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Appeal No. 2014AP001947  
(Eau Claire County Case No. 06PA163)

IN RE THE FINDING OF CONTEMPT IN RE THE  
PATERNITY OF M.J.F.-S.:

MICHELLE L. STEELE AND STATE OF WISCONSIN,

Petitioners-Respondents,

v.

JASON G. FOSTER,

Respondent-Appellant.

-----  
**Appeal From The Order re Contempt Entered In The  
Circuit Court For Eau Claire County,**

**The Honorable Jon M. Theisen, Circuit Judge, Presiding**

-----  
**BRIEF AND APPENDIX OF  
RESPONDENT-APPELLANT**  
-----

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## **ISSUES PRESENTED FOR REVIEW**

- I. WHETHER THE CIRCUIT COURT ERRED IN FAILING TO FIND THAT THE AFFIDAVIT FOR CONTEMPT UNDERLYING THE ORDER TO SHOW CAUSE WAS VAGUE.
- II. WHETHER THE CIRCUIT COURT ERRED IN FINDING MR. FOSTER IN CONTEMPT.

## **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

Oral argument is appropriate in this case under Wis. Stat. (Rule) 809.22. Appellant's arguments clearly are substantial and do not fall within that class of frivolous or near frivolous arguments concerning which oral argument may be denied under Rule 809.22(2)(a).

Publication is not requested under Wis. Stat. (Rule) 809.23.

## **STATEMENT OF THE CASE**

This case arises from a paternity case commencing in 2006. The history of the case (including the post-conviction motion hearing) is very complex, but the only issue regarding this motion is the finding of remedial contempt, which was heard on September 16, 2013 and filed on September 19, 2013 (R. 132), as well as the order denying in part Mr. Foster's Post-Conviction Motion dated July 25, 2014 (oral decision on July 24, 2014) (R. 280).

It is important to note that on December 4, 2012, a previous hearing on an Order to Show Cause was heard for a motion filed in December 22, 2011 (R. 78, 79, 283). The court found Mr. Foster in contempt following the December 4, 2012 hearing in a written order filed December 21, 2012 (R. 283, 108).

Following the December 4, 2012 hearing and the filing of the written order regarding contempt on December 21, 2012, another Order to Show Cause was filed on August 13, 2013 (R. 128).

The August 13, 2013 Order to Show Cause was filed requiring Mr. Foster to appear and show cause as



to why he should not be found in contempt for failure to obey the orders of the court (Order to Show Cause 8/13/13).

Mr. Foster filed a pro-se Response to the Order to Show Cause on Child Support on September 12, 2013, but the response did not address the order to show cause; rather, it requested a modification of past and future child support (R. 130).

A hearing was held regarding the Order to Show Cause on September 16, 2013 (R. 151). The court found Mr. Foster in contempt and set purge conditions. The court did not modify the child support obligation, but did change it so that Mr. Foster could no longer only pay \$200 per month toward his full obligation (R. 151, p. 24:5-24:16).

A Remedial Contempt Order was filed September 19, 2013 (R. 132). Mr. Foster filed a Notice of Appeal on September 23, 2013 (R. 133). Shortly after the Remedial Contempt Order was filed, Mr. Foster filed a Respondent's Objection to Proposed Remedial Contempt Order on September 25, 2013 (R. 134). Mr. Foster filed some motions pending appeal, but

ultimately the Court of Appeals dismissed his appeal and construed it as a Notice of Intent to Appeal in Case No. 2013AP2133. Mr. Foster properly filed his Notice of Intent to Pursue Postdisposition Relief on November 21, 2013 (R. 259).

On May 29, 2014, Mr. Foster, via counsel, filed a Notice of Motion and Motion for Post-conviction Relief (R. 272). On July 24, 2014, a motion hearing was held (R. 285). On July 25, 2014, an order was filed denying in part and granting in part Mr. Foster's post-conviction motion (R. 280). On August 14, 2014, Mr. Foster timely filed his Notice of Appeal (R. 282).

### **RELEVANT STATUTES**

The relevant statute on appeal is Wisconsin Stats. Chapter 785 and section 767.305.

### **STATEMENT OF FACTS**

This case arises from a paternity case commencing in 2006. The history of the case involves many issues including paternity, custody, and child support. However, the only issues here are the findings regarding remedial contempt, which was heard on

September 16, 2013 and filed on September 19, 2013, as well as the issues raised in the postconviction motion, heard in the July 24, 2014 post-conviction motion hearing and July 25, 2014 written order regarding the July 24, 2014 hearing.

