STATE OF WISCONSIN

C O U R T OF APPEALS

Case Nos. 2021AP994 & 2021AP1186

In re the finding of contempt in:

In re the marriage of:

JULIE C. VALADEZ,

Appellant,

v.

THE HONORABLE MICHAEL J. APRAHAMIAN,

Respondent.

APPEAL FROM ORDERS FOR CONTEMPT ENTERED ON MARCH 19, 2021, AND JUNE 15, 2021, AND AN ORDER ENTERED ON APRIL 15, 2021, IN THE WAUKESHA COUNTY CIRCUIT COURT, THE HONORABLE MICHAEL J. APRAHAMIAN, PRESIDING

BRIEF OF RESPONDENT

JOSHUA L. KAUL
Attorney General of Wisconsin

BRIAN P. KEENAN
Assistant Attorney General
State Bar #1056525

Attorneys for Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0020
(608) 294-2907 (Fax)
keenanbp@doj.state.wi.us

TABLE OF CONTENTS

INTRODUCTION 5

ISSUES PRESENTED 5

STATEMENT ON ORAL ARGUMENT AND PUBLICATION 6

STATEMENT OF THE CASE 6

I. Background related to Ms. Valadez's ex parte emails to Judge Aprahamian. 7

II. Background related to the two summary contempt orders. 8

A. Ms. Valadez is sanctioned for interrupting the court and the GAL. 8

B. Ms. Valadez refuses to sign a release after ordered to do so. 10

STANDARD OF REVIEW 11

ARGUMENT 12

I. The finding of contempt against Ms. Valadez for sending ex parte emails was justified under the court's inherent authority. 12

II. The circuit court validly imposed summary contempt for Ms. Valadez's repeated interruptions and her refusal to sign a release. 13

A. Legal standards for summary contempt. 14

B. The circuit court properly found Ms. Valadez in contempt for repeatedly interrupting the court and the GAL. 15

1. The circuit court's finding that Ms. Valadez's repeated interruptions were contempt of court was not clearly erroneous. 15

2. The circuit court followed the proper procedure when it found Ms. Valadez in contempt. 18

C. The circuit court properly found Ms. Valadez in contempt for refusing a direct order to sign the release..... 20

1. The circuit court's finding that Ms. Valadez's refusal to comply with its order of contempt was not clearly erroneous. 20

2. The contempt sanction was for the purpose of preserving the authority of the court. 22

CONCLUSION..... 23

TABLE OF AUTHORITIES

Cases

City of Madison v. DHS,
2017 WI App 25, 375 Wis. 2d 203, 895 N.W.2d 844 21

Currie v. Schwalbach,
139 Wis. 2d 544, 407 N.W.2d 862 (1987)..... 14, 16, 19, 20

Frisch v. Henrichs,
2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85 ..... 12, 18

*Matter of Finding of Contempt in State v. Kru*se,
194 Wis. 2d 418, 533 N.W.2d 819 (1995).....11–12, *passim*

Matter of Findings of Contempt in State v. Shepard,
189 Wis. 2d 279, 525 N.W.2d 764 (Ct. App. 1994)..... 14, 17

State v. Henley,
2010 WI 97, 328 Wis. 2d 544, 787 N.W.2d 12

State v. Schwind,
2019 WI 48, 386 Wis. 2d 526, 926 N.W.2d 742 12

Statutes

Wis. Stat. § 48.78(2) 21

Wis. Stat. § 785.01(1) 22

Wis. Stat. § 785.01(1)(a) 16

Wis. Stat. § 785.01(1)(b) 16, 20, 21

Wis. Stat. § 785.02 12

Wis. Stat. § 785.03 8

Wis. Stat. § 785.03(2) 10, 14, 15, 20, 22

INTRODUCTION

This appeal arises out of divorce proceedings between Julie and Ricardo Valadez in the Waukesha County Circuit Court, presided over by the Honorable Michael J. Aprahamian. The case has a long history at the trial level, and Ms. Valadez has filed numerous appeals and petitions for supervisory writs throughout the case. This appeal concerns three contempt orders that the circuit court issued against Ms. Valadez.

