STATE OF WISCONSIN
C O U R T OF APPEALS
DISTRICT II

Case Nos. 2021AP1436

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 AN ORDER OF CONTEMPT ENTERED ON AUGUST 17, 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

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

The Court should affirm the circuit court's contempt orders to Appellant Julie Valadez. Ms. Valadez has violated numerous court orders. As a result of some of those violations, the circuit court applied contempt sanctions against her. While Ms. Valadez contends that the court had no authority to do so, the contempt was justified on three grounds. First, one of the sanctions was a continuation of a summary contempt proceeding in which Ms. Valadez purged her contempt by signing a release only to revoke it later that day. Second, a letter from her children's guardian ad litem served as a motion for contempt. And finally, the inherent powers of the court support the contempt sanction.

ISSUES PRESENTED

1. Did the circuit court have authority to issue the contempt sanctions to Valadez?

   This Court should answer yes.

2. Was the circuit court's finding of contempt clearly erroneous?

   This Court should answer no.

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

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.

The events at issue in this motion 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. 400:39–44, ¶¶ 161–86.) The trigger for the contempt sanctions at issue here was 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 Valadez's children with Mr. Valdez and for Ms. Valadez to undergo a psychological evaluation. (R. 445.) Thereafter, the GAL filed a motion to show cause why Ms. Valadez should not be held in contempt for having unsupervised contact with her son, in violation of the court's temporary order, including bringing him a recorder and camera to spy on his father. (R. 466.) The contempt sanctions at issue here were imposed to facilitate the timely disclosure of information necessary for the parties and the court to consider at a final hearing on the pending motions scheduled for October 4, 2021.

I. Background related to the release the circuit court ordered Ms. Valadez to sign.

In March 2021, the GAL informed the court that there were issues with the placement of one of the Valadez's children. On March 15, 2021, the GAL filed a letter informing the court that one of the children had not been staying with Mr. Valadez despite the court's placement decision and that the child had a truancy referral because he had not been attending school. (R. 431.) On March 17, the GAL requested an emergency modification of the placement for that child to the home of Mr. Valadez based on the child's behavior in

school and mental health circumstances. (R. 434.) On March 22, the GAL filed a motion for physical placement of all the Valadez's children with Mr. Valdez and for Ms. Valadez to undergo a psychological examination. (R. 445.)

As a result of the motion, the circuit court ordered that Waukesha County Family Court Services conduct a custody/placement evaluation. (R. 451.) The court also granted the motion, on a temporary basis, to place the one child with Mr. Valadez and allow only supervised visitation by Ms. Valadez. (R. 441; 474.)

At an in-person status conference conducted 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. 562:17.) Ms. D'Acquisto replied that Ms. Valadez had not responded to multiple requests for meetings and had not signed necessary releases. (R. 562:17.) Specifically, Ms. D'Acquisto requested a release for the Waukesha County Department of Health and Human Services (HHS) so that she could access records relating to multiple, unsubstantiated reports Ms. Valadez made of abuse and neglect of the children. (R. 562:23.) Ms. D'Acquisto stated that release request was customary to review such documents, and the GAL agreed that she also had a duty to investigate such reports. (R. 562:23–26.)

The circuit court found that the release was reasonable and appropriate and therefore ordered Ms. Valadez to sign it. (R. 562:30–31.) Ms. Valadez refused, saying she would only sign it after the termination of the emergency hearing. (R. 562:31.) 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. 562:31–32.) 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. 562:33–34.) 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. 562:33–34.) The court granted the request and found that Ms. Valadez purged the contempt by signing the release and did not sanction her. (R. 562:33–34.)

Unbeknownst to the court and, apparently her own attorneys, after the hearing Ms. Valadez called HHS and revoked the release she had signed.

The court conducted an evidentiary hearing on July 28–30 related to the GAL's motions. On July 30, the GAL called Ms. Valadez as an adverse witness. Ms. Valadez testified that, among other things, she called HHS after signing the release and revoked her consent and told them not to release any additional records to Ms. D'Acquisto. (R. 699:86–89.) While Ms. Valadez claims all records had been released, she testified that she would not consent to the release of any records that had not been released. (R. 699:87.)

At the end of the hearing, the court expressed concern that Ms. Valadez had revoked the release despite being ordered to sign it and where, at her request, the act of doing so purged her contempt. Ms. Valadez's attorney, Will Green, stated that had he known she revoked the release, he "would have taken corrective action with my client on my own. And we would have sent a letter to the Court and we would have made sure that the release was in fact provided and we would have done whatever [mea] culpa was necessary with regard to the set of circumstances." (R. 699:84.) The court took Attorney Green at his word and ordered him to prepare a stipulation and order for the release of the information or to have a new release provided, by August 4, 2021, or else she will be in contempt and there would be a jail sanction. (R. 699:185–86.) Ms. D'Acquisto said that she would email a

release to Green that day, and Green confirmed that she would sign it. (R. 699:191–92.)