It is important to note that on December 4, 2012, a previous hearing on an Order to Show Cause was heard for a motion filed in December 22, 2011 (See R. 283). At the time of the December 4, 2012 hearing, Mr. Foster was ordered to pay \$200.00 per month toward his \$574 monthly child support obligation and \$25.00 monthly arrears payment (R. 283, 10:23-12:1). Although the Order to Show Cause was filed on December 22, 2011 and the court should have looked at the months *prior to* December 1, 2011, the Court looked at the previous 12 months prior to December of 2012 (R. 283, 12:7-13:15). The court used the total number of payments for the year and divided by 12 months to get the average monthly payment of \$119.88 per month. Since Mr. Foster did not average a \$200 minimum monthly payment as ordered, so the court found Mr. Foster in contempt and modified it so that he would pay

the full amount of the obligation rather than the \$200 minimum payment (R. 283).

Following the December 4, 2012 hearing and the filing of the written order regarding contempt on December 21, 2012, another Order to Show Cause was filed on August 13, 2013 (R. 128).

The August 13, 2013 Order to Show Cause was filed requiring Mr. Foster to appear and show cause as to why he should not be found in contempt for failure to obey the orders of the court (R. 128). The order to show cause was a standard order that was signed due to Affidavit for Contempt which states as follows:

"I am a representative of the Eau Claire County Child Support Agency, which represents the State of Wisconsin. I do not represent any individual in this action. The State of Wisconsin is a real party in interest in this case, pursuant to s. 767.205(2), Wis. Stats. According to the payment records maintained on the Kids Information Data System (KIDS), Jason G. Foster has failed to comply with the court order for support and owes an arrearage on this case. Jason G. Foster has an obligation to pay \$574.00 per month for child support, with an additional \$25.00 per month toward his outstanding accounts. The arrears as of August 12, 2013 are \$13,992.88, of which \$380.01 is owed to the State of Wisconsin. This affidavit is in support of the state's request for an Order to Show Cause for contempt, and to increase payments toward the outstanding accounts."

(R. 128). Mr. Foster filed a pro-se Response to the Order to Show Cause on Child Support on September 12, 2013, but the response did not address the order to

show cause; rather, it requested a modification of past and future child support (R. 130).

A hearing on the order to show cause was held on September 16, 2013. Tim Sullivan appeared as counsel for the child support agency and Mr. Foster appeared pro-se (R. 151, 2:3-2:9). It was noted that in addition to the county's filing of the order to show cause, Mr. Foster filed a motion for modification of support and a "motion for remission" (R. 151, 2:10-2:17). The court had the county proceed with its case first by calling Tiffany Lake, child support specialist (R. 151, 2:24-9:13). Ms. Lake testified regarding all of the payments made by Mr. Foster, which are listed in the table below in Exhibit 1 (R. 151, 2:24-9:13). Exhibit 1 was submitted showing Mr. Foster's payments towards child support and arrears from January, 2013 to July, 2013 (R. 131-A). The table below summarizes the exhibit and testimony from the hearing regarding the exhibit show that Mr. Foster has paid a total of \$4,293.23. His payments were made as follows:

Month	Current Support Payment	Arrears Payment
1/2013	\$263.45	\$0.00
2/2013	\$574.00	\$588.69
3/2013	\$0.00	\$0.00
4/2013	\$0.00	\$0.00
5/2013	\$50.00	\$2,717.09
6/2013	\$50.00	\$0.00
7/2013	\$50.00	\$0.00

(R. 131-A). This shows that the average monthly payment made by Mr. Foster from January 2013 to July 2013 was \$613.32.

During the hearing, Mr. Foster was unable to present his case to the court on September 16, 2013.<sup>1</sup> At the September 16, 2013 hearing, the circuit court ruled that “[t]he remaining contempt order remains in effect with the sentences on it and purge conditions. The court did not modify the child support obligation as

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<sup>1</sup>This issue was raised in the postconviction motion, and the circuit court granted this portion of Mr. Foster’s motion.

requested on September 16, 2013 (R. 151, p. 24:5-24:16).

