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COURT OF APPEALS

Case No. 2025AP002229

In the State of Wisconsin Court of Appeals District II

In re the marriage of
SARAH ANN FOX,
Petitioner-Respondent,
v.
MATHIEW RAE FOX,
Respondent-Appellant

BRIEF OF RESPONDENT-APPELLANT MATHIEW RAE FOX

On Appeal from the "Order and Finding of Contempt" entered August 1, 2025, and related rulings, in the Circuit Court for Kenosha County,

Case No. 2021FA00047

The Honorable Heather Iverson, Presiding Judge

Submitted by:
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ISSUES PRESENTED

I. **Predicate Order / Timing**

Can civil contempt stand where the only contemporaneous directive on May 29, 2025 was an oral, children-only admonition with drafting delegated to counsel, Petitioner filed contempt on June 2, and the first written order (broadening to "any information concerning this case") was not filed until June 9, then not signed until August 1 after a July 24 ex parte letter to chambers?

Trial court: effectively yes.
Appellant: no. Civil remedial contempt under WIS. STAT. ch. 785 requires a clear, specific order in effect at the time of the alleged violation and a present ability to purge; a later, broadened written order cannot retroactively supply the predicate. Frisch, 2007 WI 102, ¶¶32–36, 42–45; WIS. STAT. §§ 785.01–.04; Cook, 208 Wis. 2d at 189.

II. **Prior Restraint / Overbreadth**

Is a blanket ban on "any information concerning this case," with a 48-hour purge of "all content," an unconstitutional prior restraint where the May 29 oral limit was about child-identifying content and Appellant's submissions were non-public oversight communications already taken down or set to private?

Trial court: enforced the blanket restraint.
Appellant: unconstitutional. The categorical gag on all "information concerning this case" is facially overbroad and not narrowly tailored to child-protection interests. Kindschy, 2024 WI 27, ¶¶32–44; Packingham, 582 U.S. at 104–08; Counterman, 600 U.S. at 72–78; Krasno, No. 22-3170.

III. **Sanctions Character (Remedial vs. Punitive)**

Do the combined measures—global purge of "all content," school/event bans, fees within 60 days, backed by a stayed 180-day jail term—operate punitively rather than remedially under ch. 785 where they are not tied to a narrow purge path enforcing a clear, pre-existing order?

Trial court: imposed.
Appellant: punitive; must be vacated. Remedial sanctions must coerce compliance and include a feasible purge; punitive measures require criminal contempt process. Frisch, 2007 WI 102, ¶¶42–45; WIS. STAT. § 785.04.

IV. **Best-Interests Nexus**

May categorical school/event bans be imposed through a contempt order without § 767.41(5) best-interests findings, especially where the court did not find contempt concerning the school episode and the record supported less-restrictive options?

Trial court: imposed bans.
Appellant: abuse of discretion. Access limits require § 767.41(5) findings and tailoring.

V. **Ex Parte Path / Appearance of Impropriety**

Do the July 24 ex parte communications to chambers, the August 1 signature, and the 53-day gap between hearing and order warrant reversal and reassignment on remand to preserve the appearance of neutrality?

Trial court: not addressed.
Appellant: yes. Due process requires both actual fairness and the appearance of impartiality. Miller, 2020 WI 56, ¶¶19–24; Gudgeon, 2006 WI App 143, ¶¶20–24.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary. The issues can be resolved on the briefs. WIS. STAT. § 809.22.

Publication is appropriate under WIS. STAT. § 809.23(1) because this case presents:

1. The requirement that civil contempt under ch. 785 rest on a clear, written, and entered order in effect at the time of the alleged violation.
2. Constitutional limits on broad "any information concerning this case" restraints as prior restraints.
3. The boundary between remedial and punitive sanctions under WIS. STAT. § 785.04.
4. The effect of ex parte drafting and significant delay on the appearance of judicial neutrality.

These questions arise within the precedential framework of WIS. STAT. § 752.41(2) and *Cook v. Cook*, which require adherence to controlling appellate authority.

