

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 5, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0331

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

IN RE IMPOSITION OF SANCTIONS IN
STATE OF WISCONSIN V. NICHOLAS UHRMAN:

ALAN D. EISENBERG,

APPELLANT,

v.

MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE
ROBERT CRAWFORD PRESIDING,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
ROBERT C. CRAWFORD, Judge. *Affirmed.*

¶1 FINE, J. Alan D. Eisenberg, Esq., appeals from an order imposing sanctions against him for being late to a scheduled court hearing. We affirm.

I.

¶2 Eisenberg represented Nicholas J. Uhrman in an unlawful-possession-of-marijuana case. Uhrman made his initial appearance on May 9, 1999, when a pre-trial was set before the Honorable Mary M. Kuhnmuench for June 14, 1999. Although Uhrman showed up on June 14, the docket sheets reveal that Eisenberg “did not appear in court.” The case was adjourned to June 24, 1999, before Judge Kuhnmuench. The docket sheets reveal that Eisenberg also did not appear on this adjourned date, although Uhrman did. The docket sheets recount: “Court received correspondence indicating that counsel [Eisenberg] would not be able to appear. The court talked to Lisa Kunz, defense counsel’s secretary, and informed her of the new date. She informed the court that that date would be fine.” The letter to which the docket sheets refer was dated June 18, 1999, a Friday, and was stamped as “filed” by the court on June 22, 1999. Judge Kuhnmuench set the new date in Uhrman’s case for August 13, 1999. As a result of judicial rotation, the case was re-assigned to the Honorable Jean W. DiMotto.

¶3 On August 13, 1999, Eisenberg moved to withdraw as Uhrman’s lawyer. Judge DiMotto granted the motion. The case was adjourned to October 4, 1999. According to the docket sheets, Uhrman appeared, and, once again, Eisenberg was his lawyer. Eisenberg asked Judge DiMotto to recuse herself from the case, and she did. The case was adjourned to December 3, 1999, before the Honorable Robert Crawford.

¶4 On December 3, 1999, Judge Crawford set the matter, over Eisenberg’s objection, for a January 3, 2000, 8 a.m. hearing on Uhrman’s motion to suppress evidence. Every other date Judge Crawford had suggested was rejected by Eisenberg as conflicting with some other matter he had scheduled. On December 6,

1999, Eisenberg filed a notice of motion to suppress evidence, returnable on January 3, 2000, at 8 a.m. Additionally, on December 6, he issued subpoenas to two Milwaukee police officers for the hearing before Judge Crawford on January 3, 2000, at 8 a.m.

¶5 On January 3, 2000, Eisenberg appeared in court at 8:27 a.m. Everyone else, other than Uhrman, who appeared at 8:10 a.m., was in Judge Crawford's court by 8 a.m., including the two officers whom Eisenberg had subpoenaed. Judge Crawford asked Eisenberg to explain his tardiness, and there was the following colloquy, which we join after Judge Crawford's recitation of how he spent the previous evening arranging the courtroom furniture following the laying of new carpeting:

[THE COURT:] At 7:55 this morning I was sitting on the bench; the prosecutor was in his chair; the court reporter was in her chair; the two police officers were here. Mr. Eisenberg was home in bed, and his client was gone. His client showed up at 8:10. I had to call Mr. Eisenberg at home and get him out of bed.

Do you have anything to say for yourself, Mr. Eisenberg?

MR. EISENBERG: I was ill this morning. I got in at 2:30 in the morning from the west coast, and I have been under the weather.

THE COURT: Why didn't you call the courtroom at 8:00? I know I woke you up when I called.

MR. EISENBERG: No, you didn't wake me up. You don't know any such thing.

THE COURT: I would deduce that from the manner of your voice and conversation.

MR. EISENBERG: The manner of my voice is I'm ill this morning. You did not wake me up.

THE COURT: So why weren't you here?

MR. EISENBERG: Because I was ill. I got in from the west coast and got to bed at 2:30 in the morning, and I am sick this morning.

THE COURT: So were you at the Rose Bowl game yesterday?

MR. EISENBERG: No, I was not.

THE COURT: All right. Well, when you hoot with the owls, Mr. Eisenberg, and take the red-eye flight, you better not let it interfere with your obligation in court.

MR. EISENBERG: I did not take a red-eye flight.

THE COURT: Any flight that arrives at 2:30--

MR. EISENBERG: I wasn't at the Rose Bowl; and I have been sick for several days on medications; and I was sick this morning.

THE COURT: Oh, you're going to conduct your hearing with Judge Gordon this morning?