A Remedial Contempt Order was filed September 19, 2013 (R. 132). It was ordered that since there was no substantial change in Mr. Foster's earning capacity, his motion for review of the child support obligation was dismissed. Mr. Foster was sentenced to 60 days to the Eau Claire County Jail. The sentence was imposed but stayed pending Mr. Foster's compliance with the following purge conditions:

- a) Pay \$574.00 per month current child support.
- b) Pay \$25.00 per month toward his outstanding accounts.
- c) Notify the Child Support Agency of any changes in address, income, employment or any other change in circumstances affecting this case within seventy-two hours.
- d) If unemployed, perform five verifiable job contacts per week and report them in writing to the Child Support Agency on a bi-weekly basis.

(R. 132). That in any month Mr. Foster fails to comply with any of these purge conditions a motion hearing will

be scheduled to request the stay of the 60 day jail sentence be lifted with notice to Mr. Foster. (R. 132). Mr. Foster filed his Notice of Appeal on September 23, 2013 (R. 133). Shortly after the Remedial Contempt Order was filed, Mr. Foster filed a Respondent's Objection to Proposed Remedial Contempt Order on September 25, 2013 (R. 134). Mr. Foster filed a Notice of Appeal on September 23, 2013(R. 133). Mr. Foster filed some motions pending appeal, but the Court of Appeals ultimately dismissed Mr. Foster's appeal and construed it as a Notice of Intent to Appeal in Court of Appeals case number 2013AP2133. Mr. Foster properly filed his Notice of Intent to Pursue Postdisposition Relief on November 21, 2013 (R. 259).

On May 29, 2014, Mr. Foster, through counsel, filed a Notice of Motion and Motion for Postconviction Relief (R. 272). The motion raised three issues for review: 1) That the order to show cause was vague and did not specify reasons or time periods to find Mr. Foster in contempt; 2) That Mr. Foster was denied due process when he did not get to present his case on the September 16, 2013 hearing; and 3) That Mr. Foster



was not in contempt because he did not willfully violate the order because his average payments exceeded the ordered amounts (R. 272). A hearing was heard on the postconviction motion on July 24, 2014 (R. 285). In addition, to confuse matters on this appeal, the State filed a Notice of Motion and Motion for Hearing asking that Mr. Foster serve 60 days in jail based on the September 19, 2013 order, which was heard at the same time as the postconviction motion, but the State's motion is not on appeal (R. 277, 285).

During the July 24, 2014 hearing, Mr. Foster's counsel raised the issue that the order to show cause was vague and did not specify the reasons or time periods to find Mr. Foster in contempt (R. 285, 12:15-15:13). Defense counsel argued that since Mr. Foster had made payments since the last order to show cause hearing in December of 2012, he would not be in contempt just for having an arrearage. Since the Order to Show Cause and affidavit did not state the months or amounts that Mr. Foster should be found in contempt, it was too ambiguous for Mr. Foster to be on notice for what time periods or why he would have been in

contempt (R. 285, 12:15-15:13; R. 272). The circuit court found that the affidavit and order to show contempt was sufficient despite the arguments raised by defense counsel (R. 285, 12:15-15:13).

Next, counsel argued that Mr. Foster was denied due process during the September 16, 2013 hearing because he was unable to present his side of the case during the hearing (R. 285, 15:23-16:8). The circuit court granted Mr. Foster's motion regarding the issue of due process at the September 15, 2013 hearing and allowed Mr. Foster to present evidence regarding his non-willful violation of the child support order (R. 285 16:9-18).

Mr. Foster took the opportunity to present evidence regarding his non-willful violation of the child support order next<sup>2</sup>, which was also evidence to support his third argument in his postconviction motion. The third issue in the postconviction motion was that Mr. Foster was not in contempt because he had used the circuit

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<sup>2</sup> Besides Mr. Foster's motion, the County had filed a different motion to lift the stay on the sentence that was imposed on September 16, 2013. Rather than hear those cases separately (one after the other), the circuit court asked that Mr. Foster present his case on both issues at the same time (R. 285, 16:20-18:20).

court's logic from the December of 2012 hearing, wherein the court averaged the payments to find him in contempt, and he thought that he had made sufficient payments when the payments were averaged for his support obligation to be paid in full (R. 272, p. 11).

During the July 24, 2014 hearing, Mr. Foster testified that he did not believe that he was in contempt because the history of his payments showed the average to be what he owed each month for the current and back support payments (R. 285, p. 20:13-21:14). Mr. Foster believed that the amounts he paid, plus the tax intercepts went towards the current amount of child support (R. 285, 25: 10-17). Mr. Foster did not understand that the large amounts that were paid for him on his behalf in one month would be applied to arrears; rather, he thought it would just go toward the following month's payment (R. 285, 31:21-32:21).