In the first, Ms. Valadez violated a court order against sending ex parte emails to the court, which the court imposed only after Ms. Valadez had ignored previous warnings to stop sending them. In the second and third, the court issued summary contempt sanctions against Ms. Valadez for her actions in court. She was found in contempt for repeatedly interrupting the court and another party during a hearing despite repeated warnings. In the other, she was found in contempt for refusing the court's order to sign a release that would allow a social worker access to unsubstantiated reports Ms. Valadez had made involving alleged abuse and neglect of the children. Contempt was warranted in both of these instances for Ms. Valadez's refusal to respect the court's instructions and orders.

ISSUES PRESENTED

1. Ms. Valadez violated a court order to stop sending ex parte emails to the court. While no party filed a motion for contempt, the contemptuous conduct was directed at the court rather than the parties. Was the contempt sanction justified under the court's inherent authority?

This Court should answer yes.

2. During a court proceeding, Ms. Valadez interrupted the circuit court at least eight times and another

party two times, and was warned about such interruptions twice, before the circuit court found her in contempt of court. Did the circuit court properly find Ms. Valadez in contempt of court for her multiple interruptions and ignoring the court's orders to stop interrupting?

This Court should answer yes.

3. The circuit court ordered Ms. Valadez to sign a release so that a social worker could gain access to documents needed to complete a custody study. Ms. Valadez refused the circuit court's order to sign the release. Did the circuit court properly find Ms. Valadez in contempt of court for refusing to comply with a direct court order?

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unwarranted because the issues can be adequately addressed in the parties' briefs. Publication is unwarranted because this case does not meet the criteria in Wis. Stat. (Rule) § 809.23(1)(a).

STATEMENT OF THE CASE

The events at issue followed the circuit court's decision on post-judgment motions, issued December 23, 2020, finding that Ms. Valadez engaged in overtrial because, among other things, she violated the court's orders. (R. 326:39–44 ¶¶ 161–86.)[1] The court also ordered that "Ms. Valadez is prohibited from sending emails to the judge. Any further contact with the judge by email will violate this Order and subject Ms.

[1] This brief cites the number from the appellate record index, which is located on the bottom of the documents in the record. The appellant's brief cites the circuit court docket number.

Valadez to a finding of contempt." (R. 326:49 ¶ 206.) One of the contempt sanctions resulted from Ms. Valadez's violation of that order.

The other two contempt sanctions followed a motion filed by Molly Jasmer, the guardian ad litem for the Valadez children (GAL). On March 22, the GAL filed a motion for physical placement of all the Valadezes' children with Mr. Valadez and for Ms. Valadez to undergo a psychological evaluation. (R. 370.) In the course of deciding those motions, the court issued summary contempt against Ms. Valadez due to (1) repeated interruptions at a hearing and (2) her refusal to sign a release for relevant documents that she had been ordered to sign.

I. Background related to Ms. Valadez's ex parte emails to Judge Aprahamian.

As the circuit court documented in its December 23, 2020, decision, Ms. Valadez had sent several ex parte emails to the court despite having been warned not to do so. (R. 319–21.) As a result, the court ordered Ms. Valadez to cease sending ex parte emails to the court or risk a finding of contempt. (R. 326:49 ¶ 206.) Despite this order, Ms. Valadez emailed Judge Aprahamian on February 12 and February 16, 2021, regarding an apparent dispute she was having with a court reporter. (R. 351.)

The court then set an order to show cause hearing for March 18, 2021. (R. 352.) At the hearing. Ms. Valadez appeared by counsel Steven Hughes, who did not deny that she had sent the emails. (R. 495:3.) The court said it was going to find Ms. Valadez in contempt and then gave her attorney the chance to argue and Ms. Valadez the opportunity for allocution. (R. 495:3.) Her counsel stated that Ms. Valadez had been told that the court supervised the court reporter, and she was confused about the ex parte email issue.

