COURT OF APPEALS
DECISION
DATED AND FILED

December 5, 2017

Diane M. Fremgen
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. 2015AP2242 **Cir. Ct. No. 2010GN53A**

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

IN THE MATTER OF THE FINDING OF CONTEMPT IN
IN THE MATTER OF THE GUARDIANSHIP OF E. L.:

R. L.,

APPELLANT,

V.

CIRCUIT COURT FOR OUTAGAMIE COUNTY,
THE HONORABLE GREGORY B. GILL, JR., PRESIDING,

RESPONDENT.

APPEAL from an order of the circuit court for Outagamie County: GREGORY B. GILL, JR., Judge. *Affirmed*.

¶1 HRUZ, J.[1] R.L. was summarily found in contempt of court and served fifteen minutes in jail. This occurred after R.L. made what the circuit court found were two disparaging remarks about the court during a hearing. R.L. appeals pro se, primarily arguing the court erred in imposing the contempt sanction. We affirm.

BACKGROUND

¶2 On June 2, 2015, R.L. filed three petitions that related to corporate guardianship of the estate of his mother, E.L.[2] Specifically, R.L. sought court review of the conduct of the corporate guardian, modification of the guardianship, and to have himself appointed as successor guardian. A hearing was scheduled for July 8, 2015, to address these petitions, and the circuit court provided copies of the petitions and a notice of hearing to interested parties on June 12. These interested parties included, but were not limited to, Outagamie County assistant corporation counsel Aaron Janssen and M.L., one of E.L.'s daughters. After receiving R.L.'s petitions, Janssen served R.L. with a notice of a motion for sanctions pursuant to WIS. STAT. § 802.05(3)(a) on June 12. On July 7, Janssen filed a motion for sanctions against R.L.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] This appeal is an offshoot of a longstanding dispute over the guardianship of E.L., who suffered from progressive dementia at the time the initial petitions for guardianship of her person and estate were filed in 2010. *See* ***M.L. v. Outagamie Cty. DHHS***, Nos. 2012AP2464, 2013AP2681, unpublished slip op., ¶¶2-3 (WI App Apr. 12, 2016). E.L. passed away on July 15, 2015, after the July 8 hearing at issue was held, thus terminating the guardianships over her person and estate. *See* ***id.***, ¶¶10, 12.

¶3 R.L., M.L., Janssen, E.L.'s guardian ad litem, E.L.'s attorney, and the representative of the guardian of E.L.'s estate all appeared at the July 8 hearing. After the circuit court asked R.L. to explain his petitions, R.L. instead objected to the circuit court's action in directing the Outagamie County Probate Court to inform Janssen in advance of the proceeding. R.L. claimed that WIS. STAT. § 54.68 required only him to notify all interested parties and that the statute did not permit the circuit court to provide such notice on its own initiative. The circuit court denied R.L.'s objection.

¶4 R.L. segued into another objection regarding the appointment of E.L.'s attorney, but he returned to Janssen's having received notice of the hearing. When the circuit court asked why this issue mattered, R.L. said notice of the proceedings "puts Mr. Janssen at a distinct legal advantage, particularly in regard to filing a motion for sanctions." R.L. continued: "Had the court followed the correct procedure under [WIS. STAT. §] 54.68 and told me whether or not Mr. Janssen was even going to be invited to the hearing …." The court interrupted and replied, "[T]he days of ambush litigation are way gone. … [W]hen there is a motion filed, I'm going to let all the parties know. Every time. Okay?" M.L. then interjected that she was a party to the litigation but that she had not been notified of the hearing.

¶5 The circuit court told M.L. and R.L. they were "so far out in left field, it's not even funny" on the issue of providing notice. After the court noted a standing objection regarding notice, it instructed them to "stop this nonsense." R.L. protested that "ambush litigation is not from our perspective, but … from Mr. Janssen's side" in regards to Janssen's "frivolous" sanction motion. The court then clarified that it would give R.L. an opportunity to respond to the sanctions

motion at a later date and that it would not rule on the motion during the current hearing.