Ms. Valadez, however, after the hearing again violated the court's orders. She did not provide a signed release and no stipulation was filed by August 4.

II. Background on the circuit court's order that Ms. Valadez undergo a psychological examination.

As noted above, on March 22, 2021, the GAL moved the court to order Ms. Valadez to undergo a psychological examination. (R. 445.) The court took evidence at the July 28–30 hearing on the motion.

During the hearing on July 28, Attorney Green requested a break to meet with his client. (R. 696:28.) During that break, Ms. Valadez had an emotional outburst with her attorney that could be heard inside the courtroom. She then rushed to the women's restroom and refused to return to court. (R. 696:32–39.) When a bailiff went into the restroom to assist, Ms. Valadez stated that she needed an ambulance. (R. 696:43–44.) An ambulance was called, and Ms. Valadez went into the ambulance, which was in front of the courthouse. (R. 696:43–44.) Prior to adjourning for the day, the court recited events on the record and granted the GAL's request for a psychological evaluation. (R. 696:39.) Attorney Green did not object to the order that Ms. Valadez undergo a psychological evaluation, even stating that it would be better if the court had the results of the evaluation before finishing the trial. (R. 696:41–42.) Soon after the court adjourned the hearing for the day, Ms. Valadez left the ambulance without further medical attention, and got in a car and drove away. (R. 697:4.)

At the end of the day on July 30, the court confirmed its order that Ms. Valadez undergo a psychological evaluation and ordered that it be accomplished promptly so the report

could be used at the final hearing scheduled for October 4, 2021, as Attorney Green had himself requested. (R. 699:175.) Green requested that *both* parties be ordered to undergo a psychological evaluation because "what's good for the goose is good for the gander." (R. 699:174.) The court declined to order that Mr. Valadez undergo an evaluation unless and until Green filed a motion requesting that relief identifying the reasons why such an evaluation was appropriate. (R. 699:174.)

Ms. D'Acquisto put on the record the steps Ms. Valadez needed to take to comply with the court's order such that the result of the evaluation could be used and considered when the hearing continued on October 4, 2021. (R. 699:188–90.) Ms. D'Acquisto stated that she would forward referral paperwork to Ms. Valadez and her attorney that day and that the paperwork needed to be completed by Monday, August 2, 2021. (R. 699:188–90.) In addition, Ms. Valadez needed to contact Dr. Gust-Brey by Friday, August 6 to schedule an appointment no later than August 20. (R. 699:188–90.)

The court then asked the GAL to prepare a written order confirming those dates and steps. (R. 699:188–90.) Attorney Green did not object to the ordered psychological evaluation or to any of the dates and deadlines ordered by the court. (R. 699:191–92.)

On August 6, 2021, the court entered a written order confirming the ruling that had been issued from the bench on July 30. (R. 670.) That order, drafted by the GAL, expressly provided that "[a]ny violation of this Order may subject the person to the Court's contempt powers." (R. 670:2.)

On August 9, the GAL filed a letter with the court stating that Ms. Valadez had not complied with the order because she had not completed or signed the necessary

referral paperwork and had not scheduled an appointment for the evaluation. (R. 672.)

III. The contempt ruling at issue in this appeal.

After receiving the GAL's letter, the court issued an order to show cause on August 10 why Ms. Valadez should not be held in contempt for both (1) "her failure to comply with this Court's Order Regarding Psychological Evaluation" and (2) her noncompliance with the Court's July 30 order that she facilitate the release of information by August 4 "to remedy her inappropriate revocation of the release the Court had her sign on June 2, 2021, to purge her contempt of court." (R. 674.) Ms. Valadez was ordered to appear in person for the hearing, set for August 13. (R. 674.)

Ms. Valadez failed to appear for the hearing but was represented by both Attorneys Green and Hughes. (R. 708:3.) Hughes objected to the hearing because it was a nonsummary proceeding, which cannot be initiated by a judge. (R. 708:5.) The court overruled the objection, holding that the contempt "is in part summary because it's a continuation of the summary contempt I found in June and also as I have inherent authority to proceed with contempt." (R. 708:5.) The court found Ms. Valadez's violations were willful and intentional and imposed 30 days in jail, concurrently, for each violation, with the opportunity to purge her contempt by complying with the prior orders, i.e., sign the release and undergo a psychological evaluation. (R. 708:9–11.)

On August 17, 2021, the court issued a written order memorializing its oral ruling. (R. 694.) This Court has since stayed the contempt orders pending this appeal.

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 unless the finding is clearly erroneous." *Matter of Finding of Contempt in State v. Kruse*, 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 circuit court had the authority to issue the contempt sanctions at issue in this appeal.

