

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 10, 2018**

Sheila T. Reiff  
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. 2017AP733**

**Cir. Ct. Nos. 2016CV309, 2015CV559,  
2014CV463, 2014CV444**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE FINDING OF CONTEMPT IN:**

**DAVID OLSON,**

**PLAINTIFF-RESPONDENT,**

**v.**

**OLSON'S WOODVILLE MEATS, INC.,**

**DEFENDANT-RESPONDENT,**

**KEVIN OLSON, CORY OLSON AND FIRST BANK OF BALDWIN,**

**DEFENDANTS,**

**ADRIAN DYKSTRA, DYKSTRA MANAGEMENT SERVICES, LLC AND  
DYKSTRA LEASING SERVICES COMPANY, LLC,**

**APPELLANTS.**

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**IN RE THE FINDING OF CONTEMPT IN:**

**FIRST BANK OF BALDWIN,**

**PLAINTIFF,**

**V.**

**DAVID J. OLSON,**

**DEFENDANT-THIRD-PARTY  
PLAINTIFF-RESPONDENT,**

**REGIONAL BUSINESS FUND, INC.,**

**DEFENDANT,**

**V.**

**OLSON'S WOODVILLE MEATS, INC.,**

**THIRD-PARTY DEFENDANT-RESPONDENT,**

**KEVIN OLSON AND CORY OLSON,**

**THIRD-PARTY DEFENDANTS.**

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**IN RE THE FINDING OF CONTEMPT IN:**

**FIRST BANK OF BALDWIN,**

**PLAINTIFF,**

**V.**

**OLSON'S WOODVILLE MEATS, INC. AND DAVID J. OLSON,**

**DEFENDANTS-RESPONDENTS,**

**CORY B. OLSON,**

**DEFENDANT.**

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**IN RE THE FINDING OF CONTEMPT IN:**

**THE FIRST BANK OF BALDWIN,**

**PLAINTIFF,**

**V.**

**OLSON’S WOODVILLE MEATS, INC. AND DAVID J. OLSON,**

**DEFENDANTS-RESPONDENTS,**

**CORY OLSON, REGIONAL BUSINESS FUND, INC. AND UNKNOWN  
SPOUSE OF DAVID OLSON,**

**DEFENDANTS.**

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APPEAL from an order of the circuit court for St. Croix County:  
ERIC J. LUNDELL, Judge. *Appeal dismissed and cause remanded with  
directions.*

¶1 HRUZ, J.<sup>1</sup> Adrian Dykstra, Dykstra Management Services, LLC, and Dykstra Leasing Services Company, LLC, (collectively, “Dykstra”) appeal an order holding Dykstra in remedial contempt of court. David Olson and Olson’s Woodville Meats, Inc., (Woodville)<sup>2</sup> have not filed a response brief. We conclude Woodville has conceded Dykstra is entitled to relief from the remedial contempt

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<sup>1</sup> 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.

<sup>2</sup> We refer to the respondents collectively as “Woodville,” but we refer to David Olson separately where appropriate.

order by it not responding to—and thereby failing to refute—one of Dykstra’s arguments that the remedial sanctions have been satisfied. By virtue of this concession, we conclude that this appeal is moot and that there is no need to address Dykstra’s additional arguments. Accordingly, we dismiss this appeal, but we remand the matter with directions that the circuit court order that the remedial sanctions have been satisfied in full and, as a result, that Dykstra is released from the remedial contempt order.

¶2 The contempt proceedings arose from a dispute between David Olson and his sons, Kevin Olson and Cory Olson, regarding Woodville and its management. Dykstra’s participation in this case began when Woodville filed a second amended motion seeking to hold both Dykstra and Kevin Olson in remedial contempt of court. The motion alleged that Adrian Dykstra—who had been retained as a consultant with Woodville and provided services by and through his business entities—had aided Kevin Olson in a manner contrary to a prior injunctive order. Namely, Dykstra and Olson allegedly violated that order by diverting customers and business from Woodville, laying off and/or hiring Woodville employees, incurring excess business debt, and otherwise taking actions to diminish the value of Woodville. Specifically, the motion alleged that Kevin Olson and Dykstra distributed payments totaling \$60,000 from Woodville’s accounts to Dykstra and that certain assets had been taken from Woodville while Kevin Olson managed Woodville. Dykstra objected to the contempt motion on the grounds that the circuit court lacked personal jurisdiction over Dykstra and that Dykstra was not in privity with Kevin Olson and Cory Olson so as to allow Dykstra to be found in contempt for allegedly violating the prior order.

