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WISCONSIN COURT OF APPEALS

DISTRICT II

CLERK OF COURT OF APPEALS
OF WISCONSIN

2013AP001398

CIRCUIT COURT CASE NO. 1999PA000270

In re the finding of contempt in

In re the paternity of A.M.P.

STATE OF WISCONSIN and KIMBERLY A. UTTEBROEK,

Petitioner-Respondents

v.

MARK R PETERSEN,

Respondent-Appellant.

PETITIONER-RESPONDENT'S SUPPLEMENTAL APPENDIX TO RESPONSE
BRIEF FOR APPEAL FROM THE CIRCUIT COURT OF WINNEBAGO
COUNTY, JUDGE JOHN J JORGENSEN PRESIDING

Kathleen M Diedrich
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TABLE OF CONTENTS

STATEMENT ON ORAL ARGUMENT

..... ■

STATEMENT ON PUBLICATION

..... ■

TABLE OF AUTHORITIES

.....iv

ARGUMENT

1.

APPELLANT IS NOT ENTITLED TO A NEW EVIDENTIARY HEARING, THE HEARING IN WHICH A STAY OF JAIL SENTENCE WAS LIFTED FOR FAILING TO PAY SUPPORT, AS THE APPELLANT WAS AWARDED A FAIR HEARING WHERE ALL EVIDENTIARY RIGHTS WERE ALLOWED .

.....1

2.

THE APPELLANT CAN NOT SHOW ANY LEGAL ERROR AT THE HEARING AS SUCH THAT WOULD ALLOW FOR A NEW HEARING .

.....3

CONCLUSION

.....4

ATTACHMENTS

1. CERTIFICATION OF FORM AND LENGTH
2. BRIEF APPNDIX CERTIFICATION
3. CRTIFICATION OF ELECTRONIC FILING
4. CERTIFATION OF MAILING

APPENDIX (SEPARATE DOCUMENT)R-Ap:1, 2

Findings and Order, filed
December 8, 2011R-Ap:1

Post-Conviction Motion Transcript of
May 15, 2013R-Ap:2:1-11



STATEMENT ON ORAL ARGUMENT

Petitioner-Respondent, State of Wisconsin (hereinafter, State), through its attorney, Kathleen M Diedrich, is not requesting oral argument, as the undersigned believes that the issue will be adequately briefed herein.



STATEMENT ON PUBLICATION

The issues raised in this appeal and response will be adequately briefed herein, and the state does not believe publication is necessary.

TABLE OF AUTHORITIES

Wisconsin Statutes

§908.03 (6)2

§908.03 (10)2

III

ARGUMENT

1.

APPELLANT IS NOT ENTITLED TO A NEW EVIDENTIARY HEARING, THE HEARING IN WHICH A STAY OF JAIL SENTENCE WAS LIFTED FOR FAILING TO PAY SUPPORT, AS THE APPELLANT WAS AWARDED A FAIR HEARING WHERE ALL EVIDENTIARY RIGHTS WERE ALLOWED.

Appellant-Respondent's basis for appeal rests on his contention that the trial court erred in relying on hearsay for purposes of lifting the stay and committing the appellant-respondent to jail for 120 days for contempt. The Appellant-Respondent has misstated the facts.

The appellant-Respondent was found in contempt on December 5, 2011. The Appellant-Respondent was committed to 120 days in the county jail as a remedial sanction for that finding of contempt. (R-Ap:1).

The trial court stayed that commitment pending compliance with court ordered purge conditions and set a review date on April 9, 2012. The review date was scheduled to determine whether the Appellant-Respondent had

purged his contempt as ordered. It was rescheduled several times. (A-Ap:2 at 10) .

The review hearing was held on June 7, 2012. At that hearing the Appellant-Respondent admitted that he had not followed the court's ordered purge conditions as issued in December 2011. (Id. at 11-12) In spite of those admissions, the court asked the state to proceed with testimony. The state called the case specialist in charge of the file.

Appellant-Respondent's argument is that the case-specialists testimony was hearsay and therefore constitutes a legal error.

The case specialist's testimony is allowed under the exceptions to the hearsay rule pursuant to 908.03(6) & (10). The case specialists testified he was the case specialist assigned the case in question and that he had the file in front of him that he keeps in the ordinary course of business in conducting his duties. (A-Ap:2 at 14). The specialist was familiar with the file, had the file in front of him as he was giving testimony in case he needed to refer to it during questioning. (Id). Following the case specialist testimony, the court allowed the Appellant-Respondent to offer a defense.

The Appellant-Respondent entire recitation as to his reasons for not following the court order had little to do with the order for child support. (Id. at 17-20)

2.

THE APPELLANT CAN NOT SHOW ANY LEGAL ERROR AT THE HEARING AS SUCH THAT WOULD ALLOW FOR A NEW HEARING.

Appellant-Respondent claims that the Court did not address his claim of ineffective assistance of counsel due to there being no remedy available. However, this is incorrect. The trial court denied the Appellant-Respondent's motion for new hearing finding he already had his day in court and the proper rules were followed and only secondly that there was no remedy. (R-Ap:2,9).

It was Appellant-Respondent's counsel that did not pursue the ineffective assistance of counsel claim. The Court merely agreed. (Id. at 10).

The Appellant-Respondent asserts that the Court must apply the Strickland two-part test as the Circuit Court's sole basis for lifting the stay. (Appellant-Respondent's Brief p. 8)

Even if the Appellant-Respondent's counsel had made an error by not objecting to the testimony of the case

specialist, the error prejudiced the defendant and that but for that error, the stay would not have been lifted.

However, the court clearly reviewed the history of the case and the statements made by the Appellant-Respondent at the time of hearing in addition to the testimony of the case specialist, in its order to lift the Appellant-Respondent's stayed sentence.

CONCLUSION

The state respectfully requests the court affirm the order of the Circuit Court.

Respectfully Submitted,

Dated this day of November,

4

2013. Kathleen M Diedrich

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1.

CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(19)(8)(b) and (c), Stats., for a brief produced using the following font:

r:l, Monospaced font: 10 characters per inch; double-spaced; 1.5-inch margin on left side and 1-inch margin on the other 3 sides. The length of this brief is _____ pages.

Dated this j!f day of November 2013

A handwritten signature in cursive script, appearing to read 'Kathleen M. Diedrich', written over a horizontal line.

Kathleen M Diedrich

RESPONDENT'S SUPPLEMENTAL APPENDIX CERTIFICATION

I hereby certify that filed with this response brief, either as a separate document or as part of this brief, is a supplemental appendix that complies with Wis. Stat. § 809.19 (2)(a) and that contains, at a minimum:

- (1) Table of contents;
- (2) The findings and opinion of the circuit court;
- (3) A copy of any unpublished opinion cited under Wis. Stat. § 809.23(3) (a) or (b); and
- (4) Portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 14 day of November, 2013.

Signed: Kathleen M. Diedrich

Kathleen M Diedrich

3.

CERTIFICATE OF COMPLIANCE WITH STAT. §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.

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

Dated this j!f day of November, 2013 .



4.

CERTIFICATION OF MAILING

I certify that this brief and appendix was deposited in the United States mail for delivery to the Clerk of Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, postage pre-paid.

Dated this_1ff_ day of November, 2013.

Signature:

A handwritten signature in cursive script, appearing to read 'Kathleen M. Diedrich', written over a horizontal line.

Kathleen M Diedrich