A. The order with respect to the failure to sign the release was valid as a continuation of the earlier summary contempt sanction.

The sanction for Ms. Valadez's failure to sign the release form that would allow the release of Waukesha County HHS records relates back to the June 2, 2021, hearing. At that hearing, the court ordered Ms. Valadez to sign the release so that Ms. D'Acquisto could complete the custody and placement evaluation. (R. 562:31.) Ms. Valadez refused to sign the release, at which point the court began summary contempt proceedings. (R. 562:31–32.) She avoided a sanction at that point by signing the release in the presence of the court as ordered. (R. 562:33–34.) The court could have again placed her in summary contempt at the July 30 hearing but instead offered her the chance to provide the release—but with a warning that there would be a jail sanction if she did not. (R. 699:185–86.)

The June 2, 2021, contempt proceeding was a valid exercise of summary contempt. In a summary proceeding, "[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. Further, the statute provides that "[t]he judge shall impose the punitive sanction immediately after the contempt of court and only for the purpose of preserving order in the court and protecting the authority and dignity of the court." *Id.* On June 2, Ms. Valadez failed to follow an order of the court in the presence of the court but was able to avoid the contempt sanction because she ultimately complied with the court's order.

Ms. Valadez's compliance with the court's order, however, was a sham. After the hearing, she revoked the consent. (R. 699:86–89.) Thus, Ms. Valadez had completely disrespected "the authority and dignity of the court," Wis. Stat. § 785.03, by following the court's order only to renege that same day. With Ms. Valadez escaping sanction by pretending to comply with the court order, the court was justified in continuing the summary contempt proceeding on August 13. (R. 699:86–89.) If the court could not continue the summary contempt proceeding, Ms. Valadez would be able to continue her charade of purging contempt in the presence of the court to only to renege on it outside the presence of the court later. Ms. Valadez should not be allowed to escape summary contempt sanctions through sham compliance. The subsequent violation was as if Ms. Valadez had never signed the release in the courtroom in the first instance. And given that she was represented by counsel throughout this process, there should not be any due process concerns about imposing a sanction on Ms. Valadez.

B. The circuit court was justified in treating the GAL's August 9 letter as a motion for contempt.

Given the history of Ms. Valadez's conduct in this case, the circuit court was well within its discretion to treat the GAL's August 9 letter as a motion for sanctions. Ms. Valadez is correct that for nonsummary contempt, a court may impose a remedial sanction after "[a] person aggrieved by a contempt of court" files a motion, Wis. Stat. § 785.03(1)(a), and a punitive sanction if it is sought by "[t]he district attorney of a county, the attorney general or a special prosecutor appointed by the court," Wis. Stat. § 785.02(1)(b). While not formally labeled as a motion, the GAL's letter noted that Ms. Valadez had completely failed to comply with the court's detailed order on steps she needed to take to undergo the psychological exam.

Ms. Valadez has ignored numerous court orders and had contempt sanctions imposed on her several times before the sanctions at issue. The court had entered a detailed order, drafted by the GAL, on things Ms. Valadez needed to do for the psychological exam, which expressly provided that a "violation of this Order may subject the person [to] the Court's contempt powers." (R. 670:2.) Thus, when the GAL wrote to the court that Ms. Valadez had not complied with the order, the circuit court was justified in treating that letter as a motion for contempt and issuing an order to show cause in light of the timing issues in completing the evaluation for use at the October 4 hearing. Ms. Valadez had violated an order that put her on notice that a violation could subject her to contempt, so the GAL's informing the court of that fact under these circumstances can fairly be interpreted as a motion for contempt.

C. The circuit court's inherent authority justified the contempt sanctions.

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 350). 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 and abused the judicial system. The circuit court's December 23, 2020, decision noted that she had violated prior orders. (R. 400:40 ¶ 169.) As noted above, she then violated even more court orders in the months following the GAL's March motions. This brief has covered the facts of the court orders relating to the release and psychological examination in great detail above and will not repeat them all here. But it

bears noting that Ms. Valadez signed a release in the presence of the court to avoid contempt, revoked it later that day outside the presence of the court, and then refused to sign even after her attorney represented to the court that he would have taken corrective action had he known about the revocation.

In the light of all of the foregoing, particularly the urgency in obtaining the psychological evaluation for the court's consideration in anticipation of a final hearing and decision in early October, the court was justified in entering an order to show cause and scheduling an in-person hearing on August 13, 2021. As noted, Ms. Valadez did not appear in person as ordered to address her conduct. Both Attorneys Green and Hughes appeared in person and stated that they had been in contact with her within the hours preceding the hearing.