¶3 After several evidentiary hearings, the circuit court found Kevin Olson and Dykstra in remedial contempt, as set forth in a nineteen-page order.

The court ordered Kevin Olson and Dykstra to “jointly and severally” return the following to Woodville: (1) \$60,000; (2) “25 beef and 25 hogs”; (3) confidential finance, employee and customer information; and (4) all accounting and tax files for Woodville. Dykstra’s subsequent motion for reconsideration was denied.

¶4 Both Kevin Olson and Dykstra filed notices of appeal from the contempt order. Nearly one month after Kevin Olson filed his notice of appeal, he entered into a stipulation and order with David Olson and Woodville. This stipulation and order, which is part of the record on appeal, provides:

[Woodville], David Olson, and Kevin Olson, by their undersigned attorneys, hereby inform the Court that all claims by [Woodville] or David Olson against Kevin Olson, including all contempt sanctions against Kevin Olson as set forth in this Court’s Order of January 19, 2017, have been settled, resolved, and satisfied as to Kevin Olson, and the parties respectfully request that Kevin Olson be dismissed as a party to these actions, with prejudice and without costs.

Kevin Olson later voluntarily dismissed his appeal. Dykstra’s appeal is now before this court.

¶5 On appeal, the first argument Dykstra raises is that the stipulation and order releasing Kevin Olson from the remedial contempt order also had the effect of releasing Dykstra from the same order. According to Dykstra, this result obtains because Dykstra and Kevin Olson were “jointly and severally liable” for the remedial contempt, which Woodville and Kevin Olson then “settled, resolved, and satisfied” through the dismissal order. Dykstra cites *Brown v. Hammermill Paper Co.*, 88 Wis. 2d 224, 276 N.W.2d 709 (1979), for the proposition that a general release of liability against one party who is jointly and severally liable for tort damages also releases other jointly and severally liable parties, unless the damaged party specifically reserves its rights against a nonreleased party. *See id.*

at 235-36. While contempt of court and commission of a tort are different, Dykstra contends the notion of allegedly concerted wrongdoing—and subsequent joint and several liability—is the same in both contexts. Thus, Dykstra argues, “If the sanctions have been satisfied by Kevin, then it follows that they have likewise been satisfied as to Dykstra.” Dykstra maintains that this argument alone is dispositive of the present appeal, although Dykstra raises other arguments as to why the circuit court erroneously ordered the remedial contempt sanctions.

¶6 Dykstra’s foregoing argument has potential merit, and, at the very least, it is legally developed and supported by facts in the records. However, Woodville has not filed a brief in response to this appeal, in violation of WIS. STAT. RULE 809.19(3)(a)1., nor has Woodville filed any statement with this court explaining why it has not filed a brief. Given the circumstances of Woodville releasing Kevin Olson from the contempt order, a response from Woodville could provide insight on, for example, whether the remedial contempt sanction has in fact been satisfied in full, whether Dykstra was also intended to be released from it, and, most importantly, whether Woodville contests Dykstra’s foregoing argument regarding the legal effect of the stipulation and order. As Woodville has failed to file a response brief, we construe its silence as an implicit concession that Dykstra’s argument is correct regarding the effect of the release. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded).

¶7 Accordingly, we conclude that the stipulation and order between Kevin Olson and Woodville also released Dykstra from the remedial contempt sanction. As a result, we further conclude this appeal is moot. Given Woodville’s tacit concession that Dykstra has been released from liability, addressing Dykstra’s arguments on the merits of the remedial contempt order not would have

any practical effect on an existing controversy. See *Richards v. Graham*, 2011 WI App 100, ¶11, 336 Wis. 2d 175, 801 N.W.2d 821. We generally decline to address moot issues, and this appeal is no exception to that principle, especially when considering Woodville’s lack of a response brief. See *id.*; see also *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (appellate courts “cannot serve as advocate and judge” by developing arguments on a party’s behalf).

¶8 Even though this appeal is moot due to entry of the stipulation and order, as well as Woodville’s concession, the remedial contempt order is still in effect. We therefore remand the matter with directions that the circuit court order that the remedial sanctions have been satisfied in full by operation of the stipulation and order, and also that Dykstra is released from the remedial contempt order.

¶9 No costs to the appellants.

*By the Court.*—Appeal dismissed and cause remanded with directions.

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