STATEMENT OF THE CASE AND FACTS

I. **May 29, 2025 (Status).**

The court orally barred both parties from posting about the children on social media (photos/videos/audio), directed Attorney Anderson to draft an order, and required removal of such content within 48 hours. No written order issued that day. R.156:13–14; Tr. 5/29/2025 at 13–14.

II. **June 2, 2025.**

Petitioner filed a motion for contempt before any signed written order existed reflecting or expanding the May 29 remarks. App. A-8:A-39 (docket entry identifying contempt filing).

III. **June 9, 2025.**

A written order was filed that, for the first time, used broadened language referring to "any information concerning this case" and imposed a 48-hour takedown requirement. R.112:2 (¶¶10–11), ¶12.

IV. **June 11, 2025 (Contempt hearing).**

Counsel relied on the broadened Paragraph 10. R.157:3.
The court read CR 1-6 into the record, adopted it for the proceeding, and ordered device collection. R.157:6.
The court imposed a stayed 180-day jail term; ordered removal of "all content" concerning court proceedings or the children from "any online sites," with affidavit; ordered fees within 60 days; and imposed school/event bans. R.157:31–33.
The court stated the school incident was not contempt. R.157:31; App. A-4:A-13.
Appellant testified that his communications were directed to oversight bodies (OLR, Judicial Commission, Supreme Court, legislators) and that public videos had been removed or set to private consistent with the court's directive. R.157:23–26.

V. **June 13 and 16, 2025.**

Petitioner filed an Affidavit of Attorney Fees (June 13).
Appellant filed an Affidavit of Compliance (June 16) confirming timely removal. App. A-6:A-35; App. A-5:A-34.

VI. **July 24, 2025 to August 1, 2025.**

On July 24, counsel sent an ex parte letter to chambers urging signature of a proposed order. On August 1, the court signed the "Order and Finding of Contempt," more than seven weeks after the hearing. App. A-7:A-38; App. A-1:A-1; R.151:1.

VII. **Post-Order Motions Addressing Contempt and Sanctions.**

Appellant filed multiple motions seeking clarification, narrowing, or vacatur:

- Motion for clarification of Clause 4C and the school/event restriction. App. A-9:A47, R.139.
- Motion to strike the school/event sanction as unsupported by the contempt finding or record App. A-10:A52, R.140.
- Motion to dismiss contempt and affidavit explaining the oversight nature of the communications. App. A-11:A59, R.153–154.
- Consolidated motion regarding contempt, unsupervised placement, fee waiver, medical support compliance, and support recalculation. App. A-12:A65, R.168.
- Supplemental memorandum seeking to modify support, vacate contempt, and correct the record. App. A-13:A76, R.171.

No substantive written order resolved the core challenges to the contempt finding, the speech restraint, or the school/event bans.

STANDARDS OF REVIEW

Whether a clear predicate order existed, whether sanctions are remedial or punitive, and constitutional issues are reviewed de novo. Frisch, 2007 WI 102, ¶¶32–36, 42–45.

Factual findings are reviewed for clear error.

Placement and access restrictions are reviewed for erroneous exercise of discretion and must be grounded in the correct legal standards, including WIS. STAT. § 767.41(5).

Claims regarding judicial bias or the appearance of partiality are evaluated under an objective reasonable-person standard. *Miller,* 2020 WI 56, ¶¶19–24; *Gudgeon*, 2006 WI App 143, ¶¶20–24.

ARGUMENT

I. No clear, written, and entered predicate order existed when contempt was pursued; the later broadened writing cannot be enforced retroactively.

Civil remedial contempt requires a prior, clear, and specific order in effect when the alleged violation occurs, and a present ability to purge. Frisch, 2007 WI 102, ¶¶32–36; WIS. STAT. §§ 785.01–.04.

On May 29 the court gave oral, children-focused remarks and delegated drafting. Petitioner filed contempt June 2 before entry of any written order. The June 9 order broadened the scope to "any information concerning this case" and formalized purge terms.

