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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

In re the finding of contempt in:

TOWN OF STETTIN,

Plaintiff-Respondent,

vs.

Appeal No. 2013-AP-1201
Trial Court Case No. 2008-CV-528

ROGER HOEPPNER and
MARJORIE HOEPPNER,

Defendants-Appellants.

PLAINTIFF-RESPONDENT'S BRIEF

Appeal from the Circuit Court of Marathon County,
The Honorable Gregory E. Grau, Presiding

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent, Town of Stettin, does not request oral argument. The arguments are adequately set forth in the briefs of the parties. Publication is not requested as the resolution of this matter does not meet the criteria set forth in Wis. Stat. §809.23(1)(a).

ISSUES PRESENTED

1. Did the circuit court comply with the statutory requirements under Wis. Stats. Ch. 785 in conducting remedial contempt hearings, imposing purge conditions, viewing the premises on two separate occasions such that, after the circuit court determined on May 24, 2011, the Defendants-Appellants, Roger Hoeppner and Marjorie Hoeppner, had not met the purge conditions in the September 24, 2010 Stipulated Order, it was within its discretion to permit the Town to proceed to remove "farm equipment, pallets, and other material" to effect compliance with the September 24, 2010 Stipulated Order without holding an additional hearing?

Not Answered by the Trial Court

2. Did the circuit court deny the Defendants-Appellants', Roger Hoeppner and Marjorie Hoeppner, due process by failing to hold another hearing after the May 24, 2011 hearing which permitted the Plaintiff-Respondent, Town of Stettin, to clean up the Defendants-Appellants' property, to determine whether the Defendants-Appellants had removed "farm equipment, pallets, and other material" from their property sufficient to comply with the purge conditions in the September 24, 2010 Stipulated Order?

Not Answered by the Trial Court

3. Did the Defendants-Appellants', Roger Hoeppner and Marjorie Hoeppner, waive their right to complain that due process required a new hearing

and/or a new view of their property by the circuit court after the circuit court's May 24, 2011, view and hearing and before it authorized the Plaintiff-Respondent, Town of Stettin, to enter on the Defendants-Appellants' property to remove and dispose of property in violation of the September 24, 2010 Order, by (1) not requesting that the May 24, 2011 Order include a review hearing; (2) by not objecting to the Plaintiff-Respondent's Proposed May 24, 2011 Order; and/or (3) by not making an offer of proof of full compliance with the September 24, 2010 Stipulated Order as a basis for precluding the Plaintiff-Respondent from entering on the Defendants-Appellants' property to remove and dispose of property?

Not Answered by the Trial Court

STANDARD OF REVIEW

The Court of Appeals should uphold findings of fact unless they are clearly erroneous; however, the Court reviews questions of law *de novo*. *Monicken v. Monicken*, 226 Wis.2d 119, 125, 593 N.W.2d 509 (Ct. App. 1999). Determining the type of remedial sanctions to impose for contempt is a discretionary determination. *Benn v. Benn*, 230 Wis.2d 301, 308, 602 N.W.2d. 65 (Ct. App. 1999); *City of Wisconsin Dells v. Dells Fireworks*, 197 Wis.2d 1, 23, 539 N.W.2d 916 (Ct. App. 1995).

STATEMENT OF THE CASE

In April, 2008, the Plaintiff-Appellant, Town of Stettin ("Town"), commenced judicial enforcement of its zoning and nuisance ordinances against the Defendants-Appellants, Roger Hoeppner and Marjorie Hoeppner ("Hoeppners"), relating to their real estate located in a RS-1/40 Residence District in the Town. R. 12, ¶ 4. The Town's enforcement of its zoning ordinance was aimed at the Hoeppners' continuing sales of farm equipment, including, but not limited to, tractors and their placement of signs on the property. R. 12, ¶¶ 5-10, 11-16. Beyond the zoning violations, the enforcement action addressed the public nuisance which the Hoeppners maintained on the property as a result of accumulations of rubbish, vehicles, debris, including wooden pallets in particular. R. 12, ¶¶ 18-21.