(R. 495:4–5.) Ms. Valadez declined to say anything. (R. 495:5.)

The court found that Ms. Valadez was not confused because "she is very sophisticated when it comes to this" and has "been handling matters in this case for a long time." (R. 495:5.) The "order was crystal clear she should not be emailing [the court]. She willfully and intentionally did violate my order." (R. 495:5.) The court found her in contempt, stayed for 30 days to allow her to purge the contempt by paying $250 or performing 15 hours of community service. (R. 495:5.)

Ms. Valadez, by attorney Hughes, filed a motion to reconsider arguing that the court had not followed the correct procedure under Wis. Stat. § 785.03. (R. 368.) The court denied the motion in a written order on the grounds that the sanction was within the inherent authority of the court. (R. 398:2 ¶ 4.)

II. Background related to the two summary contempt orders.

A. Ms. Valadez is sanctioned for interrupting the court and the GAL.

The March 18, 2021, hearing also dealt with the GAL's recent letters regarding one of the Valadezes' children. On March 15, 2021, the GAL filed a letter with the court stating that one of the Valadezes' sons, referred to as E., had not had any placement time with his father despite the court having ordered a week on/week off placement schedule. (R. 357:1.) Moreover, the son had not attended school since the prior October and thus was subject to a truancy referral to the Waukesha County Department of Health and Human Services (HHS). (R. 357:1.) Further, Ms. Valadez had not responded to the GAL's repeated requests to speak with her about E.'s placement and schooling. (R. 357:1–2.) On March

17, the GAL requested an emergency modification of the placement of E. to Mr. Valadez's home based on the child's behavior in school and mental health circumstances. (R. 359.)

After dealing with the contempt issue regarding the ex parte emails, the court moved on to discussing the GAL's request for modification of placement. (R. 495:7.) Ms. Valadez's brief contains much of the exchange between the circuit court and Ms. Valadez. (Valadez Br. 11–13, quoting R. 495:10–13.) As can be seen from the transcript, Ms. Valadez interrupted the court at least eight times and the GAL twice during the exchange. (R. 495:8–13.)

In the middle of the interruptions, the circuit court warned that "[i]f you interrupt me one more time, I'll hold you in contempt again and I will not stay it. Stop interrupting me." (R. 495:10.) After that warning, Ms. Valadez interrupted the GAL when she began to speak, then interrupted the circuit court again when it was trying to answer her question about the GAL's role. (R. 495:11.) The court again warned that "[i]f you interrupt me one more time I'm holding you in contempt." (R. 495:12.) After the circuit court requested that the GAL provide an update, the GAL began to speak, and Ms. Valadez again interrupted. (R. 495:12.) The circuit court then attempted to transition to holding Ms. Valadez in contempt, after which she again interrupted four more times. (R. 495:12.)

Once the circuit court could finally speak without interruption, it said it was holding Ms. Valdez in contempt for another five days and asked if she had anything to say in mitigation. (R. 495:12–13.) Ms. Valadez said she had a right to object and to ask for clarification, to which the court responded that it was holding her in contempt for interrupting. (R. 495:13–14.) The court imposed a sanction of five days in jail, stayed 30 days, which could be purged by

paying $500 or performing 15 hours of community service. (R. 495:14.)

Ms. Valadez filed a motion for reconsideration arguing that she was only asking clarifying questions and making objections and that the contempt violated her First Amendment right to petition the court. (R. 379:1–3.) The circuit court denied the motion in an order entered on April 15, 2021. (R. 398:3–4 ¶¶ 13–15.) The court noted that the contempt occurred in the presence of the court and followed the summary procedures in Wis. Stat. § 785.03(2). (R.398:3 ¶ 13.) The court reasoned that the contempt was warranted because "[a]s reflected on the record and in the Court's order, despite repeated warnings, Ms. Valadez interrupted the proceedings by repeating her objections and questions (which the Court had already answered and addressed) while the other parties, particularly the Guardian ad Litem, was addressing the Court." (R. 398:4 ¶ 14.)