¶6 Nonetheless, R.L. continued to press the sanctions issue. In response to Janssen's comments that about twenty-five days had passed since the filing of his notice of motion for sanctions and that the notice related to R.L.'s petitions, R.L. claimed Janssen timed his sanctions motion for "intimidation and harassment purposes." The court then explained that, under statute, a party moving for sanctions is required to provide the opponent with notice so as to allow the party to cure the alleged misconduct, just as Janssen did here.

¶7 After this explanation, the following exchange occurred:

> [R.L.]: Yes, Your Honor. I just want to let the court know that I am completely in agreement with the court. I believe the court is referring to [WIS. STAT. §] 802.05 which covers the signings of pleadings, motions, and other papers, representations to the court, and sanctions.
>
> THE COURT: Yes.
>
> [R.L.]: Excuse me, Your Honor. I'm very familiar with that. And that goes back to the original petition. *I'm actually surprised that the court is familiar with that*.
>
> THE COURT: What -- Mr. [L.] -- with what are you surprised?
>
> ….
>
> [R.L.]: Well, the reason I would be surprised, Your Honor, is because of the very -- well, I think Mr. Janssen understands why I'm surprised, is *because the very filing for the [§] 802.05 motion which is currently on appeal was not handled in that manner at all*. In fact, Mr. Janssen filed

> the motion … and the court granted the motion for sanctions in violation of the safe harbor provision.[3]
>
> THE COURT: What sanctions have I imposed against you?
>
> [R.L.]: I believe you said that we -- my motions were frivolous and numerous.
>
> THE COURT: That's not a sanction.
>
> [R.L.]: Well, it's a ruling, and then you said because of that you would not hear my … [WIS. STAT. §] 806.07 motions, and I was prohibited from -- you would not deal with any substantive motions. I don't exactly have the totality of the sanctions ready because that matter is on appeal. I wasn't really prepared to do that.
>
> THE COURT: That's fine. I'm not going to address that. Let's get back to the --
>
> [R.L.]: I believe we're on that, Your Honor.
>
> THE COURT: We're not. Again, … we go so far on these tangents. I want to know what your issues are today. We're done talking about the motion for sanctions.
>
> [R.L.]: Right. Your honor, I believe the motion for sanctions is one of the issues today.
>
> THE COURT: I'm not going to address it today.
>
> [R.L.]: Well[,] I'm going to clearly object that *now the court has artfully dodged the filing of the motion for sanctions*, and it had said it was going to address it, but now it is complied -- and I'd also like to say that Mr. Janssen --
>
> THE COURT: Mr. [L.], stop. Stop.

(Emphasis added.)

[3] We concluded in another appeal that the circuit court dismissed M.L. and R.L.'s motion for relief from a permanent guardianship order on the merits, not as a sanction under WIS. STAT. § 802.05. ***M.L.***, Nos. 2012AP2464, 2013AP2681, unpublished slip op., ¶¶58-60. Accordingly, we reject R.L.'s attempts to re-litigate that issue in this appeal.

¶8 The circuit court told R.L. it was having difficulty understanding what he expected of the court. In particular, the court observed,

> I tell you today I'm not going to address the motion for sanctions because, after having heard your position, you tell me you're not ready. So I say, fine, we'll deal with that later. Now you're upset with me because we're not dealing with that motion today.… Every time I follow the law, you get upset with me. And, quite frankly, it's becoming a big waste of time.… We've now been here for 25 minutes, I've not heard one iota on how this hearing relates to [E.L.]. Not one word.… So, let's get on track; otherwise, I'll just call off the hearing until you can be more concise.

¶9 Nevertheless, R.L. claimed not to have expressed unpreparedness to argue on Janssen's sanctions motion; he instead affirmed he now wanted to address it. R.L. asserted that Janssen had "blind sided [him]," that the record showed Janssen, and not R.L., had scheduled the hearing at which they were currently present, and that he thought "the intention of this whole hearing was for Mr. Janssen's motion."

