In any event, Anderson does not suggest that any issue in this appeal is moot, and no issue that I resolve turns on these details.

present at the hearing underlying the ruling of the court commissioner for which the parties seek review.

¶19 Lennon appeals the contempt order.

DISCUSSION

¶20 In this appeal, Lennon does not challenge the circuit court order imposing the sanction for overtrial, nor does he dispute that he failed to timely comply with the court order that he pay Anderson. I address each of his arguments in turn. Further below, I address Anderson's motion to this court requesting costs and fees under WIS. STAT. RULE 809.25(3) because Lennon's appeal is frivolous.

I. Present Ability to Pay

¶21 As noted, Lennon argues that the findings in the contempt order were not adequate to demonstrate that he had the ability to pay the overtrial sanction. Under pertinent legal standards that I now summarize, Lennon's argument fails because it was his burden to prove his inability to pay, and he did not meet that burden when he failed to appear at the contempt hearing.

¶22 I review the circuit court's decision to exercise its contempt powers for an erroneous exercise of discretion. *See* ***City of Wisconsin Dells v. Dells Fireworks, Inc.***, 197 Wis. 2d 1, 23, 539 N.W.2d 916 (Ct. App. 1995). The circuit court's findings of fact are upheld on appeal unless they are clearly erroneous. ***Id.*** (citing WIS. STAT. § 805.17(2)).

¶23 "A person may be held in contempt of court if he or she has the ability, but refuses, to comply with a circuit court order." ***Benn v. Benn***, 230

Wis. 2d 301, 309, 602 N.W.2d 65 (Ct. App. 1999); *see also*; WIS. STAT. § 785.02 ("A court of record may impose a remedial or punitive sanction for contempt of court."). Pertinent here, a party refusing to pay a sum ordered by the court to another party can be found to be in contempt of court if the party ordered to pay has the ability to do so and "the refusal to pay is willful and with intent to avoid payment." ***Benn***, 230 Wis. 2d at 309-10; WIS. STAT. § 785.01(1)(b) ("'Contempt of court' means intentional … [d]isobediance, resistance[,] or obstruction of the authority, process[,] or order of a court.").

¶24 The circuit court here imposed a "remedial sanction," which is one "imposed for the purpose of terminating a continuing contempt of court." WIS. STAT. § 785.01(3). Remedial sanctions may be sought by "[a] person aggrieved by a contempt of court … by filing a motion for that purpose in the proceeding to which the contempt is related." *See* WIS. STAT. § 785.03(1)(a).

¶25 If the person seeking a sanction makes a "prima facie showing … of a violation of an order" of the court, then the "alleged contemnor[] bear[s] the burden of demonstrating that [his or her] conduct was not contemptuous." ***Noack v. Noack***, 149 Wis. 2d 567, 575, 439 N.W.2d 600 (Ct. App. 1989) (citing ***Joint Sch. Dist. v. Wisconsin Rapids Educ. Ass'n***, 70 Wis. 2d 292, 321, 234 N.W.2d 289 (1975); ***Balaam v. Balaam***, 52 Wis. 2d 20, 30, 187 N.W.2d 867 (1971)). Thus, when there is a prima facie case that a party failed to pay a sum ordered by the court, that party bears the burden "to show that [the party] was not able to pay and that [the] refusal to pay represents something other than a willful and intentional avoidance of payment." ***Id.*** (citing ***Balaam***, 52 Wis. 2d at 29-30).

¶26 This court has explained that an alleged contemnor can fail to meet his or her burden to rebut a prima facie case for contempt in many ways:

> [The contemnor's] evidence may be insufficient or uncompelling; or he [or she] may present no evidence at all. Where an alleged contemnor chooses not to present evidence on his [or her] own behalf, we find no reason in law or logic that the [circuit] court would be precluded from finding the underlying conduct was contemptuous and holding the alleged contemnor in contempt. Nothing in the contempt statutes or in the case law interpreting those statutes precludes such an action. Rather, it is well-settled that issues must be raised before the [circuit] court or they are deemed [forfeited]. Even issues of constitutional importance can be [forfeited] or abandoned.

Id. (citations omitted).[8] Thus, it was permissible for the circuit court to hold the alleged contemnor in ***Noack*** in contempt because he "was silent by virtue of his absence from [the] contempt hearing." ***Id.*** at 575-76.

¶27 Because Lennon does not argue that Anderson failed to make a prima facie case of noncompliance through her contempt motion, Lennon had the burden to show that his noncompliance was due to his inability to pay and was not due to his "willful and intentional avoidance of payment." *See* ***id.*** at 575. Here, as in ***Noack***, Lennon "was silent by virtue of his absence" from the contempt hearing. *See* ***id.*** at 575-76. Thus, it was not an erroneous exercise of discretion for the circuit court here to determine that Lennon was in contempt "[b]y default."

