

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2002

Cornelia G. Clark
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. 01-1495

Cir. Ct. No. 01-CV-133

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ANN E. BURTON,

PETITIONER-RESPONDENT,

v.

MICHAEL S. FISH,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sauk County:
RICHARD O. WRIGHT, Judge. *Affirmed and cause remanded with directions.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Michael Fish appeals from an order which enjoined him from having any contact with Ann Burton, her family, or her employers for a period of two years. He claims the order is invalid because he was given insufficient notice of the hearing, depriving him of the opportunity to obtain counsel; there was insufficient evidence to show harassment; and opposing

counsel threatened him into accepting the terms of the injunction. However, we conclude that Fish has waived the right to raise any of these arguments on appeal, and therefore affirm without addressing the merits. We further conclude that Burton is entitled to costs and attorney fees on the grounds that the appeal is frivolous, and remand for a determination of the amount of the award.

¶2 The record shows that Fish and Burton each filed an injunction petition against the other, and that both agreed to the trial court's proposal that they each be enjoined from contacting the other. Because Fish stipulated to the order at issue, he cannot now challenge the sufficiency of the notice or the evidence on appeal. *County of Racine v. Smith*, 122 Wis. 2d 431, 437, 362 N.W.2d 439 (Ct. App. 1984). Fish also waived any right to raise the issue of alleged coercion by opposing counsel because he failed to bring the matter to the trial court's attention prior to the issuance of the order. *See Terpstra v. Soiltest, Inc.*, 63 Wis. 2d 585, 593, 218 N.W.2d 129 (1974).

¶3 WISCONSIN STAT. RULE 809.25(3)(a) (1999-2000)¹ authorizes this court to award costs and attorney fees if an appeal is found to be frivolous. An appeal is frivolous if it is filed in bad faith or if a party "knew, or should have known, that the appeal ... was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." RULE 809.25(3)(c). Although we give some leeway to unrepresented parties, even a pro se litigant is required to make a "reasonable

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

investigation" of the law. *Holz v. Busy Bees Contracting, Inc.*, 223 Wis. 2d 598, 608, 589 N.W.2d 633 (Ct. App. 1998).

¶4 Burton argues that Fish filed the appeal in bad faith for the purpose of harassment. While it appears there may be some merit to that contention, this court is unable to make the factual findings necessary to sustain that conclusion. We need not remand for that purpose, however, because we are satisfied that a reasonable litigant in Fish's position should have known that he could not appeal from an order after he had expressly agreed to it in open court. We therefore conclude that the appeal is frivolous and award Burton costs and attorney fees for defending the appeal. We remand to the trial court for a determination of the amount of the award.

By the Court.—Order affirmed and cause remanded with directions.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