¶10 In response to R.L.'s assertion about the hearing's purpose, the circuit court said, "My understanding is that the whole purpose of this motion was to address the various items that you have." R.L. replied, "Well, Your Honor, then I would think you are the only one in the courtroom in the dark."

¶11 Immediately following this remark, the circuit court found R.L. in contempt of court. It explained this finding was

> based upon your disrespectful behavior that has been ongoing. You have insulted me by suggesting that I don't know the law, suggesting that I don't follow my statutory mandates. You have insulted me by suggesting that I am in the dark; and you have disparaged this court and this judicial position.

¶12 Before imposing a contemplated sanction of thirty minutes in jail pursuant to the summary contempt statute, the circuit court gave R.L. an opportunity for allocution. After R.L. stated he was "not exactly sure" of the basis for the contempt finding, the court explained again that "over the course of our various proceedings I have constantly warned you about your disparaging treatment of this court" and cited to the "surprise" and "in the dark" comments. R.L. apologized for any perceived insult, but he persisted in his argument about the past motions and explained to the court "the thing to the dark" was prompted by the court's supposed unawareness of the procedure for initiating a sanctions motion.

¶13 The circuit court then ordered R.L. to be detained in the county jail's holding cell for fifteen minutes. The hearing reconvened after fifteen minutes, and R.L. returned and participated in the remainder of the hearing. R.L. now appeals from the amended order imposing the contempt sanction.[4]

DISCUSSION

¶14 Although R.L. primarily challenges his being ordered in contempt of court, he also raises arguments relating to other issues involving the guardianship dispute. Yet, R.L. has appealed only from the amended order imposing the contempt sanction against him. Thus, those other issues are either outside the

[4] On September 17, 2015, the circuit court signed the original contempt order nunc pro tunc to July 8, 2015. The court later signed an amended order on December 23, 2015, nunc pro tunc to July 8, 2015. The amended order appears to have been edited to clarify the findings of contempt of court against R.L. For the first time in his reply brief, R.L. seems to argue the amended order was improperly entered because it "purposefully altered the order of events of the allocution, contrary to the record, and in favor of Judge Gill." We do not address this issue. *See* ***Roy v. St. Lukes Med. Ctr.***, 2007 WI App 218, ¶30 n.6, 305 Wis. 2d 658, 741 N.W.2d 256 (appellate courts do not consider arguments raised for the first time in a reply brief).

scope of this appeal, have already been decided in another appeal, or both. We only discuss issues pertaining to the circuit court's contempt ruling.

¶15 A circuit court's finding of contempt of court under WIS. STAT. § 785.03(2) shall be upheld unless contrary to the great weight and clear preponderance of the evidence. ***Currie v. Schwalbach***, 139 Wis. 2d 544, 551-52, 407 N.W.2d 862 (1987); *see also* WIS. STAT. § 805.17(2). Interpretation of the summary contempt statute is a question of law we decide independently. ***Currie***, 139 Wis. 2d at 552.

¶16 The record supports the circuit court's findings of contempt based upon R.L.'s statements of "surprise" regarding the court's familiarity with Wisconsin's sanctions statute and that the court was the "only one in the dark." Contempt of court includes any "[m]isconduct … which impairs the respect due the court." WIS. STAT. § 785.01(1)(a). The court did not err in finding that R.L.'s on-the-record statements had the effect of insulting the court as being ignorant of both the law and the issues at the hearing. *See supra* ¶¶7, 10.

¶17 The circuit court followed the correct procedure in imposing the summary contempt sanction. R.L. made these statements directly and specifically to the court during a hearing and in response to what R.L. perceived were the court's deficiencies and favoring of Janssen. *See* WIS. STAT. § 785.03(2) (contempt must be committed in circuit court's actual presence). Moreover, the court promptly found R.L. in contempt after R.L.'s "in the dark" retort. *See* ***id.*** (sanction must be imposed immediately after contempt).