¶28 Lennon argues to the contrary that the burden in a contempt matter cannot, in his words, "shift to a party [who was] excluded from the proceeding." I reject this argument because I conclude that it is contrary to the settled law

[8] Although this court in ***Noack v. Noack***, 149 Wis. 2d 567, 575, 439 N.W.2d 600 (Ct. App. 1989), refers to the "waiver" of issues by failing to appear at a contempt hearing, I interpret ***Noack*** to have referred to what is more precisely called the "forfeiture" of issues. *See* ***State v. Ndina***, 2009 WI 21, ¶¶28-29, 315 Wis. 2d 653, 761 N.W.2d 612 (noting that case law has at times been "imprecise" in use of "waiver" and "forfeiture," but explaining that the latter is failure to make the timely assertion of a right, as opposed to an intentional relinquishment of that right).

described above, and Lennon does not cite to legal authority suggesting that it is not settled law. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may decline to consider arguments not supported by legal authority).

¶29 Moreover, Lennon fails to direct my attention to evidence in the record to support the premise that he was "excluded from" the contempt hearing. As noted in the background above, the contempt order included the findings that Lennon called the clerk of the circuit court requesting leave to appear at the contempt hearing by telephone and that he "chose not to attend the hearing." This implied that Lennon's request to appear telephonically was rejected by the court commissioner, a fact that Lennon confirms on appeal. Also implied in the contempt order are findings by both the court commissioner and the circuit court that Lennon was not credible, or that he provided insufficient support, when he represented that he was not able to appear at the hearing in person. Lennon does not show that any of these explicit or implicit findings were clearly erroneous. *See* ***Country Visions Coop. v. Archer-Daniels-Midland Co.***, 2021 WI 35, ¶19, 396 Wis. 2d 470, 958 N.W.2d 511 (under clear error standard, "'the circuit court's findings are to be sustained if they do not go against the great weight and clear preponderance of the evidence,'" even if the evidence "'present[s] competing factual inferences'" (quoted source omitted)).

¶30 More generally, Lennon does not develop an argument, based on pertinent authority, that the court commissioner erred by denying Lennon's request to appear telephonically. *See* ***Pettit***, 171 Wis. 2d at 646. He notes that, under local rules, the court commissioner had the discretion to allow Lennon to appear by video call or telephone, and that the court commissioner denied Lennon's request without entering a written order to that effect. Lennon does not

cite, much less attempt to apply, any authority regarding the discretionary decision of a circuit court or court commissioner to allow parties to appear telephonically. *See* ***id.*** (declining to address as inadequately briefed arguments that did not consist of "developed themes reflecting any legal reasoning").[9]

¶31 Lennon repeatedly emphasizes that he filed a sworn affidavit of indigency in the circuit court in May 2025, so that it was part of the record by the time the circuit court found Lennon in contempt in January 2026. In the affidavit, Lennon averred that he had little in the way of cash assets and received means-tested public assistance. Lennon argues that the court erred by finding him in contempt without considering the affidavit as evidence of his ability to pay the overtrial sanction. However, Lennon fails to support the proposition that, even though he failed to appear at the hearing, the court commissioner and the circuit court were required to search the record for evidence in his favor, or required to credit as evidence various record references. *See* ***id.*** By failing to appear, Lennon did not present any argument based on the affidavit filed months earlier, nor did he make himself available as a fact witness for the court commissioner or Anderson to question him on the topic of his ability to pay.

¶32 In a related series of arguments, Lennon challenges the individual findings contained in the contempt order regarding Lennon's ability to pay the overtrial sanction, and contends that the order did not explicitly find that he had been "shirking" from pursuing income-producing opportunities. These arguments

[9] While not necessary to my conclusion on this issue, I observe that, as a general matter, it would appear to be a sensible approach for a court commissioner, depending on various dynamics in a particular case, to have a strong preference for the advantages of being able to interact with parties face-to-face when evaluating sensitive issues involving personal finances and allegedly contemptuous conduct.

all fail for at least the following reasons. The contempt order did not need to rely on the challenged findings because it was Lennon's burden to show an inability to pay, and he did not appear. Although the contempt order includes these findings, it also found him in contempt "[b]y default." *See* ***Noack***, 149 Wis. 2d at 575. Closely related, Lennon's failure to appear and challenge the findings at a hearing at which Anderson could respond to Lennon's evidence and argument forfeited his ability to challenge the findings in this appeal. *See* ***id.***; ***State v. Ndina***, 2009 WI 21, ¶30, 315 Wis. 2d 653, 761 N.W.2d 612 (noting purposes of the "forfeiture rule" that include "giv[ing] both parties and the circuit court notice of the issue and a fair opportunity to address [an] objection").[10] Further, Lennon does not persuade me that the circuit court clearly erred in making any relevant factual finding or in how it weighed any particular piece of evidence on the topic of Lennon's ability to pay the overtrial sanction. *See* ***State v. Below***, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95 ("the trier of fact is the sole arbiter of the credibility of witnesses and alone is charged with the duty of weighing the evidence").

