NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-66

	Opinion Delivered February 4, 2009
PATRICK J. POWERS APPELLANT	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT, [NO. CV-06-2492]
V.	HONORABLE MARK LINDSAY, JUDGE
PATRICIA PAN ADAMS and ALTERNATIVE SOLUTIONS, LLC APPELLEES	AFFIRMED IN PART; REVERSED and DISMISSED IN PART

LARRY D. VAUGHT, Chief Judge

Patrick Powers brings this pro se appeal from an order holding him in contempt of court. He argues that the circuit judge erred in failing to recuse; in denying him unrestricted access to the courts; and in holding him in contempt. We affirm in part and reverse and dismiss in part.

Powers was divorced in 2004 and subsequently pled guilty to two counts of incest involving his teenaged daughter. In 2006, he filed three pro se lawsuits alleging, *inter alia*, that his former wife, Kathryn Powers, devised a fraudulent scheme to accuse him of sexual abuse; that Connie Williams, his daughter's high-school counselor, influenced his daughter's decision to make the abuse accusations; and that Patricia Pan Adams, his daughter's therapist, reported the molestation to a child-abuse hot line. The circuit court dismissed the lawsuits and imposed

Ark. R. Civ. P. 11 sanctions on Powers in two of the cases, including the *Adams* case. The court ruled:

> To deter the Plaintiff from filing future frivolous lawsuits or other pleadings against the Defendants, the Plaintiff shall submit any such pleadings or lawsuits for review to a licensed attorney. Further, before such lawsuits or pleadings may be filed, they must be accompanied by a certificate signed by the licensed attorney stating that said attorney has reviewed the lawsuit or pleadings and that to the best of his or her knowledge, information, and belief, the attorney has found after reasonable inquiry that it is well founded in fact and is warranted by existing law or contains a good faith argument for the extension, modification, or reversal of existing law and further that the lawsuit or pleading is not being pursued for any improper purpose.

Powers filed pro se notices of appeal in all three cases. We affirmed the court's rulings in *Powers v. Adams*, CA07-884 (May 14, 2008) (not designated for publication); *Powers v. Williams*, CA07-883 (May 14, 2008) (not designated for publication); and *Powers v. Powers*, CA07-880 (May 14, 2008) (not designated for publication).

After Powers filed his notice of appeal in the *Adams* case, Adams moved to show cause why Powers should not be held in contempt because his notice did not contain an attorney certification. Powers asked the court to dismiss Adams's motion, and he filed several motions of his own, including a motion for recusal. At the show-cause hearing, the court declined to hold Powers in contempt for filing the notice of appeal but did hold him in contempt for filing the motions. The court ordered Powers to pay Adams $1,472.27 in attorney fees and expenses and directed the circuit clerk not to accept any additional pleadings or filings from Powers unless they contained the attorney certification. Powers appeals from that order.

Powers argues first that the circuit judge should have recused. A judge has a duty to hear a case unless there is a valid reason to disqualify. *Porter v. Ark. Dep't of Human Servs.*, 374

Ark. 177, ___ S.W.3d ___ (2008). A judge is presumed to be impartial, and the party seeking recusal must demonstrate bias. *Id*. We will not reverse a trial judge's decision not to disqualify unless the judge has abused his or her discretion. *Id*. In determining whether there was an abuse of discretion, we review the record to determine if any prejudice or bias was exhibited. *Id*.

Powers argues that the circuit judge demonstrated bias earlier in the *Adams*, *Williams*, and *Powers* lawsuits. However, his argument on this point is barred. We previously affirmed the judge's decision not to recuse in those proceedings, and our ruling is law of the case. *See Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001). Powers also cites several examples of the judge's allegedly exhibiting bias or prejudice during the contempt hearing. He complains that the judge told him not to discuss his notice of appeal during the hearing. However, the judge clearly stated he would not hold Powers in contempt for filing the notice. Powers also contends that the judge showed partiality merely by scheduling the contempt hearing. However, the hearing was prompted by Adams's motion to show cause, and a circuit court may hold hearings on motions. *See* Ark. R. Civ. P. 78. Powers further claims that the judge was impatient and irritable during the contempt hearing, but our review of the transcript does not bear this out. The judge did nothing more than make adverse rulings against Powers, which is not sufficient to warrant recusal. *See Carmical v. McAfee*, 68 Ark. App. 313, 7 S.W.3d 350 (1999). For these reasons, we affirm the judge's decision not to recuse.

Next, Powers contends that the circuit judge unconstitutionally restricted his access to the courts. His challenge to Rule 11 attorney-certification requirement in the underlying

Adams order is barred by the law-of-the-case doctrine—we affirmed the Rule 11 sanctions in *Powers v. Adams*, *supra*. As for Powers's claim that the attorney-certification requirement applied only in another of his lawsuits, the requirement was clearly contained in the *Adams* dismissal order, which Powers acknowledged below. Powers also appears to argue that the contempt order infringed on his ability to appeal and that the circuit judge had no authority to restrict his future filings in circuit court. However, the judge expressly did not hold Powers in contempt for filing a notice of appeal, and Powers makes no convincing argument that a judge cannot impose filing limitations on a party who has recently engaged in baseless, frivolous litigation.

Finally, Powers challenges the court's finding of contempt. Our standard of review for civil contempt is whether the circuit court's finding of contempt is clearly against the preponderance of the evidence. *Terry v. White*, 374 Ark. 366, ___ S.W.3d ___ (2008). Willful disobedience of a valid court order is contemptuous behavior. *Id*. However, before one can be held in contempt for violating the order, it must be definite in its terms and clear as to what duties it imposes. *Id*.

The court's order requires Powers to submit "pleadings or lawsuits" to a licensed attorney for review and certification. Powers argues that he did not violate the order because he filed defensive motions only in response to Adams's motion to show cause. We agree. The order does not clearly impose on Powers a duty to obtain certification when he is responding to matters filed against him rather than taking the initiative. Moreover, the order limits the certification requirement to "pleadings" and "lawsuits." Powers's motions were not lawsuits, as that term is ordinarily understood, and were not pleadings, which our Rules of Civil

Procedure distinguish from motions. *See* Ark. R. Civ. P. 7(a) and (b). Consequently, there was no factual basis for the contempt finding and it was clearly against the preponderance of the evidence. *See Applegate v. Applegate*, 101 Ark. App. 289, ___ S.W.3d ___ (2008). We therefore reverse and dismiss the finding of contempt.[1]

Affirmed in part; reversed and dismissed in part.

ROBBINS and GRUBER, JJ., agree.

[1] Powers asks this court to impose sanctions on Adams pursuant to Ark. R. Civ. P. 11. The appellate counterpart to that rule is Ark. R. App. P. - Civil 11. We do not find that Adams's brief was filed for an improper purpose or that it violates our Rule 11 in any respect. We therefore decline to impose sanctions.