¶18 The circuit court also properly imposed the contempt sanction in order to preserve order and to protect the dignity of the court under WIS. STAT. § 785.03(2). If even a single remark "denigrates and impairs the respect due the

court," a court may preserve order in the courtroom by summarily sanctioning the offending party. ***Oliveto v. Circuit Court for Crawford Cty.***, 194 Wis. 2d 418, 433, 533 N.W.2d 819 (1995). Aside from R.L. disparaging the court through his comments, the hearing had languished with these exchanges (as reflected in over thirty transcript pages and noted by the court as lasting at least twenty-five minutes), preventing the court and the parties from addressing the issues for which the hearing was held. In this sense, R.L. was repeatedly and improperly attempting to wrest control of the hearing from the court.

¶19 Finally, the circuit court provided R.L. with an opportunity for allocution before R.L. was escorted to the jail holding cell. *See* ***Currie***, 139 Wis. 2d at 565 (fundamental fairness requires contemnor must be afforded opportunity for allocution before sanction). R.L. explained himself to no avail. During allocution, the court observed R.L.'s "attempt to justify [his] behavior has only further insulted the court."

¶20 R.L.'s arguments that he did not intend to insult the circuit court and that his remarks did not disrupt the proceedings are misdirected. Acts of misconduct are "intentional" for the purposes of the summary contempt statute as long as the contemnor intentionally commits the act on which the sanction is based, not whether he or she intended to be contemptuous. *See* ***Shepard v. Circuit Court for Outagamie Cty.***, 189 Wis. 2d 279, 286-89, 525 N.W.2d 764 (Ct. App. 1994) (concluding that a defendant's voluntary intoxication at plea hearing constituted contempt of court). Moreover, an act may be contumacious if the context of an utterance and the delivery of even a single word "has the potential to be disruptive, rude, and offensive." ***Oliveto***, 194 Wis. 2d at 428.

¶21 R.L. appears to suggest the circuit court erred in finding his remarks contemptuous because the court was incorrect, as a matter of law, on the issues of sanctions under WIS. STAT. § 802.05 and notice under WIS. STAT. § 54.68(3). Such a suggestion is irrelevant. Disagreement with the circuit court on a legal issue does not entitle a litigant to tell the court it lacks integrity or knowledge.[5] As R.L. fails to cite any authority in support of this argument, we do not consider it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶22 R.L. also argues the circuit court erred by finding him in contempt for acts that occurred in other proceedings, and that are not in the record, rather than acts that occurred during the July 8 hearing. As noted at length above, the record does not support his argument. Rather, during R.L.'s allocution, the court reminded him "this is not out of the blue that I have warned you to toe the line." In that respect, the court did not err when it considered R.L.'s "surprise" and "in the dark" remarks all the more inexcusable given these past admonishments.

¶23 Finally, we observe that R.L. has violated several rules of appellate practice in his briefing. For example, R.L. supports his factual assertions with citations to his appendix, and not also to the record, in violation of WIS. STAT. RULE 809.19(1)(d) and (1)(e). In addition, R.L. asserts under Issue II of his brief-in-chief that this court "fully contrived a story" regarding the renumbering and

[5] R.L.'s arguments on the merits of WIS. STAT. § 802.05—which this court has rejected, *see supra* n.3—and WIS. STAT. § 54.68(3) are also conclusory, undeveloped and suspect. In addition, R.L. argues without citation to relevant legal authority that the circuit court was biased against him on account of its "left field" response to his and M.L.'s objections to notice. Whatever their relevance may be to this appeal, we need not address these issues. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

review of the guardianship cases and that this court made "blatantly misleading" statements on that topic.[6] He also accuses this court of "perplexingly" limiting "the scope of this appeal by limiting the record," allegedly "contrary to [WIS. STAT. RULE] 809.15." R.L.'s arguments on this point are unbecoming of a litigant in this court. In any event, we admonish R.L. that future violations of appellate rules may result in sanctions. *See* WIS. STAT. RULE 809.83(2).

By the Court.—Order affirmed.

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

[6] R.L.'s Issue II is irrelevant to this appeal, and it appears to be prefaced on an argument this court has previously rejected. *See* ***M.L.***, Nos. 2012AP2464, 2013AP2681, unpublished slip op., ¶¶13-15.