COURT OF APPEALS
DECISION
DATED AND RELEASED

March 28, 1996

NOTICE

No. 95-2377

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PASTORI M. BALELE,

Defendant-Appellant,

DEPARTMENT OF ADMINISTRATION,

Garnishee-Defendant-Respondent.

APPEAL from an order of the circuit court for Dane County: MICHAEL NOWAKOWSKI, Judge. *Affirmed*.

EICH, C.J.[1] Pastori M. Balele appeals from an order denying his motion to stay proceedings in this garnishment action pending the decision of

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

the United States Court of Appeals for the Seventh Circuit in the underlying federal action on which the garnishment is based.

We begin by noting that we are somewhat hampered in this appeal because the proceedings associated with an earlier appeal in the case are not part of the instant record, though both parties refer us generally to briefs and other materials purportedly contained in that record.[2]

As best we can piece them together from the record, the facts are as follows. Balele, an employee of the Wisconsin Department of Administration, has filed several civil rights actions in state and federal courts relating to his failure to achieve job promotions over the years. All of his actions have been dismissed, and the judgments of dismissal included awards of costs to the various defendants, all of whom are state officials.

One of the suits, against Gerald Whitburn, former secretary of the Wisconsin Department of Health and Social Services, was dismissed on summary judgment in the United States District Court for the Western District of Wisconsin. Balele appealed the dismissal to the Seventh Circuit and, while the appeal was pending, the State of Wisconsin, having received assignments of the judgments from twenty-six of the defendants in Balele's unsuccessful actions, commenced a garnishment action to recover these costs.

This appeal is from the circuit court's denial of Balele's motion to "[d]elay the proceeding and enforcement of the garnishment because the case [the ***Whitburn*** action] which precipitated this garnishment proceeding is on appeal [to the Seventh Circuit]." In his motion, Balele also stated that the garnishment action would "financially hurt" him and his family, "was interposed by [the state's attorney] ... selectively to harass Balele because of his

[2] It is, of course, the appellant's responsibility to ensure that evidence and other materials pertinent to the appeal are in the record, and failure to incorporate such materials into the record may constitute grounds for dismissal of the appeal. ***State v. Smith***, 55 Wis.2d 451, 459, 198 N.W.2d 588, 593 (1972). Our review is limited to those portions of the record available to us. ***In re Ryde***, 76 Wis.2d 558, 563, 251 N.W.2d 791, 793 (1977).

race" and was commenced solely to "harass" him because the assistant attorney general representing Whitburn was "mad" at him.

At the hearing on the motion, Balele told the court: "My motion basically is based on the fact that the case is on appeal and ... when a case is on appeal attorney fees and costs are not awarded until the appeal is resolved." He also complained that he lacked the means to pay the judgments. Balele concluded, "So Your honor, I am before you to ask you to delay this proceeding until the decision of the appeals court and then they can proceed on it so easily."

The trial court, ruling that Balele was subject to a valid judgment of the district court which, unless stayed, is subject to collection--and noting that the federal courts had refused to stay the judgments pending Balele's appeal--denied his request for a stay and proceeded to take evidence on his claim that he was unable to afford the garnishment and that the statutory exemptions were insufficient to avoid a hardship to himself and his family.

After hearing the evidence, the court found that Balele's monthly income was $2006 per month and that his other debts and financial obligations did not warrant dismissal of the garnishment action. Finding, however, that granting him the statutory exemption of only eighty percent of his disposable income "would result in some hardship to him," the court increased the exemption to ninety percent and entered an order allowing the action to proceed on that basis. It is from that order that Balele appeals.

Balele's argument is essentially limited to assertions that the state's attorneys, whom he describes as "DOJ gang-members," fraudulently commenced this action in order to "punish him and his family because of his race and national origin," and in retaliation for his legal actions against his present and prospective employers--in his words, in order to "stifle [him] from asserting his civil rights and those of other blacks." In his brief, he purports to support these assertions by reference to documents which are not part of the record on appeal.