Since June, 2008, there have been more than six (6) circuit court orders and three (3) prior relevant Court of Appeals' Orders. In its December 16, 2010 and January 4, 2012 Orders, this Court dismissed the Hoeppners' appeals in 2010-AP-2645 as the entire litigation had not been resolved.

This Courts' Order of September 5, 2013 in the present appeal narrowed the scope of consideration to three (3) of the six (6) circuit court orders. The Order specifically precluded appellate review of the original stipulated Order, R. 18, A-App. 128, the first enforcement hearing on August 24, 2010 (hereafter September 24, 2010 Stipulated Order as it was entered on September 24, 2010),

R. 22, A-App. 131. The Order further precluded appellate review of the Order Denying Motions to Withdraw or Vacate Stipulation or Order. R. 55, A-App. 157. What remains in the present appeal is the Judgment of April 5, 2013, entered May 13, 2013, R. 70, A-App. 173, together with the underlying non-final orders preceding the Judgment.[1]

In the Findings of Fact, Conclusions of Law and Final Judgment, R. 70, A-App. 173, the circuit court imposed contempt sanctions for discrete periods of time:

- $100 per day for 230 days (October 6, 2010 through May 23, 2011) and
- $500 per day for 48 days (May 24, 2011 through July 11, 2011).

The circuit court also ratified the Town's entry onto the Hoeppners' property to remove all pertinent personal property thereon in violation of the May 24, 2011 Order. R. 36, A-App. 55. The circuit court further ratified the Towns action in disposing of the property by auction and for it to be reimbursed costs and disbursements. The circuit court calculated a deficiency in the auction proceeds to cover all of the Town's costs and disbursements of $11,568.21.

[1] The Hoeppners also include an unsigned copy of a "Judgment" in their Appendix which resulted from the circuit court's May 9, 2012, Order, R. 56, A-App. 171, without reference to it in their Statement of Facts. This non-final Judgment was rendered and entered on June 4, 2012 and is referenced in the Findings of Fact, Conclusions of Law and Final Judgment of April 5, 2013.

Most significant, the Findings of Fact, Conclusions of Law and Final Judgment determined that the Hoeppners' contempt terminated on July 11, 2011. R. 70, A-App. 173 This was the date the Town had completed its authorized entry onto the Hoeppners' property. According to the circuit court, any further violations of the May 24, 2011 Order or the Town Zoning Ordinance would require a new action for enforcement. R. 36, A-App. 155.

The non-final orders incorporated into the April 5, 2013 Findings of Fact, Conclusions of Law and Final Judgment memorialize the proceedings from two (2) judicial views of the Hoeppner property and six (6) purge and other hearings before three (3) circuit court judges. These non-final orders involve purge conditions for the contempt to which the Hoeppners stipulated in the Order entered September 24, 2010. R. 22, A-App. 131. The September 24, 2010 Stipulated Order granted the Hoeppners nine (9) additional months to bring their property into compliance with the Town's Zoning Ordinance. *Id.,* ¶ 3. The September 24, 2010 Stipulated Order also provided that the Hoeppners were to remove various tractors, pallets and other items off of the property or out of view from the right-of-way. Importantly, the Hoeppners agreed that:

> The Defendants hereby stipulate to a finding of contempt, and this Court Order is hereby considered the purge attempt by the Defendants. Any further hearings shall be limited solely to the punishment for the contempt.

R. 22, ¶ 7.

This Order further stated that:

> Upon the Defendants' failure to comply with any aspect of this Order, the Town shall be granted all relief and may seek all remedies for the contempt. In all other respects, the Defendants' parcels shall conform to the requirements of the district for which said parcels are zoned.