B. Ms. Valadez refuses to sign a release after ordered to do so.

On March 22, the GAL filed a motion for physical placement of all the Valadezes' children with Mr. Valdez and for Ms. Valadez to undergo a psychological examination. (R. 370.) As a result of the motion, the circuit court ordered that Waukesha County Family Court Services conduct a custody/placement evaluation. (R. 377.)

At an in-person status conference on June 2, 2021, the court asked social worker Shari D'Acquisto, who was performing the custody evaluation, how long it would take to complete her work. (R. 500:17.) Ms. D'Acquisto replied that Ms. Valadez had not responded to multiple requests for meetings and had not signed necessary releases. (R. 500:17.) Specifically, Ms. D'Acquisto requested a release for HHS so that she could access records relating to multiple,

unsubstantiated reports Ms. Valadez made of abuse and neglect of the children. (R. 500:23.) Ms. D'Acquisto stated that was customary to review such documents, and the GAL agreed that she also had a duty to investigate such reports. (R. 500:23–26.)

The circuit court found that the release was reasonable and appropriate and therefore ordered Ms. Valadez to sign it. (R. 500:30–31.) Ms. Valadez refused, saying she would only sign it after the termination of the emergency hearing. (R. 500:31.)

The court proceeded to a summary contempt proceeding and found Ms. Valadez in contempt for her insolent and contemptuous behavior, directly tending to impair the authority and dignity of the court. (R. 500:31–32.) The court provided Ms. Valadez with her right of allocution and asked Ms. Valadez's attorney Stephen Hughes whether he wanted to advise his client. (R. 500:33–34.) After consultation with counsel, Ms. Valadez signed the release in open court, and Mr. Hughes asked that her action of signing the release constitute a purge of her contempt. (R. 500:33–34.) The court granted the request and found that she purged the contempt by signing the release and did not sanction Ms. Valadez. (R. 500:33–34.)[2] The court later entered a written order memorializing what had happened at the hearing. (R. 457.)

STANDARD OF REVIEW

Because "[t]he question of whether or not an act or remark is a contempt of court is one which the circuit court has far better opportunity to determine than the reviewing court," a circuit "court's finding that a person has committed a contempt of court will not be reversed by a reviewing court

[2] While not in the record in this appeal, Ms. Valadez, later revoked her release after the contempt sanction had been purged.

unless the finding is clearly erroneous." *Matter of Finding of Contempt in State v. Kru*se, 194 Wis. 2d 418, 427–28, 533 N.W.2d 819 (1995). "Whether the circuit court proceeded under the proper provision of the contempt statute is a question of statutory construction which is a question of law that [this Court] review[s] de novo." *Id.* at 429.

ARGUMENT

I. The finding of contempt against Ms. Valadez for sending ex parte emails was justified under the court's inherent authority.

While the Legislature may regulate the procedures and penalties for contempt of court, the Wisconsin Supreme Court noted that allowing the statutes to completely control issues of contempt "necessarily presents questions of whether the legislature has fully prescribed the procedures and penalties of contempt and, if it has, whether the limitations imposed impair the inherent authority of the court." *Frisch v. Henrichs*, 2007 WI 102, ¶ 32, 304 Wis. 2d 1, 736 N.W.2d 85. Moreover, "[t]he legislature may regulate and limit the contempt power 'so long as the contempt power is not rendered ineffectual.'" *Id.* (quoting Note (Wis. Stat. § 785.02), § 11, ch. 257, Laws of 1979, at 1355). To the extent the contempt sanctions here did not comply with chapter 785, this is an instance where they should be upheld based on the court's inherent authority.