¶33 Lennon notes that the United States Supreme Court has concluded that right to due process includes the requirement that states either provide counsel for indigent parties subject to civil contempt proceedings or else provide the following "alternative procedural safeguards" related to the topic of an alleged contemnor's ability to pay:

[10] Because the forfeiture rule is a rule of judicial administration, an appellate court has the authority to disregard the rule and address the merits of an unpreserved issue. ***State v. Counihan***, 2020 WI 12, ¶27, 390 Wis. 2d 172, 938 N.W.2d 530. But given the nature of the forfeiture and the history of litigation in this case, this would not be an appropriate occasion to disregard the rule.

> (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information …; (3) an opportunity at the hearing for [the defendant] to respond to statements and questions about his [or her] financial status (*e.g.*, those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay.

Turner v. Rogers, 564 U.S. 431, 447-48 (2011). He argues that none of these safeguards were provided here.

¶34 Before addressing Lennon's procedural safeguards argument further, I explain why I am not persuaded by Anderson's argument that the safeguards in ***Turner*** do not apply here. Anderson contends that Wisconsin law provides for appointed counsel for the representation of indigent parties who are subject to civil contempt proceedings. But in support she cites authority explaining that there is a constitutional right to counsel when a party's "liberty is threatened in a remedial contempt action brought *by the government*." *See* ***State v. Pultz***, 206 Wis. 2d 112, 131, 556 N.W.2d 708 (1996) (emphasis added). This court has declined to recognize such a constitutional right in actions initiated by private parties. *See* ***Sheppard v. Sheppard***, No. 2016AP530, ¶26, unpublished slip op. (Jul. 19, 2017) (declining to apply ***Pultz*** to case that "was not initiated by the state or an arm of the state"). Neither party identifies a statutory or regulatory right for someone in Lennon's position to counsel. For these reasons, I assume without deciding that the "alternative procedural safeguards" described in ***Turner*** apply to the contempt proceedings here.[11]

[11] For these same reasons, I reject Lennon's brief argument that it was also error for the circuit court to issue the contempt order without advising him of the right to counsel under the rule stated in ***Pultz***.

¶35 With this assumption in mind, I conclude that Lennon's reliance on ***Turner*** fails because he forfeited any argument based on ***Turner*** by failing to appear at the contempt hearing. By failing to appear, Lennon eliminated an opportunity for the court commissioner to engage in a colloquy with the parties regarding topics relevant to the ***Turner*** safeguards. To cite only one example, the court commissioner had no chance to explore with Lennon whether he understood from Anderson's motion that Lennon's ability to pay the overtrial sanction was at issue.[12] On a related point, Lennon's motion to adjourn the contempt hearing suggested that he might need additional time to prepare a defense to the contempt, but he used vague terms to express this, and the court commissioner could not explore this concept with Lennon due to his absence from the hearing. Lennon does not persuade me that the procedural safeguards mentioned in ***Turner*** are not among the "issues of constitutional importance [that] can be [forfeited] or abandoned" by his failure to appear. *See* ***Noack***, 149 Wis. 2d at 575.

II. Issuance of Contempt Order by a Judge

¶36 Lennon argues that the contempt order should be reversed because it was not "issued" by the circuit court. Under WIS. STAT. § 785.07, "[a] contempt order imposing confinement shall be issued by a judge." There is no dispute that the court commissioner was not a "judge," and Lennon contends that the court commissioner issued the order, not the circuit court. This is so, he argues, because the circuit court did not "exercise … independent judicial discretion" by "reviewing evidence, making findings, and determining the sanction." This is

[12] On September 22, 2025, along with her contempt motion, Anderson filed a sworn declaration that stated, "[u]pon information and belief, Alexander has the ability to pay but is refusing to do so."

required, the argument continues, because "issuing" an order is a "substantive judicial act" as opposed to a ministerial act.

¶37 Citing dictionary definitions as evidence of the plain meaning of the word "issue," Anderson argues that issuing an order means "to put forth officially" or "to send out or distribute officially." *See Issue*, BLACK'S LAW DICTIONARY (12th ed. 2024) (giving definitions for the verb "issue" as opposed to the noun); *accord Issue*, MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/issue.[13] Lennon does not argue that the circuit court did not "issue" the contempt order under this standard—the order, as it appears in the record, bears the electronic signature of the circuit court.