R. 22, ¶ 9.

On October 1, 2010, a hearing was held to determine compliance with the September 24, 2010 Stipulated Order. R. 23, R. 78. At that hearing, a dispute arose between the Town and the Hoeppners concerning compliance with the September 24, 2010 Stipulated Order. R. 23. Consequently, on October 6, 2010, the circuit court viewed the property and ordered an additional hearing to rule upon compliance with the September 24, 2010 Stipulated Order. R. 28. The follow-up purge hearing on November 17, 2010 was adjourned because of the Hoeppners' first appeal. R. 79.

After the Hoeppners' first appeal was dismissed, the circuit court held an additional purge hearing on February 15, 2011 and ordered the Hoeppners to pay a forfeiture of $100.00 per day from October 6, 2010 until the contempt was purged. R. 32, R. 80, R. 81, and R. 82.

On April 25, 2011, the circuit court held yet another purge hearing to review compliance with the September 24, 2010 Stipulated Order. R. 83, p. 2. At this hearing, the Hoeppners' counsel represented that the Hoeppners were in compliance and had fully purged their contempt. R. 83, p. 3. Counsel for the

Town referred to April 18, 2011 photographs showing twenty-nine (29) tractors and represented that the Town Chair "went by…today, and there were more than the 15 tractors there [referring to the Hoeppner property]". *Id.* Then, the Hoeppners' counsel back-peddled on the tractors, eventually seeking to blame the tractor removal delays on the weather and medical problems with both Mr. and Mrs. Hoeppner and agreed to have the fourteen (14) tractors moved off the Hoeppner property within one (1) week. R. 83, pp. 3-6. There were also issues relating to the location of the pallets on the property raised at this hearing. The Hoeppners' counsel represented to the circuit court that, "[t]hose [pallets] have been moved since all day yesterday and today. I have pictures showing that they have been moved way back…." *Id.*, p. 3. Counsel for the Town again questioned compliance. *Id.*, p. 4. The Town Chair stated that, "[i]f the pallets were back the 60 feet from the right-of-way, that's the agreement. As of 11:23 this morning, they were not moved back." *Id.*, p. 5. Although the circuit court declined to increase the $100 forfeiture, the circuit court admonished the Hoeppners, "[s]chedule it [the adjourned hearing] in a week to ten days. That's going to be your last opportunity to cure…. But believe me, there is going to be bigger sanctions than that [$100 per day] if this isn't done within the ten days." *Id.*, pp. 7-8.

The next review of the Hoeppners' compliance began on May 9, 2011 but was adjourned after less than fifteen (15) minutes. A dispute arose concerning the

location of the right-of-way relative to the Hoeppners' property. This resulted in the circuit court allowing the Hoeppners to have a survey at their expense. Thus, another hearing date was set. R. 84.

The continued purge hearing was conducted on May 24, 2011. R. 85, A-App. 136. Once again, counsel for the Hoeppners' represented that he believed that the Hoeppners were in full compliance with the September 24, 2010 Stipulated Order, R. 85, p. 6, A-App. 141. Again counsel for the Town disputed the representation and raised the issue of whether the nine (9) months for full compliance had expired on May 24, 2011 or would expire on June 24, 2011 (depending on whether the nine (9)-month deadline started on the date of the hearing or the date of entry of the Order from the hearing). R. 85, p. 10, A-App. 145.

The circuit court decided to personally view the Hoeppner property and did so. The transcript, R. 85, p. 11, A-App. 146, *et seq.*, contains the circuit court's findings of non-compliance and the circuit court's determination that the Hoeppners would have until June 24, 2011 to entirely remove all but fifteen (15) of the tractors and farm equipment from the property (versus moving the farm equipment to the easterly edge of the westerly parcel). See R. 85, p. 12, lines 18-22, A-App. 147. This transcript also contains the circuit court's determinations that the forfeiture amount be increased from $100 to $500, "as of today"; that the Town would be authorized "to remove whatever property is not in compliance";

that the Judgment would end on the day of compliance; and that counsel for the Town should draft the Order for the circuit court's signature after providing Hoeppners' counsel an opportunity to review and object if necessary. R. 85, pp. 15-18, A-App. 150-153.