The Wisconsin Supreme Court has recently made clear that Wisconsin courts, as a separate co-equal branch of the government, have inherent powers, among other things, "to ensure the efficient and effective functioning of the court, and to fairly administer justice." *State v. Schwind*, 2019 WI 48, ¶ 16, 386 Wis. 2d 526, 926 N.W.2d 742 (quoting *State v. Henley*, 2010 WI 97, ¶ 73, 328 Wis. 2d 544, 787 N.W.2d). This

inherent power expressly includes the power to hold a party in contempt. *Id.* ¶ 19.

In this case, Ms. Valadez has repeatedly flouted court orders against sending ex parte emails. The court warned in its December 23, 2020, decision and order that further ex parte emails would result in contempt because Ms. Valadez had ignored prior warnings. (R. 326:49 ¶ 206.) As noted above, two months later Ms. Valadez was again sending ex parte emails to the circuit court. In the light of the foregoing, the court was justified in entering an order to show cause and scheduling an in-person hearing on the contempt issue. While no party made a motion for sanctions, the violation was one of ex parte contact with the court—something the other parties did not know about in the first instance. Further, the issue was between the court and Ms. Valadez, meaning a party would likely not necessarily have made a motion regarding such communications.

Moreover, the exercise of the court's authority comported with due process and fundamental notions of fairness. Ms. Valadez received notice of the potential contempt and had an attorney representing her at the hearing on the issue. The court entered a reasonable sanction to remedy the contempt and provided Ms. Valadez with an opportunity to purge the contempt.

II. The circuit court validly imposed summary contempt for Ms. Valadez's repeated interruptions and her refusal to sign a release.

The circuit court complied with the summary contempt procedure and validly exercised its discretion in finding Ms. Valadez in contempt for her actions in court. On one occasion, she repeatedly interrupted the court and the GAL during a hearing, even after warnings to stop. The court reasonably found her in contempt for disrespecting the court's orders and

the orderly operation of the court. One the other occasion, Ms. Valadez flatly refused the court's order to sign a release that the social worker performing a custody examination said was necessary. Again, the court reasonably held Ms. Valadez in contempt for ignoring its order—and then purged that contempt when she signed the release.

A. Legal standards for summary contempt.

The statutory contempt provisions are "intended to be broadly interpreted to include a wide range of misbehavior." *Matter of Findings of Contempt in State v. Shepard*, 189 Wis. 2d 279, 288, 525 N.W.2d 764 (Ct. App. 1994). The type of conduct punishable by contempt "need not be indecent, profane, boisterous or unreasonably loud such as would violate the criminal disorderly conduct statute." *Id.* Further, overt physical disorder is not necessary to obstruct the administration of justice. *Id.* Courts may impose contempt for "a single act that aborts the entire proceedings, necessitating postponement to another day," as well as "a series of disruptive actions which result in the proceedings being briefly interrupted or which merely threaten to interrupt proceedings." *Currie v. Schwalbach*, 139 Wis. 2d 544, 555, 407 N.W.2d 862 (1987).[3]

Wisconsin Stat. § 785.03(2) allows for a summary contempt procedure, providing that "[t]he judge presiding in an action or proceeding may impose a punitive sanction upon a person who commits a contempt of court in the actual presence of the court." As for the sanction, "[t]he judge shall impose the punitive sanction immediately after the contempt of court and only for the purpose of preserving order in the

[3] This case is sometimes referred to as *Dewerth* as the contempt was imposed in the criminal case *State v. Thomas M. Dewerth*.

court and protecting the authority and dignity of the court." *Id.*

This Court recognizes that this procedure must comply with due process and fundamental fairness. These criteria are satisfied

> when the record following a summary contempt proceeding demonstrates all of the following: (1) a statement indicating the judge's decision to hold a person in contempt as well as the factual basis for the holding; (2) a statement from the judge informing the contemnor of the right of allocution and a further statement inviting the contemnor to exercise that right prior to imposition of sanction; and (3) the judge's final decision to impose sanction and the sanction, if any, is imposed.

Kruse, 194 Wis. 2d at 435–36.