During Mr. Foster's testimony, the county argued that Mr. Foster was also responsible for the September payment; however, defense counsel objected stating that the order to show cause put Mr. Foster on notice only through July 2013 because the notice was filed on

August 12, 2013, and the payment would have been past due after August 31, 2013. However, the circuit court disregarded the objection (R. 285, 25:18-26:8, 55:24-56:12).

The circuit court eventually interjected and began to calculate child support payments. Defense counsel asked how the amounts were calculated, and the court did not use the arrearage payments despite the fact that the court had used the arrearage payments and tax intercepts in the December 2012 hearing to calculate Mr. Foster's amount paid (R. 285, 36:10-37:21; R. 283, 5:21-6:8, 12:2-13:12).

After Mr. Foster's testimony, the circuit court began to calculate Mr. Foster's monthly amount paid, which included argument from Defense counsel. Defense counsel argued that based upon the logic used to calculate the average support from the hearing in December of 2012, and that the time period (vague from the county's order to show cause and affidavit) should be between January 2013 (because the previous order was filed December 21, 2012) through July 2013 (because the notice was given on August 12, 2013

before the August payment would have been due), Mr. Foster would have understood that he paid \$613.32 per month on average) (R. 285, 56:6-58:10). Despite the fact that Mr. Foster thought he paid adequate support, if counsel's argument was correct, Mr. Foster would not be in contempt if the circuit court's previous calculation method from December 2012 was used. The circuit court would not reverse the finding of contempt from the September 16, 2013 (R. 285, 60:1-63:21).

## **ARGUMENT**

### **I. THE CIRCUIT COURT ERRED IN FAILING TO FIND THAT THE AFFIDAVIT FOR CONTEMPT UNDERLYING THE ORDER TO SHOW CAUSE WAS VAGUE AND DID NOT SPECIFY THE REASONS OR TIME PERIODS FOR MR. FOSTER TO SHOW WHY HE WAS IN CONTEMPT.**

#### **A. STANDARD OF REVIEW**

The U.S. Constitution amendment fourteen, section 1 provides in part: "No State shall ... deprive any person of life, liberty, or property, without due process of law". The applicability of a constitutional right is a question of law reviewed *de novo*. *State v. Phillips*, 218 Wis. 2d 180, 194-95, 577 N.W.2d 794 (1998).

## **B. ARGUMENT**

Due process demands at least a notice and a hearing in the contempt process, whether the proceeding is under statutory authority or is an exercise of the inherent power of the court to enforce its order by an in personam remedy. *O'Connor v. O'Connor*, 48 Wis. 2d 535, 543, 180 N.W.2d 735, 740 (1970). There must be a timely notice to the respondent that reasonably conveys information about the hearing so he can prepare a defense and make objections. See *Schramek v. Bohren*, 145 Wis. 2d 695, 704, 429 N.W.2d 501 (Ct. App. 1988). “As for the adequacy of notice, the notice must be reasonably calculated to inform the person of the pending proceeding and to afford the person an opportunity to object and defend his or her rights.” *Zimbrick v. Labor & Indus. Review Comm’n*, 235 Wis. 2d 132, 138, 613 N.W.2d 198, 201, 2000 WI App 106 (Wis. Ct. App. 2000) (citing *Schramek v. Bohren*, 145 Wis. 2d 695, 706, 429 N.W.2d 501 (Ct. App. 1988)). “The statutory requirements and due process [for a contempt finding under Wisconsin Statutes section 767.305] require that

the defendant be aware of what he must answer to so that he can be prepared to offer proof and explanation showing his good faith efforts to comply with the court's orders." *Dennis v. State*, 117 Wis. 2d 249, 261, 344 N.W.2d 128, 134 (Wis. 1984). In addition to the notice being inadequate, Mr. Foster must also show prejudice from the inadequate notice. *Zimbrick*, 235 Wis.2d at 139 (citing *Weibel v. Clark*, 87 Wis. 2d 696, 704, 275 N.W.2d 686 (1979)).