As can be seen, the May 24, 2011 Order authorized the Town, its agents, officers, employees and/or persons and companies contracted by the Town, after June 24, 2011, to enter upon the Hoeppners' property and remove or cause to be removed all of the items required to be removed by the circuit court's Stipulated Order of September 24, 2010 and dispose of the property as requested in the Plaintiff's original Motion for Contempt of July 28, 2010. R. 19, ¶ 4. This motion sought authority for the Town to turn over the items which the Town determined in good faith to be saleable to an auctioneer selected by the Town to conduct a public sale and authorizing the Town to dispose of any items which the Town determined in good faith to be junk. R. 36.

After the Town had removed the property from the Hoeppners' parcels pursuant to the May 24, 2011 Order but before the Town auctioned the items removed, the Hoeppners brought a Motion to Stay the public auction. R. 38. On July 21, 2011, the circuit court heard the Hoeppners' Emergency Motion to Stay Auction and denied the same. R. 47, R. 86.

After the public auction, the Town brought a Motion for Judgment to Recoup Costs and Expenses for Compliance with the circuit court's May 24, 2011 Order. R. 48, 49.

On January 23, 2012 and May 9, 2012, the circuit court addressed a plethora of motions, eventually addressing the Town's Motion to Recoup Costs and Expenses for Compliance with the May 24, 2011 Order. R. 84, 89 and 90. Insofar as is relevant at this stage, the circuit court's May 9, 2012 Order determined that the Town was entitled to a judgment to recoup costs, expenses and fees for the removal and auction of property in compliance with the May 24, 2011 Order. R. 57, A-App. 159. While the May 9, 2012 Order also addressed the Town's right to again inspect the Hoeppners' property, the circuit court subsequently ruled in its April 5, 2013 Findings of Fact, Conclusions of Law and Final Judgment that the Hoeppners' property was deemed in compliance with the contempt order as of July 11, 2011. R. 70, A-App. 173.

Ultimately, the circuit court concluded this matter on April 5, 2013. At the time of that hearing, the circuit court modified previous Orders to deem the Hoeppners in compliance with the circuit court's Order as of July 11, 2011. R. 96. This is the date when the Town last entered onto the Hoeppners' property to bring it into compliance with the September 24, 2010 Stipulated Order for contempt. This appeal follows.

ARGUMENT

The Circuit Court Appropriately Exercised Its Contempt Power In Approving The Purge Conditions In The September 24, 2010 Stipulated Order As Modified and Reaffirmed In The May 24, 2011 Order.

The circuit court appropriately exercised its discretion in approving the purge conditions set forth in the September 24, 2010 Stipulated Order. The circuit court also properly exercised its contempt powers in modifying and reaffirming the May 24, 2011 Order. The purge conditions in both Orders served remedial aims, were within the Hoeppners' ability to fulfill and were reasonably related to the cause or nature of the contempt.

In *Frisch v. Henrichs*, 2007 WI 102, 304 Wis.2d 1, 736 N.W.2d 85, the Supreme quoted *Larsen v. Larsen*, 165 Wis.2d 679, 478 N.W.2d 18 (1992), concerning the parameters for purge conditions in civil contempt as follows: "[T]he purge condition should serve remedial aims, the contemnor should be able to fulfill the proposed purge, and the condition should be reasonably related to the cause or nature of the contempt." *Frisch*, 2007 WI 102, ¶ 64.

In this case, the original purge conditions arose from the September 24, 2010 Stipulated Order, R. 22, A-App. 121, and the updated Order of May 24, 2011. R. 36, A-App. 155. The September 24, 2010 Stipulated Order contains specific purge conditions and granted a nine-month period for the removal of all farm equipment from the Hoeppners' property with a third (30)-day time window

for interim clean-up. Since the Hoeppners stipulated to the purge conditions initially, it is problematical how they can now raise an issue about whether their compliance was within their power to perform.