B. The circuit court properly found Ms. Valadez in contempt for repeatedly interrupting the court and the GAL.

Ms. Valadez's conduct at the March 18, 2021, hearing warranted contempt; at a minimum, the circuit court's finding of her in contempt was not clearly erroneous. Further, the court used the proper procedure, which merely requires the chance for an allocution prior to final imposition of the sanction and not, as Ms. Valadez contends, an allocution before the circuit court announces what sanction it is thinking of imposing.

1. The circuit court's finding that Ms. Valadez's repeated interruptions were contempt of court was not clearly erroneous.

This Court recognizes that "[t]he question of whether or not an act or remark is a contempt of court is one which the circuit court has far better opportunity to determine than the

reviewing court." *Kruse*, 194 Wis. 2d at 427. The circuit court's finding that Ms. Valadez's repeated interruptions was reasonable and not clearly erroneous under the deferential standard applied by this Court.

As the transcript shows, Ms. Valadez interrupted the court at least eight times and the GAL two times. (R. 495:8–13.) In the middle of this exchange, the circuit court warned that "[i]f you interrupt me one more time, I'll hold you in contempt again and I will not stay it. Stop interrupting me." (R. 495:10.) After that warning, Ms. Valadez interrupted the GAL when she began to speak, then interrupted the circuit court when it was answering her question about the GAL's role. (R. 495:11.) The court again warned that "[i]f you interrupt me one more time I'm holding you in contempt." (R. 495:12.) After the circuit court requested that the GAL provide an update then the GAL began to speak, Ms. Valadez again interrupted. (R. 495:12.) The circuit court attempted to transition to holding Ms. Valadez in contempt, after which she again interrupted four more times. (R. 495:12.)

This behavior surely qualifies as "a series of disruptive actions which result in the proceedings being briefly interrupted or which merely threaten to interrupt proceedings," *Currie*, 139 Wis. 2d at 555, which the supreme court recognizes as worthy of contempt. Repeated interruptions of the court surely constitute both "[m]isconduct in the presence of the court which interferes with a court proceeding or with the administration of justice, or which impairs the respect due the court;" Wis. Stat. § 785.01(1)(a), and "[d]isobedience, resistance or obstruction of the authority, process or order of a court," Wis. Stat. § 785.01(1)(b). Although pro se litigants may not understand all the formalities of the law, they can understand the basic point that one should not interrupt others when they are speaking.

Ms. Valadez presents her behavior as merely asking for clarification or objecting. There are, however, proper ways to raise objections and ask questions. The court did not punish her for those actions but for continuously interrupting the proceeding. If she would have merely objected and asked questions, without repeatedly interrupting the court and the GAL, there would have been no finding of contempt. Instead, she continued interrupting the proceedings even after being warned not to do so—for objections that had already been overruled and questions that had already been answered. Ms. Valadez both impeded the court proceeding and disobeyed court orders. This satisfies the standard for contempt.

Ms. Valadez seems to suggest that merely interrupting cannot qualify as contempt of court. This ignores this court's precedent that the contempt provisions are "intended to be broadly interpreted to include a wide range of misbehavior." *Shepard*, 189 Wis. 2d at 288. This Court has specifically held that the type of conduct punishable by contempt "need not be indecent, profane, boisterous or unreasonably loud such as would violate the criminal disorderly conduct statute," nor does there need to be overt physical disorder to obstruct the administration of justice. *Id.* Repeated interruptions, which continue even after multiple warnings, meet this standard.

Respondent takes issue with Ms. Valadez's assertions that it was belittling her in the exchange. (Valadez Br. 25.) The GAL had submitted letters to the court, via e-filing such that Ms. Valadaez received notice of their filing, detailing issues with one child's failure to attend school and mental health. (R. 357; 359.) Given the seriousness of these allegations, the court wanted to address them at the hearing when all parties were present. Ms. Valadaez could have discussed the facts of the child's situation—of which she had first-hand knowledge. As can be seen later in the hearing, Ms. Valadez did eventually provide factual information relevant

to the GAL's request. (R. 495:29–36.) The circuit court was merely trying to get Ms. Valadez to focus on those issues rather than interrupting the proceedings by repeating objections that had already been ruled on.