¶38 The interpretation and application of a statute presents issues of law that I review de novo. *See* ***Frisch v. Henrichs***, 2007 WI 102, ¶29, 304 Wis. 2d 1, 736 N.W.2d 85.

¶39 I agree with Anderson's supported argument that "issued," as used in WIS. STAT. § 785.07, means that the judge sent out or distributed the order. In support of his contrary argument, Lennon relies on case law that is not applicable, as I now explain.

¶40 Lennon notes that our supreme court has stated that a circuit court order made in the judge's "chambers is ineffective until notice thereof has been served upon the opposite party or his attorney." ***Yanggen v. Wisconsin Mich.***

[13] Courts may consult apt definitions in dictionaries to attempt to discern the meaning of undefined statutory terms as part of a plain-language analysis. ***Kyllonen v. Artisan & Truckers Cas. Co.***, 2026 WI App 2, ¶16, 419 Wis. 2d 433, 30 N.W.3d 901. The word "issued" is not defined for purposes of WIS. STAT. ch. 785. *See* WIS. STAT. § 785.01.

Power Co., 241 Wis. 27, 32, 4 N.W.2d 130 (1942). Lennon argues that this establishes that "issuing" an order requires more than signing and distributing an order, and that the court must make its order at a proceeding for which the parties have proper notice. One problem with Lennon's argument is that the court made this statement in ***Yanggen*** in a context that is not present here—namely, in the context of orders granting motions to extend the deadline to seek a new trial after a verdict. *See* ***id.*** at 30-31. Even setting this problem aside, however, ***Yanggen*** has no solving power here because, at the broadest level, the reasoning in that opinion is based on the principle that the parties should be aware of judicial orders that affect their rights. *See* ***id.*** at 31-32. Here, Lennon provides no evidence that the circuit court took any action that prevented him from being aware of the contempt order or its contents.

¶41 Lennon also cites ***United States v. Hondras***, 176 F. Supp. 2d 855, 858 (E.D. Wis. 2001), as persuasive authority. In ***Hondras***, the district court discussed "two different mechanisms by which a warrant or summons may be issued at the start of a criminal case." *See* ***id.*** at 858. Under one rule, a magistrate judge must sign the warrant or summons. *See* ***id.*** (discussing FED. R. CRIM. P. 4(c)). Under another rule, "the court" must issue a warrant or summons, and the warrant or summons "'shall be signed by the clerk.'" *See* ***id.*** (discussing FED. R. CRIM. P. 9(b)). The district court rejected the argument that the latter rule was contrary to federal statutory law or the Fourth Amendment. *See* ***id.***

¶42 Lennon asserts that ***Hondras*** demonstrates that forming the substantive justification for issuing a legal document (there, a warrant or summons; here, a judicial order) is part of the act of issuing. But ***Hondras*** undermines, rather than supports, Lennon's argument. In the course of explaining its reasoning, the district court distinguished between, on the one hand, the

substantive requirement that warrants can be issued only on probable cause, and, on the other hand, which judicial actor (magistrate or clerk) is permitted to "issue" a warrant in part by signing it. *See* ***id.*** at 858-59.[14] The district court explained that under both rules for issuing warrants, a substantive determination of probable cause is required *before* the separate act of issuance is permitted.

¶43 Thus, to the extent that the logic ***Hondras*** is persuasive and applicable here, it supports the conclusion that the circuit court complied with WIS. STAT. § 785.07 by issuing the contempt order. The act of issuance required a substantive basis for the finding of contempt and imposition of a remedial sanction, yet the act of issuance was separate from that substantive basis.[15]

¶44 Further, to the extent that WIS. STAT. § 785.07 requires the circuit court to independently review the record as it relates to the contempt proceedings before issuing an order imposing confinement, Lennon provides no basis for me to conclude that the circuit court did not do so here. He emphasizes that the final contempt order differs in some respects from the order that was drafted and proposed to the court commissioner by Anderson's counsel. The contempt order, signed first by the court commissioner and then the circuit court, clarified that: Lennon is not entitled to Huber release, added procedural clarifications to the

[14] The Seventh Circuit, in affirming the district court in ***Hondras***, states that "[i]ssuing a warrant is not synonymous with signing a warrant." ***United States v. Hondras***, 296 F.3d 601, 602 (7th Cir. 2002). The Seventh Circuit made this point to explain how a district court could "issue" a warrant even when the court directs a clerk to sign it, instead of the judge signing. *See* ***id.*** at 602-03. This reasoning only reinforces the concept that the act of issuing a warrant is different from the act of deciding that issuance is appropriate. *See* ***id.***

[15] One of the opinions that Lennon cites is a concurrence in an unpublished Wisconsin Court of Appeals opinion from 1989, and therefore I ignore this citation. *See* WIS. STAT. RULE 809.23(3)(a)-(b) (unpublished cases may not be cited as persuasive authority if they were not issued on or after July 1, 2009).

purge condition, and specified the amount of the judicial lien. Contrary to Lennon's assertions on this topic, none of these changes demonstrate that the circuit court failed to independently consider the written submissions of the parties, Lennon's failure to appear to contest Anderson's arguments, and the broader record of the case in order to determine the appropriate sanctions and purge conditions in exercises of the court's own discretion.