A contempt finding cannot rest on an unwritten standard later replaced with a materially different written order. Applying the June 9 language to earlier conduct is an impermissible retroactive expansion, inconsistent with ch. 785.

Remedy: Reverse the contempt adjudication.

II. The global "any information concerning this case" restraint is an unconstitutional prior restraint and overbroad compared to the May 29 child-privacy limit.

The May 29 remarks addressed child-related posts. The June 9 order and June 11 enforcement extended to "any information concerning this case" and imposed a 48-hour purge of "all content" about the proceedings or the children.

That language reaches non-identifying commentary, criticism of court actors, and communications to oversight entities. It is content-based and prior in nature.

Content-based restraints are presumptively unconstitutional and must be narrowly tailored to a compelling interest. Kindschy, 2024 WI 27, ¶¶32–44; Packingham, 582 U.S. at 104–08. Counterman confirms that only true threats with the requisite mental state fall outside protection, narrowing permissible restrictions. 600 U.S. at 72–78. Krasno holds that government actors cannot deploy broad moderation rules to silence protected criticism in official online fora.

The order here is not limited to protecting child privacy or enforcing sealing. It is a blanket ban on case-related speech and functions as an overbroad prior restraint.

Even if the court sought to justify the gag as protecting the children, the record contains no specific findings that Appellant's non-public oversight communications or prior commentary caused or threatened irreparable harm. The May 29 remarks were limited to child-identifying posts; there is no evidence that non-identifying case discussion or confidential complaints to oversight bodies endangered the children's emotional or physical well-being. A prior restraint cannot rest on generalized discomfort with criticism or speculative harm; it requires concrete,

imminent harm and narrow tailoring, which are absent. See Kindschy, 2024 WI 27, ¶¶32–44; Packingham, 582 U.S. at 104–08; Counterman, 600 U.S. at 72–78.

Remedy: Vacate the "any information concerning this case" restraint and all purge provisions based on it.

III. The sanctions package is punitive, not remedial, contrary to WIS. STAT. ch. 785.

Under WIS. STAT. § 785.04(1), remedial sanctions must be coercive and purgeable. Punitive sanctions require criminal contempt procedures.

The court imposed:

- a stayed 180-day jail term;
- a sweeping purge of "all content" about proceedings or the children;
- a 60-day fee payment;
- school/event bans.

These sanctions are not closely tied to enforcing a clear, pre-existing order. They operate as penalties for past speech and impose independent disabilities.

Appellant's Affidavit of Compliance and subsequent motions (App. A-9:A47, R.139; App. A-10:A52, R.140; App. A-11:A59, R.153–154; App. A-12:A65, R.168; App. A-13:A76, R.171) show efforts to comply and to clarify. The absence of corrective relief underscores the fixed, punitive character of the sanctions.

Recent unpublished authored authority confirms that Wisconsin courts enforce statutory frameworks governing access and conditions as written. Griswold v. Miles, No. 2024AP2614, unpublished op. (Wis. Ct. App. Aug. 14, 2025) (Dist. IV), applies WIS. STAT. § 814.29 as enacted and reflects that courts may not construct ad hoc punitive regimes outside statutory authority. The sanctions here likewise exceed remedial aims and are invalid under ch. 785.

Remedy: Vacate the stayed jail term, purge conditions, fee award, and school/event bans.

IV. The school/event prohibitions lack a § 767.41(5) best-interests nexus, contradict the record, and aggravate alienation.

WIS. STAT. § 767.41(5) requires specific best-interests findings for placement and access restrictions.

The court:

- declined to find contempt for the school incident; yet
- imposed broad school and event bans through the contempt order.

Those bans lack § 767.41(5) findings and are disconnected from any proven contempt. Using contempt to impose categorical access limits without a best-interests analysis is an erroneous exercise of discretion.

The restrictions themselves risk exacerbating alienation and emotional harm by cutting off ordinary, positive contact opportunities (school functions, activities, events) that the record otherwise supported, while doing nothing narrowly targeted to any demonstrated danger. Without a supported link between Appellant's conduct and concrete harm, the bans fail both the statutory standard and any implied "harm prevention" rationale.