MR. EISENBERG: I expect to, so let's do the half hour now that you planned on, and we'll tell Judge Gordon that I got here late, and I'll be there late. Let's proceed with the hearing. I'm not trying to stall the hearing. I don't feel well this morning.

THE COURT: I accept that you don't feel well, but you're still late, and everybody here was on time except for you and your client.

I simply cannot conduct the calendar when lawyers don't show up. Our calendar is booked 60 to 90 days in advance. If I want to schedule a hearing outside a 60 or 90-day delay, I have to shuffle it around or have it start in the afternoon. About the only other way I can find time to do any significant writing is to take a vacation, which is what I did in the last two weeks; and I came here on Saturday night and wrote to finish an order. I do not appreciate it when lawyers don't show up on time.

MR. EISENBERG: I apologize. I sincerely apologize. I do my level best to respond to the desires of this Court.

THE COURT: I accept your apology, and I think you're sincere. The fact is you weren't here, and everybody was.

Under rule 972.11(1) and 805.03 I'm sanctioning you \$250 on your failure to appear this morning as ordered at 8:00. You have until January 14 to pay the sanction to the Clerk of the Circuit Court and submit proof of payment to our deputy clerk. I will draft a written order with a findings of fact.

II.

¶6 A trial court may sanction lawyers who are “late to a scheduled court appearance.” *Anderson v. Circuit Court for Milwaukee County*, 219 Wis. 2d 1, 4, 578 N.W.2d 633, 634 (1998). Whether to impose a sanction and the amount of the sanction are within the trial court’s discretion. *Id.*, 219 Wis.2d at 9, 578 N.W.2d at 636. A trial court acts within its discretion when its determination is one that a reasonable judge could make and is based on a correct view of the law. *See Lievrouw v. Roth*, 157 Wis. 2d 332, 358–359, 459 N.W.2d 850, 859–860 (Ct. App. 1990). In imposing a sanction on a lawyer for being late to a court appearance, the trial court must consider “the disruptive impact on the court’s calendar resulting from the attorney’s late arrival, the reasonableness of the attorney’s explanation[,] and the severity of the sanction to be imposed.” *Anderson*, 219 Wis. 2d at 10, 578 N.W.2d at 637.

¶7 Judge Crawford touched all of the bases. First, he explained how Eisenberg’s late arrival disrupted his attempt to resolve Eisenberg’s suppression motion without undue delay. Judge Crawford is to be commended for being willing to schedule hearings at 8 a.m. in order to move the court’s and the people’s business. Judge Crawford quickly recognized that Uhrman’s case had been dragging along since Uhrman’s initial appearance some eight months earlier, and when faced with a series of conflicts between potential hearing dates and Eisenberg’s calendar, scheduled the matter at a time when Eisenberg could be available; although he objected to the date, Eisenberg did not assert that the date conflicted either with his practice or his personal life.

¶8 Second, Judge Crawford perceptively recognized that if Eisenberg had a flight scheduled to arrive in the early morning hours of January 3, 2000, and that if

this flight had the potential to prevent Eisenberg from appearing timely for the 8 a.m. hearing, Eisenberg should have either sought an adjournment or delay on the one hand, or, on the other hand, worked his personal schedule around the hearing. Indeed, by not telling Judge Crawford on December 3, 1999, that he had a scheduling conflict with the January 3, 8 a.m. hearing, Eisenberg tacitly represented that he had no scheduling conflict. Additionally, Judge Crawford found that Eisenberg's denial that Judge Crawford's call had awakened him was not credible. This finding is supported by the undisputed fact that Eisenberg did not call to alert the court and others waiting for him that he would be delayed, and is not "clearly erroneous." See WIS. STAT. RULE 805.17(2), made applicable to criminal proceedings by WIS. STAT. § 972.11(1).

¶9 Third, Judge Crawford's imposition of a \$250 sanction is within the realm of reasonableness. Eisenberg had subpoenaed two Milwaukee police officers for the hearing. Those officers were in court by 8 a.m. Additionally, Judge Crawford and his staff were in court by 8 a.m. The whole machinery of court business was ready to roll except that Eisenberg was not there (as noted, Uhrman showed up at 8:10 a.m.). Eisenberg's delay thus "had an actual disruptive effect" on the court's business. We cannot say, in light of this actual and significant disruption, that Eisenberg's hollow apology—as noted, he never called to explain that he was running late—made the \$250 sanction unreasonable. Judge Crawford's imposition of the sanction was not an erroneous exercise of discretion.

By the Court.—Order affirmed.

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