The Hoeppners concede that the May 24, 2011 Order, "gave the Hoeppners the right to purge their contempt." Appellants' Brief at p. 7. Apparently, the Hoeppners do not contest the propriety of the purge conditions set forth in the September 24, 2010 Stipulated Order or the May 24, 2011 Order. Likewise, the Hoeppners are not contesting the $100 per day forfeiture or the $500 per day forfeiture imposed in the May 24, 2011 Order. The Hoeppners contend that, as a matter of law, the circuit court was required to hold another purge compliance hearing prior to permitting the Town to enter onto the Hoeppners' property. Appellants' Brief, pp. 6-9. As the May 24, 2011 Order states:

> 3. The Town, its agents, officers, employees and/or persons and companies contracted by the Town are authorized after June 24, 2011, to enter upon the Defendants' premises and remove or cause to be removed all farm equipment, pallets, and other material required by the Court's Order signed September 24, 2010, to be removed and/or which in any respect is in violation of said Order and to dispose of the said property as set forth in paragraph 4 of Plaintiff's Motion to the Court dated July 28, 2010.
>
> 4. That the parties shall set a future hearing in this matter for the award of the Town's costs including attorney's fees.

R. 36, A-App. 156. Apparently, the Hoeppners argue that the foregoing provisions should have been the subject of a seventh purge hearing.

The Hoeppners also contend that the circuit court erred in not holding a seventh purge hearing, after May 24, 2011, prior to the Town's entry on the Hoeppners' property, to determine whether the purge conditions were within the Hoeppners' power to perform. Appellants' Brief at p. 7, Argument I. B. The Hoeppners' argument ignores their Stipulation to the purge conditions in the September 24, 2010 Stipulated Order as well as the statements made by the Hoeppners' counsel on May 24, 2011:

(1) Regarding the pallets, counsel for the Hoeppners said, "… but these things can be moved." R. 85, p. 17, A-App. 152.

(2) In response to the circuit court's finding the existing farm equipment was moved to the edge of the Hoeppners' property and the circuit court's reminder that all of the equipment was to be removed (entirely) within nine (9) months, counsel for the Hoeppners simply said that, "[a]s to that equipment, there has been nothing new brought on there." R. 85, p. 13, A-App. 148.

(3) Counsel for the Hoeppners explained, prior to the circuit court's view, the Hoeppners' plans about selling, advertising, moving and storage arrangements off of the Hoeppners' property. R. 85, p. 7-9, A-App. 142-44.

The purge conditions were not imposed on the Hoeppners following a contested contempt hearing. The Hoeppners specifically agreed to the purge

conditions in August of 2010. Their counsel represented to the circuit court in May, 2011 that moving pallets and farm equipment were not a problem and that the Hoeppners had a comprehensive plan to attain full compliance within thirty (30) days. Given this record, the circuit court could and did properly exercise its discretion in designing appropriate contempt sanctions to terminate the Hoeppners' continuing contempt. See *City of Wisconsin Dells v. Dells Fireworks,* 197 Wis.2d 1, 539 N.W.2d 916 (Ct. App. 1995).

The Court Properly Exercised Its Discretion In Fashioning A Contempt Remedy At The May 24, 2011 Hearing, Including Thirty (30) Additional Days For The Hoeppners To Purge And Permission For The Town To Clean-Up The Property And Conduct Auction.

At the May 24, 2011 hearing, the circuit court addressed the parties' dispute about purge compliance by conducting a *second* judicial view of the Hoeppners' property. Initially, the Hoeppners' counsel flatly represented that the Hoeppners were in "full compliance". R. 85, p. 6, A-App. 141. The circuit court inquired of the Hoeppners' counsel what the plan was for clean-up at the end of nine (9) months. Counsel explained the plans for advertising, moving and paying for storage. R. 85, p. 7-9, A-App. 142-44. However, the Town's counsel disputed purge compliance and the circuit court deemed a view of the premises for a second time was necessary. R. 85, pp. 9-11, A-App. 144-46.