¶45 Lennon notes that the changes to the proposed order were made without a recorded hearing. But, as explained above, this was a result of Lennon's own failure to appear at the hearing: there was nothing to record regarding the uncontested requests by Anderson. On a related point, I reject as unsupported Lennon's assertion that the circuit court, under the circumstances here, was required to take additional evidence or allow for additional argument before determining that the findings in the contempt order supported the sanction, the purge condition, and the lien to be imposed. *See* ***Pettit***, 171 Wis. 2d at 646.

¶46 If Lennon means to argue that the circuit court should have recognized—either from the face of the contempt order as it appeared to the circuit court after it had been signed by the court commissioner, or from some other part of the record—that some aspect of the order was defective or inappropriate, he fails to develop a supported argument to that effect that I do not reject elsewhere in this opinion.

III. Due Process

¶47 In addition to Lennon's argument based on ***Turner***, he contends that the issuance of the contempt order violates several of his procedural due process rights. Whether Lennon's due process rights were satisfied presents an issue that

this court reviews de novo. *See* ***City of S. Milwaukee v. Kester***, 2013 WI App 50, ¶13, 347 Wis. 2d 334, 830 N.W.2d 710.

A. Service of Notice

¶48 Lennon argues that the contempt order should be vacated because the circuit court lacked personal jurisdiction over Lennon during the contempt hearing, because Anderson failed to timely provide personal service to Lennon of notice of the contempt hearing. Under WIS. STAT. § 785.03(1)(a), the circuit court, "after notice and hearing, may impose a remedial sanction authorized" by WIS. STAT. ch. 785. Lennon further argues that here the circuit court erred in relying on the finding of the court commissioner—that Lennon had actual notice of the contempt hearing—to support the circuit court's conclusion that the court had personal jurisdiction over Lennon.

¶49 Anderson argues that, regardless of the timing of her personally serving Lennon with notice of the contempt hearing, the circuit court properly found that it had jurisdiction based on a finding that Lennon had actual notice of the hearing. In support of this argument, Anderson cites our supreme court's decision in ***Joint School District***, 70 Wis. 2d 292. I agree with Anderson that ***Joint School District*** is dispositive based on the findings in the contempt order, which Lennon fails to show are clearly erroneous.

¶50 In ***Joint School District***, our supreme court stated that "formal notice of the charge" that a party is in contempt of court, specifically in the form of "personal service" of an order to show cause, "is not always required." ***Id.*** at 317; *see also* ***Dennis v. Dennis***, 117 Wis. 2d 249, 261, 344 N.W.2d 128 (1984) (WIS. STAT. § 785.03 and due process require that the alleged contemnor is "aware of" what is at issue at a contempt hearing, but do not require formal written

notice). Instead, the contemnor's "actual knowledge" is sufficient to satisfy the requirement of notice in contempt cases, because the purpose of the notice requirement "is that the contemnor have an opportunity to appear and present whatever defense he [or she] might have." *See* ***Joint Sch. Dist.***, 70 Wis. 2d at 317; *see also* ***id.*** at 319 (concluding that "[a]ctual notice of the contempt hearing by counsel" representing alleged contemnors was sufficient when the contemnors were notified of the injunction that they allegedly failed to comply with).

¶51 Here, the circuit court found that Lennon had actual notice of the contempt proceedings. The court credited averments and submissions by Anderson showing that Lennon had sent correspondence directly to counsel for Anderson demonstrating actual notice of the hearing more than a month before it was scheduled to take place. The court also noted that Lennon's motion to adjourn reflected his understanding of the timing and nature of the proceedings. Applying the reasoning in ***Joint School District*** to these findings, the notice requirement for contempt proceedings was sufficiently met here.