Lastly, Ms. Valadez incorrectly suggests that her behavior did not warrant an immediate sanction because the circuit court offered alternatives to jail time. (Valadez Br. 26.) The point of the contempt, however, was to get Ms. Valadez to stop interrupting and respect the court—which can be accomplished through jail time, a fine, or an alternative means. Moreover, "Chapter 785 has been consistently interpreted to allow the circuit court to establish an alternate purge condition to purge a party's contempt." *Frisch v. Henrichs*, 2007 WI 102, ¶ 60, 304 Wis. 2d 1, 736 N.W.2d 85. There was nothing wrong with the court providing a way to purge her contempt, and Ms. Valadez cites no authority to the contrary.

2. The circuit court followed the proper procedure when it found Ms. Valadez in contempt.

The circuit court also properly followed the summary procedure for finding Ms. Valadez in contempt. The court gave Ms. Valadez the opportunity for an allocution, which complied with the law on summary contempt. Ms. Valadez relies on cases in which the court gave the contemnor no opportunity to speak at all, and her argument is based on a hyper-technical reading of case law. Under a proper understanding of the case law, the circuit court complied with the applicable law.

The process here complied with the standard outlined in *Kruse*. The court made a statement indicating its decision to hold Ms. Valadez in contempt and the factual basis for that ruling, the court informed Ms. Valadez of her right to an

allocution, and the record shows the court's final decision to impose a sanction and the sanction imposed. *Kruse*, 194 Wis. 2d at 435–36. The allocution requirement provides "an opportunity for the contemnor to apologize or to defend or explain the contumacious behavior," which "allows the contemnor to speak in mitigation of the misconduct which the court has already determined." *Id.* at 436. Here, Ms. Valadez was given that opportunity, and the court did not impose the sanction until after the allocution. This is shown by the fact that the circuit court's final sanction included a purge of the sanction, which had not previously been mentioned.
(R. 495:14.)

Ms. Valadez says that the circuit court erred in stating it was holding Ms. Valadez "in contempt again another five days" before the allocution. (R. 495:12.) This argument is based on a hyper-technical reading of the case law. The two cases Ms. Valadez relies on, *Kruse* and *Currie*, involved situations where the court allowed no opportunity for allocution at all. *Kruse*, 194 Wis. 2d at (holding that circuit court "was not entitled to then impose sanction without first providing Oliveto with her right to allocution"); *Currie*, 139 Wis. 2d at 565 (concluding "that an opportunity for allocution must be accorded in summary contempt proceedings"). Further, *Kruse* explained that the purpose of the allocution is to "permit[] the judge to vacate the contempt order entirely *or to give a more lenient sanction*, after considering any mitigating factors revealed in the allocution." 194 Wis. 2d at 435 (emphasis added). Thus, the case law clearly contemplates that a court could mention a sanction it was thinking of imposing, provide an allocution to allow the contemnor to apologize or justify herself, and then make a final decision on the sanction. The summary procedure is only set aside when the court fails to offer any allocution at all.

Nor would the cases have said this when *Kruse* relied on *Currie*, in which the contemnor merely argued that "that the judge should have stayed the imposition of the penalty until Currie had the opportunity to speak." 139 Wis. 2d at 557–58. The court's statements about the allocution needing to take place before imposition of the penalty must be understood in that context—that the court can name a penalty but not impose it until after the allocution.

C. The circuit court properly found Ms. Valadez in contempt for refusing a direct order to sign the release.

Ms. Valadez's refusal to abide by a court order was clearly contemptuous conduct. In any event, it was not clearly erroneous for the court to find that her failure to sign a release was "[d]isobedience, resistance or obstruction of the authority, process or order of a court." Wis. Stat. § 785.01(1)(b). Moreover, the conduct warranted use of the summary contempt procedure.

