

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 5, 2012

Diane M. Fremgen
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. 2012AP1467

Cir. Ct. No. 2006FA32

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

PATRICIA KAY NOVOTNY,

PETITIONER-RESPONDENT,

V.

RAYMOND JEROME NOVOTNY,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Oneida County:
CONRAD A. RICHARDS, Judge. *Affirmed.*

¶1 REILLY, J.¹ Raymond Jerome Novotny appeals from the circuit court's denial of his motion to hold his former wife in contempt of court for failing to pay real estate taxes and foreclosure costs he claims she owes based, in part, on an August 2011 stipulation. The circuit court, after examining both the stipulation and the transcript from the hearing discussing it, found that Patricia Kay Novotny was not in contempt of court because she did not owe Raymond the money. We agree with the circuit court's interpretation and affirm. We also deny Patricia's motion to impose sanctions for a frivolous appeal.

¶2 Raymond's and Patricia's dispute centers on the following language from their August 24, 2011 stipulation regarding the marital home:

As of the date of entry of this Stipulation and Order, any previous orders of this court notwithstanding, Patricia will have no further obligations regarding the Property, including but not limited to any debt related to the Property, including, but not limited to, real estate taxes and foreclosure costs.

Raymond argues that this language shows that Patricia continued to owe him any outstanding money up to the date of entry of the stipulation; Patricia argues that it absolved her of all outstanding and future financial obligations related to their property.

¶3 In support of her argument, Patricia points to a hearing on August 15, 2011, where her attorney explained that under the stipulation, "[a]ny previous orders finding that my client had any obligation for real estate taxes and/or foreclosure costs will be null and void." Raymond's attorney did not object

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

to that characterization at the hearing. Later, on March 21, 2012, Raymond filed a motion for contempt based on Patricia's failure to pay real estate taxes and foreclosure costs that she owed him prior to the entry of the August 2011 stipulation. The circuit court denied Raymond's motion and he now appeals.

¶4 We review the circuit court's use of contempt power for erroneous exercise of discretion. *Monicken v. Monicken*, 226 Wis.2d 119, 124, 593 N.W.2d 509 (Ct. App. 1999). Underlying contempt decisions, there may be findings of fact and conclusions of law. *Id.* at 125. We will uphold the circuit court's findings of fact unless they are clearly erroneous, but we review its conclusions of law de novo. *Id.*

¶5 In this case, the parties are arguing over the circuit court's legal determination that Patricia was in compliance with the August 2011 stipulation when she refused to pay the real estate taxes and foreclosure costs that Raymond claims she owes. In divorce actions, stipulations are in the nature of contracts. *Waters v. Waters*, 2007 WI App 40, ¶6, 300 Wis. 2d 224, 730 N.W.2d 655. First, we give the words of the stipulation their plain meaning. *Id.* If the stipulation is ambiguous, we may look to other parts of the record to construe its meaning. *Id.*, ¶8.

¶6 Put simply, we agree with the circuit court's interpretation. When we look at the language of the stipulation, it could be interpreted to absolve Patricia of all outstanding property-related expenses or only those incurred after the date of entry. Looking at the transcript from the hearing discussing the stipulation, though, Patricia's attorney's summary unambiguously shows intent by

the parties to absolve Patricia of the real estate taxes and foreclosure statements she owed up to that point.²

¶7 We briefly address the parties' remaining issue—whether sanctions should be imposed on Raymond for filing a frivolous appellate brief. Patricia contends that Raymond's appeal is frivolous because it was motivated solely by bad faith and because Raymond's attorney knew, or should have known, that his appeal is without merit. We decline to impose sanctions or supplement the record as Patricia requests because, as we already stated, the language of the stipulation, drafted by Patricia's attorney, was not as clear as it could have been. Because of that, we do not view Raymond's appeal as either meritless or in bad faith.

¶8 No costs to either party.

By the Court.—Order affirmed.

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

² Raymond and Patricia both discuss a November 2011 ruling by the circuit court regarding Patricia's obligation to pay some interest on one of the mortgages. In deciding that she was obligated to make that payment, the circuit court interpreted the August 2011 stipulation as unambiguously applying only to Patricia's obligations after the date of entry. That decision is not before us and it is not binding on our de novo interpretation of the parties' August 2011 stipulation as it relates to real estate taxes and foreclosure costs.