Upon return from the judicial view of the Hoeppners' property, the circuit court made findings concerning the interim purge compliance (as of May 24, 2011) as well as the final purge compliance deadline in thirty (30) days (June 24, 2011), nine (9) months after September 24, 2010. R. 85, pp. 11-18, A-App. 146-53.

The Hoeppners did not challenge any findings of the circuit court after its view of their property on May 24, 2011 but do challenge the circuit court's use of its contempt power.

On appeal, the appellate court reviews the circuit court's use of contempt powers to determine if the circuit court properly exercised its discretion. *City of Wisconsin Dells v. Dells Fireworks*, 197 Wis.2d 1, 23, 539 N.W.2d 916 (Ct. App. 1995); *see also Benn v. Benn*, 230 Wis.2d 301, 312, 602 N.W.2d 54 (Ct. App. 1999).

The issues, then, become whether the circuit court's exercise of discretion was proper or erroneous and whether the record shows a process of reasoning dependent on facts of record and a conclusion based on a logical rationale founded on proper legal standards. *Estate of Burgess v. Peterson*, 214 Wis.2d 180, 186-87, 571 N.W.2d 432, 436 (Ct. App. 1997).

As reflected in the transcript and Order resulting from the May 24, 2011 hearing, R. 85, pp. 6-17, A-App. 141-52; R. 36, the circuit court heard counsels' arguments and statements and, then, conducted its second view of the property.

The circuit court noted that there "were many, many more than 40 pallets" located on the residence parcel. R. 85, p. 12, A-App. 147. The circuit court also noted that, "[t]here were more than 40 pallets when I was on there the last time. There is [sic] more pallets now than there were the last time." R. 85, p. 17, A-App. 152. The circuit court also found that the pallets on the parcel east of the residence were to be sixty (60) feet from the edge of the right-of-way and out of sight. The circuit court estimated the pallets were up to sixteen (16) feet from the edge of the right-of-way. R. 85, p. 12, A-App. 147. The circuit court also noted compliance with moving the farm equipment to the east end of the westerly parcel, as far north as possible, but noted that "all of that equipment is to be removed within nine months of the date of this order [by June 24, 2011]…." R. 85, pp. 12-13, A-App. 147-48.

The circuit court also addressed lack of compliance of moving or storing pipe, wire and wood, etc. where it was not visible from rights-of-way and noted "the defendant continues to be in contempt." R. 85, p. 13, A-App. 148. After noting the numerous non-compliance items, the circuit court concluded that the $100 per day forfeitures "are not adequate, and I need to design a sanction to terminate this continuing contempt…. Apparently a hundred dollars a day isn't enough." R. 85, pp. 14, 17, A-App.149, 152.

Accordingly, the circuit court concluded,

> I can see where some things have been done, but to say there is compliance, there isn't. The real significant date is one month from today. I am increasing the forfeiture as of today to $500 per day; and as of September 24th [sic June 24], if the property

> hasn't been removed as is guaranteed under this, then I will be authorizing the town to remove whatever property is not in compliance…. I am giving him actually in effect another month. The forfeitures are going to accumulate….

R. 85, p. 15, 17, A-App. 150, 152.

Counsel for the Hoeppners only asked for clarification on one issue "[o]nce [Mr. Hoeppner] is in compliance, the township has no authority to come and set foot on that property." R. 85, p. 17, A-App. 152. Importantly counsel did not request any hearing about purge compliance in June, 2011 as counsel, now, is asserting was a violation of the Hoeppners' right to due process. The circuit court's response to counsel for the Hoeppners was that, "I agree…. [The judgment will stop] [w]hen there has been compliance." R. 85, p. 17, A-App. 152.

There is nothing in the Record to show any objection to the Town entering on the Hoeppners' property without another hearing.