As we have noted, *supra* note 2, it is Balele's responsibility to provide us with a record supporting his arguments and assertions, and our consideration of his appeal is limited to the appellate record as he has supplied it to us. We also note that Balele did not argue or offer any evidence on these assertions at the hearing before the trial court; and it is equally axiomatic that we will not consider issues raised for the first time on appeal. ***Wengerd v. Rinehart***, 114 Wis.2d 575, 580, 338 N.W.2d 861, 865 (Ct. App. 1983).

We consider first Balele's request that the trial court stay the garnishment action pending a decision in his appeal to the Seventh Circuit Court of Appeals. The Seventh Circuit has issued a decision and order dated January 11, 1996, affirming the district court decision in the underlying ***Whitburn*** action. It is a document of which we may properly take judicial notice, and since the existence of the federal appeal formed the basis for Balele's request for a stay, we agree with the State that this issue has been mooted by the Seventh Circuit's decision.

Balele argues, however, that we should consider that appeal as still pending because he is seeking review of the Seventh Circuit's decision in the United States Supreme Court. Citing ***City of Los Angeles v. Lyons***, 461 U.S. 95 (1983), he asserts that "[t]he doctrine of mootness does not apply when there is proceedings still in effect." But ***Lyons*** does not stand for such a broad proposition. Lyons sued the City of Los Angeles, claiming his civil rights were violated when, in conjunction with a traffic stop, police officers grabbed him and applied a "chokehold." ***Id***. at 97-98. Among other things, he sought a permanent injunction barring the police from using such tactics in other than "deadly-force" cases. ***Id***. at 98. The trial court issued a temporary injunction to that effect and after the Supreme Court had granted the city's petition for *certiorari* review, the Los Angeles Board of Police Commissioners imposed a six-month moratorium on the use of chokeholds in nondeadly-force situations. ***Id***. at 100. Lyons moved the Court to dismiss the writ of *certiorari* as improvidently granted, given the new city position. ***Id***. at 101. The Court denied the motion, concluding that the case was not moot because the six-month limitation on the use of such tactics did not constitute an "[i]ntervening event[] ... `irrevocably eradicat[ing] the effects of the alleged violation.'" ***Id***. at 101 (quoting ***County of Los Angeles v. Davis***, 440 U.S. 625, 631 (1979)).

We do not see ***Lyons*** as standing for the blanket rule urged by Balele. A motion to stay proceedings is committed to the sound discretion of the trial court. Section 806.08, STATS. In this case the trial court denied Balele's request, reasoning that: (1) the authority of a state trial court to stay enforcement of a valid federal court judgment is highly questionable; and (2) Balele was aware of the procedures for seeking such a stay in the federal courts--and in fact had sought such a stay, only to have his request denied.

"We will not reverse a discretionary determination by the trial court if the record shows that discretion was exercised and we can perceive a reasonable basis for the court's decision." ***Prahl v. Brosamle***, 142 Wis.2d 658, 667, 420 N.W.2d 372, 376 (Ct. App. 1987). We are satisfied the trial court's decision meets that test, and we affirm its denial of Balele's request for a stay.

Finally, Balele devotes something less than a single page of his forty-page principal brief to his argument that he is unable to pay. The page is no more than a list of statements--unsupported by any reference to the record--that he is having problems paying his bills and his family is complaining about the lack of funds. We do not consider arguments that are inadequately briefed, or unsupported by citations to authority or references to the record. ***State v. Pettit***, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992); ***Lechner v. Scharrer***, 145 Wis.2d 667, 676, 429 N.W.2d 491, 495 (Ct. App. 1988).

Beyond that, having examined the transcript of Balele's testimony at the hearing, we are not satisfied that the trial court's decision--that, employing the higher ninety-percent exemption, the proposed garnishment would not reduce Balele's household income to a point below the statutory poverty guidelines,[3] or would not otherwise present a substantial hardship to Balele--is unsupported by the evidence.

We therefore affirm the trial court's order in its entirety.

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[3] Under §§ 812.34(2)(b)1 and 2, STATS., a debtor's earnings are exempt from garnishment only if he or she is on need-based public assistance, or if "[his or her] household income is below the poverty line, or the garnishment would cause that result ...."

By the Court.—Order affirmed.

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