COURT OF APPEALS
DECISION
DATED AND RELEASED

October 3, 1995

No. 94-2806

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

STATE OF WISCONSIN and CITY OF MILWAUKEE,

Plaintiffs-Respondents,

v.

DALE PULTZ,

Appellant,

MISSIONARIES TO THE PREBORN, ET AL.,

Defendants.

APPEAL from an order of the circuit court for Milwaukee County: ROBERT W. LANDRY, Reserve Judge. *Affirmed.*

WEDEMEYER, P.J.[1] Dale Pultz appeals from an order issuing a remedial contempt citation for violating a permanent injunction that was issued on December 10, 1992, enjoining activities of certain abortion protestors at

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

medical clinics throughout the City of Milwaukee. The injunction prohibits certain named individuals, and anyone acting in concert with those individuals, from engaging in particular activities at medical clinics. Pultz claims that the trial court erred in issuing a contempt order against him because: (1) he was not provided notice of the contempt hearing; (2) he was denied his constitutional right to an attorney; (3) the sentence imposed exceeded the trial court's authority; and (4) it failed to obey an appellate order. Because this court resolves each contention in favor of upholding the order, this court affirms.

I. BACKGROUND

On December 10, 1992, a Milwaukee trial court issued a permanent injunction order prohibiting certain individuals, and anyone acting in concert with those individuals, from engaging in certain activities at medical clinics that provide abortions. Pultz was one of the named defendants in the permanent injunction. The State of Wisconsin and the City of Milwaukee commenced a contempt proceeding against Pultz, alleging that he violated the permanent injunction: on January 14, 1994, by blocking the door of a medical clinic in Milwaukee; on April 23, 1994, by blocking access to a medical facility in Milwaukee; on May 11, 1994, by blocking access to a facility named in the permanent injunction; and on June 20, 1994, by engaging in protest activity within twenty-five feet of a facility and within ten feet of persons seeking access to the facility.

The notice of motion and motion for contempt was served on Pultz on August 22, 1994, with a hearing date set for August 31, 1994, at 9 a.m. The hearing was adjourned until September 7, 1994. Pultz objected to the hearing taking place on the grounds that he was not properly notified of the hearing and because he did not have a chance to obtain counsel. His objections were overruled and the hearing took place.

The trial court found Pultz in contempt. As a sanction for the violation, Pultz was ordered to pay a forfeiture or take an oath indicating that he will not violate the permanent injunction. If Pultz refused to pay a forfeiture, or take the oath within five days, he would be imprisoned for 380 days. Pultz would be able to purge the contempt at any time by agreeing not to violate the permanent injunction. Pultz now appeals.

II. DISCUSSION

This court's standard of review involving contempt orders is limited. Whether a defendant's act is a contempt of court is a discretionary determination because the question "is one which the trial court has far better opportunity to determine than a reviewing court." ***Currie v. Schwalbach***, 132 Wis.2d 29, 36, 390 N.W.2d 575, 578 (Ct. App. 1986), *aff'd*, 139 Wis.2d 544, 407 N.W.2d 862 (1987). A reviewing court will not reverse a trial court's determination "except in a plain instance of mistake" or erroneous exercise of discretion. ***Id.*** Further, findings of fact made by the trial court will be accepted unless they are clearly erroneous. *See* § 805.17(2), STATS.

A. Notice.

Pultz's first claim is that he was not given proper notice as to the actual date of the hearing. The trial court found that the proper notice requirements had been satisfied. This court agrees.

Pultz admits that he was served with the notice of motion and motion for contempt papers on August 22. These papers included notice of the contempt hearing date set for August 31. For some unknown reason, the hearing was adjourned until September 7. The record indicates that an attempt was made to notify Pultz of the new date, but the court clerk did not have Pultz's current address and, therefore, was unable to notify him.

Although, it would have been preferable to have served Pultz with notice of the adjournment, the fact that he was effectively served on August 22 satisfies proper notice requirements. If Pultz would have appeared for the contempt hearing on August 31, Pultz would have been notified of the adjournment. Pultz, however, failed to show up for the original hearing date and failed to notify the court of his inability to attend the original date. Accordingly, this court is not persuaded by Pultz's claims that he was not properly notified.

B. Right to Attorney.

Next, Pultz claims that he was denied his constitutional right to have an attorney represent him. The trial court determined that Pultz had plenty of time to hire an attorney on his own, and that he did not have the right to a court-appointed attorney. This court agrees.

Pultz cites ***Ferris v. State***, 75 Wis.2d 542, 249 N.W.2d 789 (1977), and ***Brotzman v. Brotzman***, 91 Wis.2d 335, 283 N.W.2d 600 (Ct. App. 1979), for the proposition that an indigent defendant has a constitutional right to a court-appointed attorney in a contempt proceeding. Although both ***Ferris*** and ***Brotzman*** support this proposition, Pultz's reliance on these cases is misplaced. The record demonstrates that Pultz did not claim to be indigent or request a court-appointed attorney at the time of the hearing. Rather, the record indicates that Pultz's complaint was that he did not have a chance to hire an attorney. This court agrees with the trial court's assessment that Pultz had plenty of time to hire an attorney between the time he was served on August 22 and the time of the contempt hearing on September 7.

Accordingly, we reject Pultz's claim that he was denied his constitutional right to counsel.

C. Authority to Impose 380 day prison term.

Next, Pultz claims the trial court exceeded its authority under § 785.04(b), STATS., when it imposed the 380 day prison term. Pultz argues that § 785.04(b) restricts the imprisonment penalty to six months or less. This issue was not raised at the trial court level and, therefore, we decline to address it on appeal. *See* ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980) (appellate court generally will not review issue raised for the first time on appeal).

D. Violation of Appellate Order.

Finally, Pultz claims that the trial court violated an order of this court, which required the trial court to conduct a hearing to reconsider the trial court's prior order regarding Pultz's release pending appeal. This court has

reviewed the portions of the record relevant to this issue. This court concludes that the trial court's hearing conducted on December 20, 1994, clearly satisfied the dictates of this court's order of January 5, 1995. Accordingly, we reject Pultz's claim.

By the Court.—Order affirmed.

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