On June 24, 2011, the Hoeppners filed a Motion to Vacate Stipulation and to Vacate Fines as well as an Emergency Motion to Stay All Orders Pending a Hearing Upon Defendant's Motion to Withdraw Stipulation and Vacate Fines. R. 37, 38. Instead of requesting a hearing or notifying the circuit court of "full compliance" with the purge, the Hoeppners elected to attempt to reopen and relitigate their Stipulation.

Accordingly, the Record establishes that after observing the Hoeppners' property for a second time, the circuit court properly exercised its discretion in

increasing daily forfeiture, authorizing the Town to enter on to the Hoeppner property, but granting the Hoeppners another thirty(30) to purge their contempt.

This Court Should Apply The Waiver Rule, No-Authority Cited Rule, And Inadequate Development Rule To Hoeppners' Argument That Yet Another Purge Hearing After The May 24, 2011 Hearing Was A Condition Precedent To Authorizing The Town To Clean Up The Hoeppners' Property.

The Hoeppners did not present their argument for another purge hearing to the circuit court. The Hoeppners do not cite any authority for this argument and have provided no legal reasoning for the additional purge hearing. For the first time on appeal, the Hoeppners argue that the circuit court was required to hold a seventh purge hearing to determine whether they were in compliance with the purge condition set forth in September 24, 2010 Stipulated Order and whether the purge conditions "were within the power of the Hoeppners'…." Appellants' Brief, p. 7, Argument I. B.

While the May 24, 2011 hearing was the last hearing before the Town carried out the authorization granted by the circuit court, the Hoeppners baldly assert that an additional motion for contempt and hearing was required with no citation to authority or any legal reasoning.

Likewise, the Hoeppners baldly reference *Messner v. Briggs & Stratton Corp.*, 120 Wis.2d 127, 353 N.W.2d 363 (Ct. App. 1984), without developing any argument about how due process challenges to police power legislation relate to enforcement of zoning ordinances with the circuit court's civil contempt power.

At the May 24, 2011, the only issue relative to another hearing that was raised was by the circuit court and counsel for the Town:

> THE COURT: Obviously we will have a follow-up hearing with whoever is sitting here at that time.
>
> MR. VANDER WAAL: What's the purpose of the follow-up? To argue about the costs --
>
> THE COURT: Costs.

R. 85, p. 16, A-App. 151.

Counsel for the Hoeppners was silent about the follow-up hearing; although, he did seek clarification of the circuit court's ruling concerning the termination of the Town's authority to set foot on the Hoeppners' property on the day of compliance. R. 85, p. 17, A-App. 152.

Issues not considered by the circuit court ordinarily are deemed waived and will not be considered by the Court of Appeals. *Jackson v. Benson*, 218 Wis.2d 835, 901, 578 N.W.2d 602, 630-31 (1998); *Noack v. Noack*, 149 Wis.2d 567, 575, 439 N.W.2d 600 (Ct. App. 1989). However, more significant than raising new issues on appeal is the failure to cite any authority, develop any argument or legal analysis which bridges the gap between simply stating facts and asserting conclusions. This court should decline to consider these issues as inadequately briefed. *In re Guardianship of O. G. M-K*, 2010 WI App 90, ¶ 20, 327 Wis.2d 749, 763-64, 787 N.W.2d 848 (arguments inadequately developed); *State v. Lindell*, 2000 WI App 180, 238 Wis.2d 422, 438, 617 N.W.2d 500, 507, aff'd

2001 WI 108 (undeveloped legal reasoning); *Roehl v. American Family Mut. Ins. Co.*, 222 Wis.2d 136, 148-49, 585 N.W.2d 893, 898 (Ct. App. 1998) (state facts and assert conclusion without legal analysis to bridge the gap).

In sum, the Hoeppners, prior to this appeal, never presented to the circuit court their argument that a second purge hearing was necessary. In addition, the Hoeppners cite no authority for this argument and have provided no legal reasoning for the additional purge hearing. As such, this Court should apply the waiver rule, no authority cited rule and its inadequate development rule as set forth above.