Foster was served with an affidavit and order to show cause (R. 128). The order to show cause was a standard order that was signed due to Affidavit for Contempt which states as follows:

"I am a representative of the Eau Claire County Child Support Agency, which represents the State of Wisconsin. I do not represent any individual in this action. The State of Wisconsin is a real party in interest in this case, pursuant to s. 767.205(2), Wis. Stats. According to the payment records maintained on the Kids Information Data System (KIDS), Jason G. Foster has failed to comply with the court order for support and owes an arrearage on this case. Jason G. Foster has an obligation to pay \$574.00 per month for child support, with an additional \$25.00 per month toward his outstanding accounts. The arrears as of August 12, 2013 are \$13,992.88, of which \$380.01 is owed to the State of Wisconsin. This affidavit is in support of the state's request for an Order to Show Cause for contempt, and to increase payments toward the outstanding accounts."

(R. 128).

Mr. Foster also responded to the order to show cause, but not with his reasons for any alleged violation, but with requests to modify support (R. 130). The Order to Show Cause and affidavit do not set forth what Mr. Foster must answer to in order to be prepared for contempt. It simply states the amount of Mr. Foster's current child support order and the current amount of arrears (R. 128). The testimony from the December 2012 hearing stated that Mr. Foster (at that time) owed \$16,121.38 in child support arrears (R. 183, 5:10-14). The order for contempt and affidavit shows a lesser amount of arrears, which was \$13,992.88 (R. 128). Interest would have also been applied from the time between the December 2012 hearing and the August 2013 affidavit. A listing of the monthly amount of his support obligation and the fact that there was an arrearage are not enough to show that Mr. Foster was in violation of the current support order at the time. Assuming Mr. Foster made payments since the last order to show cause hearing in December of 2012, he would not be in contempt for having an arrearage, especially with an order for him to pay the rate of \$25



per month toward arrears. The Order to Show Cause and affidavit do not state the months or amounts that Mr. Foster should be found in contempt for, and is therefore ambiguous.

It was especially clear that Mr. Foster could not have known which months after the December 21, 2012 order that he would have been in contempt for given that the circuit court and attorneys were not clear about which months would apply to determine whether Mr. Foster was in contempt. If licensed attorneys had to argue over which months applied during the postconviction hearing (see Statement of Facts above), it begs the question as to how Mr. Foster was supposed to determine how he would allegedly be in contempt. Having the knowledge of which months he would need to provide a defense for was critical in determining his defense and what documentation he might need to obtain in order to prove his non-contempt. Being unclear of the months or other specific facts was clearly prejudicial when he ultimately was able to present his case during the post-conviction motion hearing.

**II. THE CIRCUIT COURT ERRED IN FINDING MR. FOSTER IN CONTEMPT. MR. FOSTER IS NOT IN CONEMPT OF COURT REGARDING HIS CHILD SUPPORT OBLIGATIONS BECAUSE HE BELIEVED HE WAS IN COMPLIANCE WITH THE COURT'S ORDER AS HIS PAYMENTS WERE MADE SIMILARLY TO THE COURT'S PREVIOUS RATIONALE IN FINDING HIM IN CONTEMPT IN DECEMBER OF 2012. HE DID NOT WILLFULLY VIOLATE THE ORDER.**

**A. STANDARD OF REVIEW**

An appellate court reviews a trial court's use of its contempt power to determine whether the court properly exercised its discretion. *Benn v. Benn*, 230 Wis. 2d 301, 308, 602 N.W.2d 65 (Ct. App. 1999). The standard of review for remedial contempt is erroneous exercise of discretion. *Krieman v. Goldberg*, 214 Wis. 2d 163, 169, 571 N.W.2d 425, 428 (Ct. App. 1997). This court will sustain discretionary determinations if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175, 184 (1982). The trial court's discretionary determination will be sustained as long as it is the product of a rational mental process based on

the reasoned application of the appropriate legal standard to the relevant facts. *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, 326 N.W.2d 727, 732 (1982).

## **B. ARGUMENT**

In a remedial contempt proceeding, the movant must make a prima facie showing of a violation of a court order. *Noack v. Noack*, 149 Wis. 2d 567, 575, 439 N.W.2d 600 (Ct. App. 1989). It is then the alleged contemnor's burden to demonstrate that his or her conduct was not contemptuous. *Id.* The mere failure to comply with a court order is an insufficient basis for a contempt finding. See *Benn* at 309. However, a person may be held in contempt if that failure is willful and contemptuous and not due to an inability to comply with the court order. *Id.* at 309-310.

