COURT OF APPEALS
DECISION
DATED AND FILED

October 5, 1999

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. 99-0542

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

IN RE THE FINDING OF CONTEMPT

IN RE THE MARRIAGE OF SANDRA A. SOSNOWSKI V. LAWRENCE E. DIEZ:

LAWRENCE E. DIEZ,

APPELLANT,

V.

ONEIDA COUNTY CHILD SUPPORT AGENCY,

RESPONDENT.

APPEAL from an order of the circuit court for Oneida County: MARK A. MANGERSON, Judge. *Affirmed*.

¶1 HOOVER, P.J. Lawrence Diez appeals an order finding him in contempt for failing to pay child support. He claims that the circuit court denied him his Sixth Amendment right to present a defense by failing to schedule a

hearing in response to a letter he sent the court in which he sought advice on what to do in connection with his employment and health problems. Because Diez does not explain how the court's failure to set a hearing to revise the child support order relates to the contempt order or why a right applicable by its terms to criminal prosecutions is implicated in a civil remedial contempt action, we reject his arguments. Accordingly, this court affirms the circuit court's order.

¶2 Diez was in arrears on his child support. The Oneida County Child Support Agency informed Diez that it was initiating an enforcement action. Diez wrote to the judge to explain his financial situation. He indicated that he had been terminated from his employment and that due to health problems, he had not been employed. He asserted that his support payments should be adjusted and requested the judge to advise him how to proceed. Diez filed no motion, and no hearing was held.

¶3 The County filed a petition for an order to show cause. Diez appeared with counsel, who elicited testimony from Diez regarding his recent work history and health problems. Counsel also brought to the court's attention Diez's letter.[1] The matter was continued to permit Diez to provide additional financial information. At the continued hearing, counsel again brought up the letter. The court responded that Diez would be required to make a formal motion to obtain relief from the current order. The hearing was again continued, but no such motion was subsequently filed.

[1] The court did not recall receiving the letter, and it was not in the court's file. It was later found with the judge's date stamp on it and placed in the court file.

¶4 At the final hearing in this matter, Diez testified that he had not required long-term hospitalization or inpatient care for the immediately preceding four months. During that time, he had applied for six jobs. The court rejected Diez's continued contention that his letter constituted a motion. The court also found Diez's failure to be employed and pay support for the preceding four months was willful, and on that basis found him in contempt. The court imposed jail time for the contempt, but permitted Diez to purge the contempt by finding work. Diez appeals that order.

¶5 The failure to pay court-ordered support may constitute a civil contempt. *See* ***Schroeder v. Schroeder***, 100 Wis.2d 625, 637, 302 N.W.2d 475, 481 (1981). To find contempt, the circuit court must determine that the respondent "is able to pay or should be able to pay if he can work and will not and the refusal to pay is willful …." *See* ***Balaam v. Balaam***, 52 Wis.2d 20, 29, 187 N.W.2d 867, 872 (1971). The circuit court's findings will not be overturned unless they are clearly erroneous. *See* § 805.17(2), STATS.

¶6 Diez contends that the court's failure to grant him a hearing on modifying his child support, despite his letter, violated his constitutional rights. He asserts that his letter should be construed as a motion and had the motion been heard, it is unlikely he would have been found in contempt. This court rejects his arguments.

¶7 First, Diez does not explain how the failure to hold a support revision hearing because of his health problems relates to the circuit court's findings. The court found that Diez's failure to obtain work and pay support was willful for four months immediately preceding the hearing, a period when his health was stable and he was looking for work. It found that Diez had not "wanted

to work badly enough," and was not realistic in his search for a job. The court found Diez had not made "a good-faith attempt to maintain full employment." Diez does not challenge these determinations, which constitute the court's basis for finding him in contempt, nor are the court's findings clearly erroneous.

¶8 Second, even if relevant, Diez does not explain why the failure to hold a hearing to modify his support obligation somehow impinged upon his right to provide a defense to the order to show cause. On appeal, Diez was able to cite to his testimony in the record that he had had health problems. The circuit court was aware of this circumstance and did not find him in contempt for the period when his health was unstable. Diez was therefore able to present the very evidence he claimed he was somehow denied from presenting.[2]

¶9 Finally, Diez does not state why the Sixth Amendment right to provide a defense applies to this proceeding. This is a civil contempt proceeding, and "most of the constitutionally protected bill of rights procedures and due process protections apply only to criminal contempt." *See* ***Schroeder***, 100 Wis.2d at 637, 302 N.W.2d at 481. This court will neither develop Diez's argument for him, *see* ***State v. Gulrud***, 140 Wis.2d 721, 730, 412 N.W.2d 139, 142 (Ct. App.

[2] Diez's real complaint seems to be that the court did not modify his support obligation. Yet, he failed to file a motion to effect that result, even after the court told him to do so. He did not put the issue of modifying his support obligation before the circuit court. Diez would have this court apply ***Davanis v. Davanis***, 132 Wis.2d 318, 392 N.W.2d 108 (Ct. App. 1986), to these facts and determine that his letter was in fact a motion to modify his support obligation. This court declines to do so. ***Davinis*** is factually different. In ***Davinis***, this court determined that a letter written by counsel challenging jurisdiction, which outlined legal arguments and was supported by a brief, could be properly construed by the circuit court as a motion. ***Id***. at 327-28, 392 N.W.2d at 112. The ***Davanis*** court did not state that all letters must be treated as motions. Diez was specifically advised by the circuit court that it did not consider his letter to be a motion and that if he wanted a revision of his support obligation, he would need to file a motion. As noted in the text, even if his letter were construed as a motion, it does not support his appeal from the court's contempt order.

1987), nor address issues on appeal that are inadequately briefed. ***State v. Flynn***, 190 Wis.2d 31, 58, 527 N.W.2d 343, 354 (Ct. App. 1994).

¶10 This court concludes that Diez's arguments do not address the circuit court's finding that he was in contempt, but instead implicate the court's failure to hold a support revision hearing, despite Diez's failure to move for such a hearing. The failure to hold such a hearing, even if warranted, did not affect Diez's ability to defend himself in the contempt action.

By the Court.—Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.