¶52 Lennon's argument that actual notice was not sufficient here relies on case law that does not apply to this context. Some of the cases that he cites deal with entry of judgments against parties that were not properly served with a summons at *the commencement of the action*. *See* ***State ex rel. Lachenmaier v. Gehrz***, 272 Wis. 188, 190, 74 N.W.2d 801 (1956) (service of divorce judgment failed to comply with then-applicable statutory procedures due to lack of personal service); ***Johnson v. Cintas Corp. No. 2***, 2012 WI 31, ¶25, 339 Wis. 2d 493, 811 N.W.2d 756 (actual notice of the commencement of a new action is not enough to confer personal jurisdiction when service of the summons is not made according to statutory requirements). In this case, Anderson brought her contempt motion as part of this divorce action to enforce an order for sanctions made earlier in this

action. *See* ***Evans v. Luebke***, 2003 WI App 207, ¶15, 267 Wis. 2d 596, 671 N.W.2d 304 (no "jurisdictional infirmity" created by bringing contempt proceedings against alleged contemnor by motion instead of commencing separate action); WIS. STAT. § 785.03(1)(a) (permitting person aggrieved by a contempt of court to seek imposition of a remedial sanction by filing a motion "in the proceeding to which the contempt is related").

¶53 Lennon also cites decisions of the United State Supreme Court discussing due process considerations, but he fails to show that any of these opinions are in conflict with the point made in ***Joint School District*** that actual notice suffices in this context. For example, he notes the general point that the Due Process Clause requires "'that deprivation of life, liberty[,] or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" ***Armstrong v. Manzo***, 380 U.S. 545, 550 (1965) (quoted source omitted); *accord* ***Kester***, 347 Wis. 2d 334, ¶13. But these are exactly the same due process requirements that the court in ***Joint School District*** stated may be satisfied by actual notice. *See* ***Joint Sch. Dist.***, 70 Wis. 2d at 317.

¶54 What remains of Lennon's argument on this issue are brief and isolated factual references that are not part of a fully developed argument that the circuit court clearly erred in any pertinent respect by finding that he had actual notice. It is sufficient to note one deficiency. Lennon fails to explain why the court could not rely on, for example, the communications by Lennon to Anderson's counsel to show that Lennon understood the nature of Anderson's motion and the specifics regarding the scheduled hearing time and location.

B. Opportunity to be Heard

¶55 In a related argument, Lennon contends that he was not afforded a meaningful opportunity to be heard on the contempt motion, again citing to U.S. Supreme Court authority that makes the broad point that due process requires such opportunity. *See, e.g.*, ***Mathews v. Eldridge***, 424 U.S. 319, 333 (1976). This argument is premised on the assertion that Lennon's request to appear at the hearing telephonically was improperly denied, and that the circuit court clearly erred in finding that Lennon, once his request was denied, chose not to attend in person. But, as noted, Lennon does not develop an argument supported by legal authority that the denial of his request to appear telephonically was improper, nor does he develop an argument that the court clearly erred in making any findings related to Lennon's ability to attend the hearing. *See* ***Pettit***, 171 Wis. 2d at 646. Given these findings, Lennon had the opportunity to be heard, at the hearing, regarding Anderson's contempt motion, but he chose not to take advantage of the opportunity. *See* ***Noack***, 149 Wis. 2d at 573-575 (neither due process nor WIS. STAT. § 785.03(1) require contemnor's presence before a finding of contempt can be made, provided the contemnor had notice and opportunity).

C. Denial of De Novo Review

¶56 Lennon argues that the circuit court erred by denying his request for de novo review of the contempt hearing in front of the court commissioner. By a local rule of the Dane County Circuit Court, de novo review is not available to parties who were not present at the hearing for which they seek review. Lennon argues that this rule is inconsistent with WIS. STAT. § 757.69(8), which provides in its entirety:

> Any decision of a circuit court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order, or ruling by a circuit court commissioner may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing de novo.

See also ***Nehls v. Nehls***, 2012 WI App 85, ¶7, 343 Wis. 2d 499, 819 N.W.2d 335 (quoting ***Hefty v. Strickhouser***, 2008 WI 96, ¶59, 312 Wis. 2d 530, 752 N.W.2d 820 (local rules "may supplement state statutes and rules, but they may not supersede state statutes and rules" or be inconsistent with them)).

¶57 I question whether WIS. STAT. § 757.69(8) applies to the contempt hearing presided over by the court commissioner here, given that the contempt proceedings here arose out of Lennon's request that the circuit court vacate or reopen the judgment of divorce. WISCONSIN STAT. § 767.17(1) has substantially identical language to § 757.69(8), but § 767.17(1) applies to "[a]ny decision of a circuit court commissioner under" WIS. STAT. ch. 767. Further, in language that is not present in the more general statute, § 767.17(1) specifies that "[a] party is required to be present at the hearing in order to seek a de novo review."