The contempt-based school and event bans are not neutral risk-management tools; they function to exclude Appellant from pro-social contact and undermine the statutory policy favoring a child's frequent and continuing contact with both parents. Any resulting estrangement is a product of the court's restrictions, not of any adjudicated misconduct by Appellant.

Remedy: Strike the school/event bans and direct that any future limitations be imposed, if at all, only through proper § 767.41(5) findings with consideration of less-restrictive alternatives.

V. The ex parte letter-to-signature path and 53-day gap create an appearance of impropriety warranting reversal and reassignment.

Judicial neutrality is evaluated from the standpoint of a reasonable, well-informed observer. Miller, 2020 WI 56, ¶¶19–24; Gudgeon, 2006 WI App 143, ¶¶20–24.

Here:

- June 11, 2025: contempt hearing;
- July 24, 2025: ex parte letter to chambers advocating for signature of a proposed order;
- August 1, 2025: signing of a broadened and punitive "Order and Finding of Contempt";
- no substantive resolution of Appellant's motions attacking that order.

This sequence, against the backdrop of the overbroad gag, punitive sanctions, and unsupported school/event bans, creates a reasonable question whether one party's draft and communications drove the result.

When a court both adopts one party's ex parte-drafted punitive terms and imposes broad speech and contact restraints unsupported by specific findings, a reasonable observer could conclude that the tribunal's actions have aligned with, and amplified, one-sided efforts to marginalize

Appellant's relationship with the children. Reassignment is required to restore confidence in a neutral application of the governing standards.

Remedy: Reverse the contempt order and direct reassignment to a different judicial officer on remand.

CONCLUSION

The contempt rests on a broadened written order not in effect when contempt was pursued. The "any information concerning this case" gag is an overbroad prior restraint. The sanctions are punitive rather than remedial under ch. 785. The school/event bans lack a § 767.41(5) best-interests basis and aggravate alienation instead of protecting the children. The ex parte path to signature and 53-day delay undermine the appearance of neutrality.

Appellant respectfully requests that this Court:

1. Reverse and vacate the August 1, 2025 "Order and Finding of Contempt."
2. Declare that no clear, written, and entered predicate order existed at the time contempt was pursued.
3. Vacate the case-speech restraint and all related purge provisions.
4. Vacate the stayed 180-day jail term, fee award, and school/event bans.
5. Remand with instructions to enter an order discharging Appellant from contempt based on timely compliance.
6. Direct that any future restrictions on contact or access comply with WIS. STAT. § 767.41(5), including specific findings and consideration of less-restrictive alternatives, and allow consideration of a transition toward unsupervised placement consistent with the record.
7. Reassign the matter on remand to a different judicial officer.

Grant such further relief as the Court deems just and proper, including referral of the record to the Wisconsin Judicial Commission for any review it deems appropriate.

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'Lex Vinicit Tenebras'

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CERTIFICATION AS TO FORM AND LENGTH

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief produced with a proportional serif font. The length of this brief is **[13 Pages] [2,648 words].**

Dated: 11/10 2025

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APPELLANT'S CERTIFICATION OF APPENDIX

I certify that filed with this brief is an appendix that complies with Wis. Stat. § 809.19(2)(a). The appendix includes:

1. A table of contents.
2. The written order(s) material to this appeal.
3. Relevant portions of the record necessary for an understanding of the issues raised.
4. A copy of each unpublished opinion cited in this brief.

I further certify that the appendix contains only materials that are in the record on appeal and that no confidential information is included contrary to law or court order.

Dated: 11/10 2025

Mathiew Rae Fox
Respondent-Appellant, Pro Se

CERTIFICATE OF MAILING

I certify that on **November 7, 2025**, I deposited in the United States mail, first-class postage prepaid, a true and correct copy of this Brief of Respondent-Appellant and Appendix, properly addressed to the following:

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