Contempt requires intentional disobedience of a court order. See sec. 785.01 (1)(b), Wis. Stat. *U.S. S.E.C. v. Hyatt*, 621 F.3d 687 (2010), 77 Fed.R.Serv.3d 565 states "to prevail on a request for a contempt finding, the moving party must establish by clear and convincing evidence that (1) a court order sets forth an

unambiguous command; (2) the alleged contemnor violated that command; (3) the violation was significant, meaning the alleged contemnor did not substantially comply with the order; and (4) the alleged contemnor failed to make a make a reasonable and diligent effort to comply.” “A person may be held in contempt of court for failure to pay money only where the failure to pay is willful and not the result of an inability to pay.” *Roellig v. Roellig*, 146 Wis.2d 652, 431 N.W.2d 759, 763 (1988) (citing *Balaam v. Balaam*, 52 Wis.2d 20, 29, 187 N.W.2d 867, 872 (1971)).

On December 4, 2012, a hearing on a previous order to show cause was heard by the court. The court took the average of Mr. Foster’s 12 months of payments in determining whether he met the \$200 per month required obligation.

THE COURT: That’s why I did it. 1,438.54 roughly, divided by 12.

MS. PAGONIS: 120.

THE COURT: Roughly, \$120?

MS. PAGONIS: Yes.

THE COURT: Per month.

MS. PAGONIS: It's 119.88.

THE COURT: Do you have a calculator? Okay. I will find – Mr. Foster, do you have any objection to that, sir, that that's the amount you paid?

MR. FOSTER: If that's what it says.

THE COURT: Okay. I will find him in contempt. As and for conditions of his purge, he will start in December of 2012, remain current on his child support order, and his child support order is 574 plus \$25. Okay.

(R. 283, 13:1 – 15).

Mr. Foster relied on the court's method of determining whether he was in compliance with the child support order that arose out of the December 4, 2012 hearing when he paid support in 2013. At the postconviction hearing, Mr. Foster testified that he believed that he had made adequate payment by taking the average of his support payments over the months. He also testified that it was his understanding that his payments went to his current monthly obligation, and that any overpayment he made in one month would be applied to the next month, not the arrears. (R. 285, 20:18-21:14;30:18-31:7; 31:22-32:21).

The order to show cause was filed on August 13, 2013; therefore, Mr. Foster could have only been on

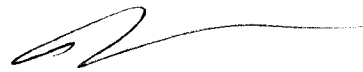
notice for the order to show cause hearing from January 2013 (following the December 2012 order) through July 2013. The evidence at the September 16, 2013 hearing showed that from January of 2013 to July of 2013, Mr. Foster paid a total of \$4,293.23. The average monthly payment of Mr. Foster from January 2013 to July 2013 calculates to be \$613.32, which exceeds the minimum required monthly support payment. Therefore, Mr. Foster reasonably believed he was not in contempt by using the same method the circuit court had used to previously find him in contempt. However, even after being presented with Mr. Foster's testimony regarding his belief and intentions, the circuit court erred when it found him in contempt.

### **CONCLUSION**

Mr. Foster was not provided proper notice to defend himself regarding the order to show cause, which prejudiced him to be able to prepare a defense knowing precisely the allegations against him. Mr. Foster believed that he made adequate child support

payments. He is not in contempt based upon his reliance on previous calculations of child support to determine contempt done by the court from the December 4, 2012 hearing.

Dated at Ellsworth, Wisconsin, January 29, 2015.



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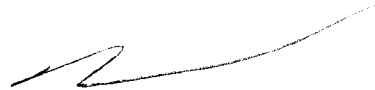
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## BRIEF CERTIFICATION

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

Proportional serif font: Minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 4,342 words.

Dated: January 29, 2015



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## APPENDIX CERTIFICATION

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

- (1) a table of contents;
- (2) relevant court record entries;
- (3) the findings or opinion of the court; and
- (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the 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.

January 29, 2015



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## CERTIFICATE OF MAILING

STATE OF WISCONSIN       )  
PIERCE COUNTY            )

I, Melissa Petersen, a licensed Wisconsin attorney, hereby certify that copies of Defendant-Appellant's Brief and Appendix in Appeal No. 2013AP000389-CR were placed in the U.S. Mail, with proper postage affixed this 29th day of January, 2015, addressed to the following as indicated below:

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**RULE 809.19(12) ELECTRONIC CERTIFICATION**

I hereby certify that the text of the electronic copies of the brief and appendix are identical to the text of the paper copies of the brief and appendix.

Dated: January 29, 2015



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