

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 17, 1998

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 97-3795

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

IN RE THE MARRIAGE OF:

ROSANNE L. JOHNSON F/K/A ROYALTY,

PETITIONER-RESPONDENT,

v.

MICHAEL E. ROYALTY, JR.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Richland County:
EDWARD E. LEINEWEBER, Judge. *Affirmed.*

DYKMAN, P.J.¹ Michael J. Royalty, Jr., appeals *pro se* from an order finding him in contempt of court for failing to comply with certain orders regarding his child support obligations and visitation privileges. Royalty argues

¹ This appeal is decided by one judge pursuant to § 752.31(h), STATS.

that the trial court wrongly found him in contempt of court, because his decisions to disobey the orders were justified. We disagree and affirm.

BACKGROUND

Michael E. Royalty, Jr., and Rosanne L. Johnson were legally separated on June 11, 1993, in Washington County and divorced on July 8, 1996, in Richland County. In the judgment of legal separation, Judge Becker awarded custody of the parties' two children to Johnson. He also ordered each party to contribute to the cost of health insurance for the children and to pay one-half of any uninsured medical expenses. Judge Becker also ordered the parties to submit to mediation in order to reach an agreement regarding placement rights. A mediated agreement was reached on July 14, 1993.

In Richland County, Judge Houck issued an order limiting Royalty's placement rights under that agreement. On December 28, 1995, he ordered the Department of Social Services of Richland County to create a supervised visitation schedule for Royalty and his two sons. In a subsequent order dated January 30, 1996, Judge Houck permitted Royalty to have supervised visitation with his children one day during the work week from 3:30 p.m. until 5:30 p.m. and unsupervised visitation for five hours on Saturdays. Judge Houck ordered Royalty to inform Johnson of the location where the children would be during these unsupervised weekend visits.

On September 4, 1996, Judge Houck found Royalty in contempt of court for having face-to-face contact with his children at times and locations other than as provided in the January 30 order. Judge Houck ordered Royalty to pay Johnson \$225, but stayed the sanction for sixty days. Houck ordered that if Royalty was evaluated by a psychiatrist and complied with any recommended

treatment within this sixty-day period, he would be purged of his contempt and not have to pay the \$225.

In an order dated May 13, 1997, Judge Houck reiterated his previous decision to allow the children to be placed with Royalty on Saturdays for five hours as long as Royalty informed Johnson where the children would be during this period. He also restated that Royalty was entitled to visit with his children one day during the work week between 3:30 p.m. and 5:30 p.m. In addition, Judge Houck ordered Royalty to keep Johnson informed of his current address and phone number as well as the name, address, and phone number of his employer. He also instructed Royalty to pay one-half of the cost of maintaining his children's health insurance coverage.

Judge Houck retired, and Judge Leinweber was elected to take his place, effective August 1, 1997. At a hearing before Judge Leinweber on September 16, 1997, Johnson asserted that Royalty had violated court orders and was in contempt of court. At the hearing, Johnson testified that she sent Royalty a bill for glasses and a prescription for one of their sons, requesting that he pay a portion of these uninsured expenses. She stated that she never received payment. Johnson also requested payment from Royalty for one-half of the children's health insurance premiums. She sent him a letter outlining the costs of maintaining their children's health insurance, and that he was responsible for paying his portion within thirty days of receiving the bill. Johnson testified that Royalty neglected to pay the premiums for five months in 1997.

Johnson further testified that Royalty failed to keep her informed of his address and phone number, as well as the names, addresses, and phone numbers of his employers. She also stated that Royalty violated the terms of a

temporary order when he had face-to-face contact with his sons while attending their recreational sports activities. And when the children were placed with Royalty, Johnson testified that he would not always inform her where he was going with them.

At the hearing, Royalty admitted to disobeying the orders regarding payment of the children's insurance premiums and uninsured expenses, asserting that he did not think that they were fair. He also admitted to not providing Johnson with his address and phone number or the names, addresses and phone numbers of all of his employers. He further admitted to having face-to-face contact with his children outside of the designated placement periods.

After the hearing, Judge Leinweber found Royalty in contempt of court and sentenced him to serve thirty days in jail.² The court stayed the sentence and permitted Royalty to purge himself of that contempt.

