



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

August 19, 2014

To:

Hon. Jay R. Tlusty
Circuit Court Judge
Lincoln County Courthouse
1110 E. Main Street
Merrill, WI 54452

Cindy Kimmons
Clerk of Circuit Court
Lincoln County Courthouse
1110 E. Main Street, Ste. 205
Merrill, WI 54452

Martha K. Askins
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Donald J. Dunphy
District Attorney
1110 East Main Street
Merrill, WI 54452

Jill Louise Laufenberg
Community Law Office, LLC
410 W. Main Street
Merrill, WI 54452-2223

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Michael Anderson
W8364 Cedar Road
Merrill, WI 54452-9314

You are hereby notified that the Court has entered the following opinion and order:

2013AP658-NM

State of Wisconsin v. Michael Anderson (L. C. #2011FA12)

Before Hoover, P.J.¹

Counsel for Michael Anderson has filed a no-merit report concluding there is no basis to challenge a Wisconsin circuit court's recognition of a Canadian child support order and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

enforcement through a remedial contempt order. Anderson was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm.

Michael and Angelina Anderson lived and worked in Ontario, Canada, and owned “Anderson’s Manitou Falls Camp.” They received a letter during the pendency of their divorce action requiring them to leave Canada because their work permits were about to expire. Michael left the country prior to the entry of the temporary child support order and relocated to Merrill, Wisconsin, but Angelina and the children remained. Both the temporary and final child support order entered in Ontario set forth a schedule for Michael to pay child support for the couple’s two children. Michael did not personally appear at the temporary or final divorce hearings, but counsel on his behalf appeared.

The Lincoln County child support agency subsequently filed an affidavit for contempt, alleging Michael was approximately \$40,000 dollars in arrears on his child support. Michael filed a motion to dismiss, claiming he was denied due process in the Canadian divorce proceedings because he was prevented from reentering Canada and therefore did not have the opportunity to be heard in Canada when the child support order was established. He further argued the Lincoln County Circuit Court lacked jurisdiction regarding the violation of the terms of a Canadian order.

The parties agreed Canada is a reciprocating country for purposes of enforcing child support orders. The circuit court found Michael participated by telephone in a settlement conference prior to the final child support order, and the final order was entered by stipulation on

the consent of the parties. The court also found no evidence of any litigation over whether the child support orders were properly determined, and Michael had notice and an opportunity to be heard through counsel in the Canadian court system. The court denied Michael's motion to dismiss the contempt action.

The circuit court also found there was a wilful and intentional violation of the Canadian order. The court ordered Michael to serve sixty days in jail and stayed the order pending compliance with conditions, including remaining current on the child support obligations, paying \$100 monthly toward the arrearages, and a work search if Michael no longer had an ownership interest in the camp.

There is no arguable issue regarding the recognition and enforcement of the child support order. WISCONSIN STAT. §§ 769.708(1) and (2) provide that a tribunal of this state "shall recognize and enforce" a registered child support order from a tribunal of a reciprocating foreign country unless certain exceptions apply, as set forth in subsections (2)(a) through (j). Among the exceptions to enforcement are that the respondent "neither appeared nor was represented" in the proceedings in the issuing foreign country, and that the law of the foreign jurisdiction did not provide for prior notice and an opportunity to be heard. Michael argued in the circuit court that he was denied due process because he was unable to appear personally in the Canadian court due to his immigration status.

Michael did not dispute in the circuit court proceedings that Canada is a reciprocating foreign country for purposes of WIS. STAT. ch. 769. Michael also did not dispute that Lincoln County registered the Canadian child support order in this case. The record supports the circuit court's finding that Michael was provided notice of the Canadian proceedings. Moreover, the

record shows he was heard at the Canadian proceedings via his appearance by counsel. Under these circumstances, our research has revealed no legal authority requiring a respondent's personal appearance in the issuing country's proceedings as a prerequisite to recognition and enforcement of a child support order under ch. 769.

Michael also claimed the circuit court proceedings were unfair because he could not afford to hire counsel in Canada to seek a modification of the Canadian support order. However, Michael failed to introduce evidence of an inability to pay for a lawyer. Furthermore, he failed to show that he could not otherwise seek modification. Accordingly, Michael has failed to show a denial of due process, or any basis for an exception of the enforcement provisions within WIS. STAT. § 769.708(2).

A person may be held in contempt if the failure to pay support is wilful and contemptuous and not due to an inability to pay. *See Benn v. Benn*, 230 Wis. 2d 301, 309-10, 602 N.W.2d 65 (Ct. App. 1999). At the contempt hearing, Michael did not dispute that he was in contempt of court for intentional failure to pay child support. Lincoln County stated its belief that Michael was prepared to admit to the contempt, and neither Michael nor his counsel disputed that representation. Michael did not dispute the feasibility of the court's purge conditions, and the conditions are clearly related to the contempt in that they seek to advance compliance with the Canadian child support order. *See id.* at 311. The record reveals no reason the contempt conditions would constitute an erroneous exercise of the circuit court's discretion.

Our independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Martha Askins is relieved of further representing Michael Anderson in this matter.

Diane M. Fremgen
Clerk of Court of Appeals