COURT OF APPEALS
DECISION
DATED AND RELEASED

July 20, 1995

No. 94-0302

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

OLIVER A. PENTINMAKI, JR.,

Plaintiff-Appellant,

v.

MARY C. VOLKER,

Defendant-Respondent.

APPEAL from an order of the circuit court for Dane County: RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Eich, C.J., Sundby and Vergeront, JJ.

PER CURIAM. Oliver Pentinmaki, Jr., appeals from an order dismissing his abuse of process complaint against Mary Volker, his former wife. Volker, representing herself, submitted factual material with her answer, indicating that Pentinmaki filed this action as part of a long-standing campaign of harassment directed against her, and that his allegations lacked a factual basis. The court ordered Pentinmaki to submit facts in rebuttal, which he did. In the functional equivalent of a summary judgment decision, the court then

concluded that the proofs established no abuse of process by Volker, and that Pentinmaki had commenced this action solely to harass her. The record fully supports these conclusions. We therefore affirm.

An abuse of process occurs when one uses a legal process to accomplish a purpose for which it is not designed. ***Brownsell v. Klawitter***, 102 Wis.2d 108, 114, 306 N.W.2d 41, 44 (1981). The process must result in a legal proceeding. *See* ***id***. at 114-15, 306 N.W.2d at 44-45. Here, Pentinmaki's complaint alleges instances where Volker complained of his actions to the police, the court and his probation agent over a period of several years. During this same period, Pentinmaki was constantly commencing legal proceedings against Volker. Pentinmaki did not allege, nor do the facts of record show, that any additional legal proceedings resulted from these complaints. With no evidence that Volker ever invoked legal process in the alleged instances, the court properly dismissed the action.

The trial court also properly concluded on the undisputed facts that Pentinmaki commenced this action solely to harass Volker. In the parties' divorce judgment, entered in 1990, the Milwaukee County Circuit Court made specific findings regarding what it described as Pentinmaki's bad faith, manipulation, lying, litigiousness and vengefulness. The court also found numerous instances of physical and verbal abuse of Volker, as well as an attempt, in May 1990, to frame her on criminal charges by planting cocaine in her house and then inducing their children to call the police.

The divorce judgment generated an onslaught of further litigation, including literally hundreds of trial court motions and ten appeals and five petitions filed in this court. Pentinmaki has requested a John Doe hearing on his marital dispute and has unsuccessfully sought a restraining order against Volker. He has been criminally prosecuted during the dispute. The trial judge who presided over the divorce stated at a subsequent hearing that "this man has indicated unequivocally that he is going to spend his life pursuing this [litigation]." The successor to that judge described Pentinmaki as obsessed with the marital dispute and, a few months before Pentinmaki commenced this action, ordered that he could not file any further motions in the marital action without permission.[1] Given that background and Pentinmaki's failure to

[1] This court affirmed the trial court's order, holding that the record supported the trial

produce any proof to support his allegations, the trial court reasonably concluded that this proceeding was one more attempt to harass his former wife. The court properly made that determination on summary judgment because the facts necessary to support it are either undisputed or established in earlier court proceedings, and no other inference is reasonably available. *See* § 802.08(2), STATS.

In her respondent's brief, Volker argues that this appeal was also commenced solely to harass her. On the basis of the same factual record available to the trial court and the absence of any merit on the issues raised, we agree. The undisputed and established evidence of Pentinmaki's repeated harassment of Volker is conclusive. No other inference is reasonably available to this court either. The appeal is therefore frivolous.[2] RULE 809.25(3)(c), STATS.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

(..continued)
court's conclusion that Pentinmaki had repeatedly abused the court system. ***Volker v. Pentinmaki***, Nos. 92-2609, 93-1070, 93-1434, unpublished slip op. at 13 (Ct. App. Apr. 19, 1994). Pentinmaki has since violated that court order and filed further motions, resulting in further denials and further appeals.

[2] Our ruling has no practical effect because Volker expended no attorney fees and is entitled to costs as the prevailing party. RULE 809.25(1)(a), STATS.