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 two attorneys representing her, neither of whom contended that she was not available or otherwise unable to attend the hearing. Under its inherent authority, the court entered a reasonable sanction to remedy the contempt and provided Ms. Valadez with an opportunity to purge the contempt and have the remaining jail sanction stayed or vacated.

II. The circuit court's contempt findings were not clearly erroneous.

Ms. Valadez alleges the circuit court's contempt findings were clearly erroneous on several grounds, all of which fail. First, she claims that the circuit court could not have held her in contempt because it had not ordered her to sign the release on July 30. The court, however, had already

ordered Ms. Valadez to sign the release, which she did, and the revoked it. On July 30, thie circuit ordered Ms. Valadez's attorney to prepare an order that would provide for the release of information so it would be released in time for the issues to be addressed at an October 4th hearing. (R. 699:185–86.) Importantly, the court then said, "[o]therwise I will be holding her in contempt." (R. 699:186.) At the end of the hearing, Ms. D'Acquisto said that she would email a release to Green that day, and Green confirmed that she would sign it. (R. 699:191–92.) To say that there was no order for Ms. Valadez to sign the release ignores what happened at both hearings related to this issue.

Second, Ms. Valadez incorrectly argues that the contempt sanction was prohibited by Wis. Stat. § 804.12(2)(a)4. This statute allows a court to impose various sanctions for failure to comply with certain discovery statutes. One of these statutes is Wis. Stat. § 804.10(1), which allows the court to order a "party to submit to a physical, mental or vocational examination." Sanctions for these discovery violations include contempt "except an order to submit to a physical, mental or vocational examination." Wis. Stat. § 804.12(2)(a)4.

The circuit court here, however, did not order the psychological examination under Wis. Stat. § 804.10. Instead, the court's power to do so when considering the best interests of the child stems from Wis. Stat. § 767.41(5)(am)10. This Court held that a court in a visitation case could order psychological examinations of the parties when considering the best interests of the child. *In re Visitation of Z.E.R.*, 225 Wis. 2d 628, 643–44, 593 N.W.2d 840 (Ct. App. 1999). The court held that the statute as numbered at that time, Wis. Stat. § 767.24(5)(e) (1999–2000), "provides that when a trial court is determining the best interests of the child, it should consider the mental and physical health of the parties and the

child." *Id.* As a result, the circuit court had the authority to order a doctor "to conduct examinations and report his findings," which "were intended to assist the trial court in deciding whether visitation was in [the child's] best interests and, if so, what amount would be reasonable." *Id.* at 644. That is what the circuit court here did—it ordered Ms. Valadez to undergo a psychological examination to help determine what type of custody and placement arrangement was in the child's best interests. Because the circuit court's power did not stem from Wis. Stat. § 804.10, the exception in Wis. Stat. § 804.12 does not apply.

The cases that Ms. Valadez cites underscore this point. The one case that held the court could not impose sanctions was a civil assault and battery case. *Syring v. Tucker*, 174 Wis. 2d 787, 797, 498 N.W.2d 370 (1993). The other case cited was a paternity case where the court held that the specific provisions related to paternity actions in chapter 767 applied rather than the general civil discovery provisions in chapter 804. *In re T.P.L.*, 120 Wis. 2d 328, 332–33, 354 N.W.2d 759 (Ct. App. 1984). The same is true here—the circuit court's order is governed by Wis. Stat. § 767.41 rather than the general civil discovery provisions in chapter 804.

Lastly, Ms. Valadez contends that the purge was not lawful because it did not provide her the "keys to the jail house door." But her view of what is required to constitute a lawful purge is mistaken. A 30-day jail sanction for past due child support subject to the party's purging the contempt by paying $2000, for example, is not invalid if the party does not have immediate access to his checkbook or credit card; or when the bank is closed over the weekend; or when the party does not have the money and needs to work several weeks to get it.

Here, all Ms. Valadez had to do was sign the release and undergo a psychological exam. She could have signed the release at any time after July 30 or, if she had appeared at

the August 13 hearing, she could have done so at that time. She also at that time could have completed the referral/intake paperwork for the psychological evaluation. Then, in order to purge the contempt, she would only have had to schedule and undergo the evaluation. If Ms. Valadez had completed the paperwork but an appointment was not available, she could have requested that the court stay the jail sentence to permit her to undergo the evaluation at the later time when an appointment was available. The court, however, was never given the opportunity because Ms. Valadez once again defied the court's order and declined to appear. Further, Ms. Valadez has not used this Court's emergency stay of the order to complete the straightforward tasks required of her, in consultation with her own attorney, to ensure that any prospect of custody was avoided, and the case proceeded as scheduled.

CONCLUSION

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

Dated this 26th 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 4409 words.

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 26th day of November 2021.

Electronically signed by:

Brian P. Keenan
BRIAN P. KEENAN
Assistant Attorney General