¶58 Lennon observes that contempt proceedings are governed under WIS. STAT. ch. 785, not WIS. STAT. ch. 767. But "'contempt proceeding[s] [are] derivative of and attached to the principal action in which [they] arise[].'" *See* ***Evans***, 267 Wis. 2d 596, ¶15 (quoted source omitted); WIS. STAT. § 785.03(1)(a) (a person seeking imposition of a remedial sanction may file a motion "in the proceeding to which the contempt is related"). Anderson pursued an order finding Lennon in contempt as part of this family law action, in which Lennon sought postjudgment relief. *See* WIS. STAT. § 767.78(2) (permitting party set to receive

payment of financial obligation to apply for order to show cause why party failing to pay obligation should not be subject to contempt of court under ch. 785).[16]

¶59 Even if I were to assume that WIS. STAT. § 757.69(8) applies instead of WIS. STAT. § 767.17(1), I would reject Lennon's argument. Lennon asserts that the local rule at issue here is inconsistent with § 757.69(8), but he does offer a reasoned argument in support. *See* ***Pettit***, 171 Wis. 2d at 646. Moreover, this court has previously considered a similar local rule to the one at issue here to be consistent with § 757.69(8). *See* ***Nehls***, 343 Wis. 2d 499, ¶¶8-9, 11-13 (concluding that local rule denying de novo review of family court commissioner decisions "entered by default" was consistent with § 757.69(8)).

¶60 What remains of Lennon's argument on this issue attempts to build off other arguments that I reject above. This includes his undeveloped contention that his absence from the contempt hearing was caused by his being improperly "excluded" from the hearing.

¶61 For all of these reasons, there is no reason to upset the circuit court's finding that Lennon chose not to attend the hearing. And, Lennon does not argue that, given this finding, the court could not rely on the attendance requirement to deny Lennon's request for de novo review.[17]

[16] Under WIS. STAT. § 767.78(1), "financial obligation" is defined to include an award of attorney fees and costs under WIS. STAT. § 767.241. To repeat, the alleged contempt at issue here was Lennon's failure to pay attorney fees incurred by Anderson as a result of Lennon's overtrial in postjudgment family court proceedings.

[17] Lennon makes a purported separate due process-related argument based on ***Matthews v. Eldridge***, 424 U.S. 319 (1976), but as best I understand this argument, it rests entirely on propositions that I reject elsewhere in this opinion.

D. Impossible Purge Condition

¶62 Lennon argues that the circuit court impermissibly imposed sanctions that are punitive in nature, rather than remedial. Punitive sanctions may be sought by a prosecutor by issuing a criminal complaint, and punitive sanctions may not be imposed in remedial sanctions proceedings. WIS. STAT. § 785.03(1)(b); ***Christensen v. Sullivan***, 2009 WI 87, ¶50, 320 Wis. 2d 76, 768 N.W.2d 798. The purpose of remedial sanctions is to coerce a party in contempt to cease continuing noncompliance with a court order. In contrast, punitive sanctions are intended to punish past noncompliance. ***Christensen***, 320 Wis. 2d 76, ¶¶49-54; WIS. STAT. § 785.01(2)-(3). For a sanction imposing confinement to be remedial, and therefore available outside of criminal proceedings, the contemnor must be able to purge the contempt by taking actions that are within the contemnor's power to do and clearly described by the circuit court. *See* ***State ex rel. N.A. v. G.S.***, 156 Wis. 2d 338, 340-43, 456 N.W.2d 867 (Ct. App. 1990) (reversing contempt order with purge condition requiring contemnor to find and hold a job while imposing sanctions of jail without work release privileges). Lennon argues that the contempt sanctions here make the purge condition impossible for him to follow. Specifically, he contends that he unable to pay Anderson $14,365, and that he would be unable to start earning funds to pay that amount while confined in jail without work privileges. I reject this argument for at least the following reasons.

¶63 First, Lennon fails in his reply brief to address Anderson's argument on this issue, conceding the point. *See* ***United Co-op. v. Frontier FS Co-op.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (court of appeals may deem lack of reply to argument in response brief as concession of the issue). For example, Lennon fails to address Anderson's contention, supported by references

to the contempt order and pertinent case law, that the circuit court effectively made the imposition of jail contingent on steps that gave Lennon the opportunity to describe "new circumstances" that might have rendered him unable to pay or to seek employment that would allow him to at least start to make payments toward purging contempt.[18]

¶64 Second, even beyond this concession, Lennon's argument depends on the factual premise that he was at all relevant times unable to pay Anderson $14,365. The circuit court here found that he was able to pay. "Whether an act is within the contemnor's power is a finding of fact that will not be disturbed unless it is clearly erroneous." ***N.A.***, 156 Wis. 2d at 343. For reasons I explain above, Lennon does not persuade me that the court clearly erred in making any relevant finding about his ability to pay, and Lennon forfeited his arguments to the contrary by failing to appear at the contempt hearing.