1. The circuit court's finding that Ms. Valadez's refusal to comply with its order of contempt was not clearly erroneous.

Ms. Valadez refused a direct order of the court to sign a release to allow a social worker the ability to see documents relating to her reports of child neglect. There could not be a clearer case of disobedience of the authority of a court. Wis. Stat.
§ 785.01(1)(b). Thus, her refusal was contempt of court, and therefore the court could "impose a punitive sanction upon a person who commits a contempt of court in the actual presence of the court." Wis. Stat. § 785.03(2).

Ms. Valadez claims that the social worker had all the necessary documents (Valadez Br. 31), but that was not the

information before the circuit court. The social worker informed the court that she "need[s] a new release to get all the records that have happened since we were last in court." (R. 500:23.) It is not clearly erroneous for the circuit court to require a release that a social worker says is necessary to complete a custody study.

Further, Ms. Valadez argues that the records could be released by order of the court under Wis. Stat. § 48.78(2), but this does not help her case. As an initial matter, if Ms. Valadez has raised this possibility before the circuit court, then perhaps this whole issue could have been avoided. Given that this argument was not raised below, it is forfeited on appeal. *City of Madison v. DHS*, 2017 WI App 25, ¶ 20, 375 Wis. 2d 203, 895 N.W.2d 844. In any event, it is hard to see why it would be improper to order Ms. Valadez to sign a release when the court could order the records released in the first instance. Ms. Valadez's refusal to sign apparently would not change whether the records would be released, so her refusal to obey the court's order was not only disobedient but also futile in that, according to her argument on appeal, it would not even prevent the records from being released. Ms. Valadez never explains why she would not merely cooperate in getting the records released if they would be released anyways.

Further, Ms. Valadez contends that because the HHS release form says people do not need to release records, the court had no authority to do so. This is a non sequitur. In general, people need not provide releases to confidential information like the HHS documents. But here, Ms. Valadez is a party to a legal case involving custody and placement issues for her and Mr. Valadez's children, making HHS records relevant to the case. The release form says nothing about whether a court can order someone to sign a release for documents that are relevant to a case.

2. The contempt sanction was for the purpose of preserving the authority of the court.

Ms. Valadez's argument that the court's use of summary contempt was improper is based on a misunderstanding of contempt of court. The summary contempt statute provides that "[t]he judge presiding in an action or proceeding may impose a punitive sanction upon a person who commits a contempt of court in the actual presence of the court." Wis. Stat. § 785.03(2). Contempt of court includes "[d]isobedience, resistance or obstruction of the authority . . . of a court." Wis. Stat. § 785.01(1)(b). Her failure to sign the release was disobedience and resistance to the authority of the court that occurred in the presence of the court, so the summary procedure was proper.

There is no requirement of an emergency, as Ms. Valadez suggests, for a court to use summary contempt. In fact, summary contempt is appropriate when someone merely makes one remark that denigrated the court. *Kruse*, 194 Wis. 2d at 433. Ms. Valadez does not explain how a refusal to comply with an order of the court is different. While these are different types of contempt—the remark impaired the respect due to the court while Ms. Valadez disobeyed and resisted the authority of the court—the violation need not be an emergency to warrant the summary contempt procedure. The contempt need not be rude or profane; so long as the conduct qualifies as contempt under Wis. Stat. § 785.01(1), then summary contempt can be used.

CONCLUSION

For the foregoing reasons, this Court should affirm the contempt sanctions at issue in this appeal.

Dated this 8th day of November 2021.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Brian P. Keenan
BRIAN P. KEENAN
Assistant Attorney General
State Bar #1056525

Attorneys for Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0020
(608) 294-2907 (Fax)
keenanbp@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 5246 words.

Dated this 8th day of November 2021.

Electronically signed by:

Brian P. Keenan
BRIAN P. KEENAN
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 8th day of November 2021.

Electronically signed by:

Brian P. Keenan
BRIAN P. KEENAN
Assistant Attorney General