DISCUSSION

Royalty contends that the trial court erred by finding him in contempt of court. A person may be in contempt of court if he or she refuses to abide by an order made by a court having personal and subject matter jurisdiction. *See State v. Rose*, 171 Wis.2d 617, 622, 492 N.W.2d 350, 353 (Ct. App. 1992). A finding of contempt rests on the trial court's factual finding regarding the person's ability to comply with the orders. *Id.* at 623, 492 N.W.2d at 353. The critical

² Royalty makes a point that Judge Houck, the previous judge in his case, understood his position better than Judge Leinweber, who assumed this case when Judge Houck retired. We cannot remedy this fact of life. We assure Royalty, however, that Judge Leinweber is an able judge. Furthermore, we note that even Judge Houck held Royalty in contempt of court. We hope that Royalty will now understand that "contempt of court" is a legal concept, not an assertion that Royalty is a bad person, or that he acted with malice.

findings are whether the defendant was able to comply with the orders and whether the refusal to comply was willful and intentional. *Id.* A trial court's finding that a person has committed a contempt of court will not be reversed by a reviewing court unless that finding is clearly erroneous. See *Haeuser v. Haeuser*, 200 Wis.2d 750, 767, 548 N.W.2d 535, 542 (Ct. App. 1996). In civil contempt matters, the defendant has the burden of showing he is not in contempt. See *Rose*, 171 Wis.2d at 623, 492 N.W.2d at 353.

Royalty admitted at the hearing that he failed to abide by the court orders. However, he argues that he was not acting contemptuously in doing so. He contends that he failed to abide by the orders because he believed them to be unfair, and he thought that some should be rewritten. Royalty misunderstands the law of contempt. A contempt determination involves the trial court deciding whether the contemnor was able to comply with the orders and whether his or her refusal to comply was willful and intentional. The court does not look to reasons or motive for refusing to comply with the orders; it simply determines whether compliance occurred, and whether the person accused of contempt could have complied.

We are satisfied that Royalty was able to comply with the orders requiring him to pay one-half of the cost of his children's health insurance premiums and uninsured medical expenses. This conclusion is based on Royalty's statement at the hearing that he had "no trouble paying bills or insurance premiums." Furthermore, Royalty admitted that he disobeyed the orders because he believed that they were unfair and needed to be rewritten. We conclude based on this evidence that Royalty willfully and intentionally refused to comply with the orders regarding payment of these various expenses.

Similarly, we conclude that Royalty failed to abide by the orders that required him to provide Johnson with his address and phone number, along with the names, addresses, and phone numbers of his employers. Royalty testified that he provided Johnson with the name of one of his employers but failed to provide that employer's address or phone number. He also failed to provide the names, addresses or phone numbers of his other employers. In addition, Royalty testified that he did not provide Johnson with his home address or phone number.³ Based on these admissions, we conclude that Royalty was aware that he was required to provide this information, and that he intentionally failed to do so.

Royalty also testified that he was aware he was required to inform Johnson where he would be taking the children when they were placed with him. The trial court concluded that Royalty failed to provide this information to Johnson. Royalty also testified that he was aware that he was to avoid face-to-face contact with his children other than when they were placed with him, and that he attempted but failed to comply with those orders as well.

While Royalty repeatedly contends that he did not act out of disrespect toward the court, he does not recognize that a contemnor need not act with malice to be in contempt of court. There simply must be evidence that he was able to comply with the court order, but instead intentionally disobeyed it. We are satisfied that such evidence exists.

³ Royalty testified that he refused to provide Johnson with his address and a phone number because he feared that Johnson's boyfriend would attack him. There was evidence that an altercation between Johnson's boyfriend, Tim Crook, and Royalty occurred one evening when Royalty returned his sons to their mother's home. Royalty testified that Crook verbally assaulted him and put his fist through the driver's side window of Royalty's vehicle. Royalty testified that he feared that if he gave Johnson his address and phone number, Crook would go there and assault him. However, as Royalty recognizes, the solution to a documented fear of violence is an action to obtain an injunction.

While a person may disagree with a court order, he or she is bound to obey it until the court changes the order. *Rose*, 171 Wis.2d at 623, 492 N.W.2d at 353. If Royalty questioned the fairness of these orders, he could have petitioned the court to revise the orders, and may still do so. That, of course, is no guarantee that the trial court will change the orders. But unless and until the court makes those revisions, Royalty is bound by the original orders. Royalty's testimony at the hearing indicates that he intentionally disobeyed these orders. We therefore conclude that the trial court did not erroneously exercise its discretion in finding him in contempt of court. Accordingly, we affirm. We therefore decline to grant Royalty's motion for costs.

By the Court.—Order affirmed.

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