Due Process Does Not Require Multiple Hearings With Multiple Notices In Civil Contempt Cases But Only An Opportunity To Be Heard In Court At A Meaningful Time And In A Meaningful Manner Upon Proper Notice.

Even if this Court entertains the Hoeppners' due process argument made for the first time on appeal, there is no merit to the argument. "'[A]n opportunity to be heard in court at a meaningful time and in a meaningful manner' satisfies procedural due process." *City of South Milwaukee v. Kester*, 2013 WI App 50, ¶¶ 13-14, 347 Wis.2d 334, 830 N.W.2d 710; *Noack v. Noack*, 149 Wis.2d 567, 571-72, 439 N.W.2d 601 (Ct. App. 1989). In *Noack*, the court of appeals turned away a due process challenge for a contemnor who was found in contempt *in absentia*, finding that he had an opportunity to be heard. 149 Wis.2d at 571-72.

The appellate contempt decisions reference due process but provide no support for the Hoeppners' due process argument. In *Larsen v. Larsen*, *supra*, the Supreme Court explained:

> Due process is what process is due under the circumstances. Civil contempt may be purged by the contemnor's complying with the court order which led to the contempt. Circuit courts are not otherwise required to grant purge conditions. However, we agree with the court of appeals that it is within the circuit court's inherent authority to grant purge conditions which allow contemnors to purge their contempt outside of complying with the court order which led to the contempt. (Citations omitted.)

165 Wis.2d at 685.

In *Diane K. J. v. James L. J. (In Re the Paternity of CY C.J.)*, 196 Wis.2d 964, 970, 539 N.W.2d 703 (Ct. App. 1995), the court explained that due process in civil contempt cases is largely taken care of with compliance to the original order or with the purge conditions:

> With a remedial sanction, however, the contemnor's ability to avoid the sanction, through compliance with the original order or satisfaction of the purge condition, obviates the need for due process.

196 Wis.2d at 970.

Despite the limited due process provisions applicable in civil contempt, there is a line of cases which address the right to counsel under the 6th and 14th Amendments to the U.S. Constitution in civil contempt actions brought by the state. See *State v. Pultz*, 206 Wis.2d 112, 119-23, 556 N.W.2d 708 (1996) (state's injunction re: picketing medical clinic), citing *Ferris v. State ex rel. Maass*, 75 Wis.2d 542-43, 249 N.W.2d 789 (1977) (DNR enforcement).

The Town contends that the Hoeppners neither raised due process in the circuit court nor developed any argument about why due process requires another hearing beyond the six (6) contempt hearings held: August 24, 2010; October 1, 2010; November 17, 2010; February 15, 2011; April 25, 2011; and May 9 and 24, 2011. However, there is nothing in the record showing that the Hoeppners were not afforded a meaningful opportunity to be heard in a meaningful manner and at a meaningful time.

CONCLUSION

The circuit court properly exercised it discretion in conducting at least six (6) contempt hearings before allowing the Town to proceed with the clean-up of the Hoeppner property. The Hoeppners have failed to demonstrate any misuse of the circuit court's discretion. The Hoeppners further fail to cite any authority requiring a seventh purge hearing. The Hoeppners do not develop any legal argument as to why due process makes a seventh purge hearing necessary.

Accordingly the Town asks this Court to affirm the circuit court's April 5, 2013 Findings of Fact, Conclusions of Law and Final Judgment.

Respectfully submitted this 17th day of January, 2014.

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CERTIFICATION

I hereby certify that:

This brief conforms to the rules contained in Wis. Stats. §809.19(8)(b) and (c) for a brief produced with a proportional serif font (Times New Roman 13 pt for body text and 11 pt for quotes and footnotes). The length of this brief, including the statement of the case, the argument, and the conclusions and excluding other content, is 4,935 words.

The text of the electronic copy of this brief is identical to the text of the paper copy.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 17th day of January, 2014.

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WITH RULE WIS. STATS. §809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

Dated this 17th day of January, 2014.

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