[18] I conclude that Lennon also concedes, through silence in his reply brief on appeal, an argument regarding the circuit court's authority to impose a judicial lien on proceeds that Lennon might obtain in unrelated litigation. In her response brief, Anderson argues that the lien is authorized under WIS. STAT. § 785.04(1)(d), which allows the circuit court to impose as a remedial sanction "[a]n order designed to ensure compliance with prior order of the court." Lennon does not address this argument in his reply brief. *See* ***United Co-op. v. Frontier FS Co-op.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578.

Separately, Lennon appears to raise for the first time in his reply brief points that appear to relate to the merits of his motion to vacate or reopen the divorce judgment, namely about allegedly newly discovered evidence regarding Anderson's finances. I reject whatever argument Lennon intends to make along these lines for at least the reason that the arguments come too late. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998) (court of appeals may reject argument raised for the first time on reply based on lack of other party's opportunity to reply).

V. Frivolous Appeal Motion

¶65 As noted, Anderson moves this court for costs and fees on the ground that Lennon's appeal is frivolous. *See* WIS. STAT. RULE 809.25(3).[19] Anderson argues that there are two alternative grounds under RULE 809.25(3) to determine that Lennon's appeal is frivolous: Lennon filed the appeal "in bad faith, solely for purposes of harassing" Anderson, RULE 809.25(3)(c)1.; and Lennon knew or should have known that his appeal "was without any reasonable basis in law or equity[,] and could not be supported by a good faith argument for an extension, modification or reversal of existing law," RULE 809.25(3)(c)2. Lennon opposes Anderson's motion, arguing that neither ground provides a basis to rule that his appeal is frivolous. Anderson's motion may present a close call, but I deny it for the following reasons.

¶66 Regarding WIS. STAT. RULE 809.25(3)(c)1., the solely-to-harass prong, Anderson emphasizes the basic background that is already summarized above, namely, that the circuit court sanctioned Lennon for overtrial and found him in contempt for failing to pay the overtrial sanction after he submitted numerous filings and then failed to appear for the hearing. She further notes that Lennon has engaged in prolific motion practice in this court, much of which has been rejected by this court based on a lack of merit. For example, this court has rejected three separate motions seeking the same form of relief in the form of a stay of contempt proceedings pending this appeal. I cannot conclude, however, that Lennon's pursuit of this appeal was done "solely with the purpose" to harass

[19] Anderson does not rely on WIS. STAT. § 895.044, which specifies a different standard for determining when an "entire appeal is frivolous" than WIS. STAT. RULE 809.25(3). *See* ***Thompson v. Ouellette***, 2023 WI App 7, ¶3, 406 Wis. 2d 99, 986 N.W.2d 338.

Anderson. *See* RULE 809.25(3)(c)1.; ***Dietscher v. Pension Bd. of Employees' Ret. Sys. of Cnty. of Milwaukee***, 2019 WI App 37, ¶56, 388 Wis. 2d 225, 932 N.W.2d 446 (all doubts regarding frivolousness are resolved in favor of determining that the appeal is nonfrivolous). As Lennon notes, the contempt order imposes serious sanctions, including the risk of incarceration. This gives Lennon a strong incentive to pursue this appeal not as part of a pattern of harassing Anderson litigation, but rather in an attempt to protect his own liberty interests.

¶67 Turning to WIS. STAT. RULE 809.25(3)(c)2., the reasonable-basis prong, this is satisfied only if I determine that each argument raised by Lennon is frivolous. *See* ***Dietscher***, 388 Wis. 2d 225, ¶56. Again, all doubts about whether the appeal is frivolous are resolved in favor of determining that it is not. *See* ***id.*** While many of Lennon's arguments are meritless, I cannot conclude that each of them lacks all potential merit. In particular, Lennon offers what I consider to be a nonfrivolous argument that the circumstances surrounding the issuance of the contempt order might have implicated the issued-by-a-judge requirement in WIS. STAT. § 785.07. For example, Lennon contends, and Anderson does not dispute, that there is no case law interpreting or applying § 785.07. While I reject what I consider to be Lennon's weak attempts to rely on case law to inform what it means to "issue" an order, Anderson does not develop an argument in her motion that Lennon had no reasonable basis to attempt to rely on § 785.07. *See* ***Dietscher***, 388 Wis. 2d 225, ¶57 & n.19 (rejecting contention that an appellant's argument was frivolous due to lack of development by movant).

CONCLUSION

¶68 For all of these reasons, the contempt order of the circuit court is affirmed, and I deny the request for costs and fees based on a wholly frivolous appeal.

By the Court.—Order affirmed.

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