COURT OF APPEALS
DECISION
DATED AND FILED

January 25, 2018

Diane M. Fremgen
Acting Clerk of Court of Appeals

Appeal No. 2016AP1902 **Cir. Ct. No. 1997FA25J**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:

CONNIE M. WEILAND,

PETITIONER-APPELLANT-CROSS-RESPONDENT,

V.

JOHN D. WEILAND,

RESPONDENT-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Rock County: RICHARD T. WERNER, Judge. *Affirmed.*

Before Sherman, Blanchard, and Kloppenburg, JJ.

¶1 PER CURIAM. This is a family court action that dates from 1997. Connie Weiland appeals an order of the circuit court awarding her approximately $9,000 for unpaid child support, medical insurance, medical expenses, and a contribution to her attorney's fees in connection with the contempt motion that Connie brought against her former husband, John Weiland.[1] Connie argues that the court erred in determining: the amount of back child support due; when interest on back child support began to accrue; and the amount due to Connie for uninsured medical expenses. We affirm for the reasons set forth below.[2]

BACKGROUND

¶2 In the 1998 judgment of divorce, the court ordered John to pay child support and maintain health insurance for the parties' two minor children, and further ordered the parties to equally share uninsured medical expenses. At pertinent times, the parties relied on John's employer, General Motors, to withdraw appropriate amounts from John's pay for child support based on a formula.

¶3 In 2013, Connie brought an Order to Show Cause seeking reimbursement of medical expenses that she contended John had not paid.

¶4 On two occasions before 2014, Connie prepared and submitted to the court stipulations and proposed orders for modifications of child support, although

[1] Because they share the same last name we refer to the parties by their first names.

[2] John cross appeals, making a limited challenge to the validity of the court's determination of the amount of back child support due from 1998-2002 because there were insufficient records available for this time period. However, we do not address this issue because John informs us that he does not wish to pursue the cross appeal if we affirm the circuit court's order.

she did not indicate in either of these submissions that she believed that John had failed to pay any amount of child support that he had been ordered to pay, and did not request that the court order reconciliation by the child support agency.[3]

¶5 In 2014, for the first time since the divorce, Connie filed a contempt motion alleging that John might be in arrears on his child support obligation. The court granted Connie's reconciliation request. By the time of the resulting reconciliation, conducted in 2016, both children had aged out of child support.

¶6 The reconciliation shows that, from the time of the judgment of divorce until the children aged out, John paid Connie over $355,000 in child support and that, while John had overpaid in some months and underpaid in others, there was an arrearage of $2,894.70. The reconciliation reflected cumulative interest in the amount of $34,046.15.

¶7 After holding multiple hearings on the issues of John's alleged arrears and medical expenses, the court issued a written decision and order. The court noted the difficulties created by Connie's significant delay in bringing the contempt motion, including the difficulty in assembling pertinent information and producing valid documentation reflecting past expenditures by the parties. Having acknowledged the spotty nature of the record, the court found that John had provided sufficient documentation to prove that he had previously paid directly to

[3] "Reconciliation" is a process provided for in WIS. STAT. § 767.71(1)(b) (2015-16), under which a court in a child support action can order the county child support agency to "reconcile the amount due with payments actually made to determine if an arrearage exists."

All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Connie $600 of the $2,894.70 arrearage reflected in the reconciliation and that John should therefore receive credit for $600 against that amount.

¶8 Based on the testimony and documentation provided at the hearings, the circuit court ordered John to pay: back child support in the amount of $2,294.70 within 30 days of the court's order; $825 as reimbursement to Connie for insurance coverage for the parties' children; $3,522.16 for uninsured medical expenses within 60 days of the order; and $2,500 for Connie's attorney's fees. The court ruled that if John failed to pay the back child support within 30 days, as ordered, then he would be required to pay interest on the total amount in arrears from that date forward. The court also ordered that any wage assignment in effect be terminated. Connie appeals. We include additional facts below as necessary to the discussion.

DISCUSSION

¶9 Connie argues that the circuit court erred in the amount it awarded her in back child support for two reasons: (1) it relied on the reconciliation amount provided by the child support agency, which Connie contends was based on incorrect income figures for John; and (2) it gave John credit for payments that he made directly to Connie, which Connie contends lacked sufficient documentary evidence. Connie also argues that the court was without authority to order that John pay interest that would start accruing after 30 days following entry of the order only if he had not paid the arrearage by then and was also without authority to give John credit for medical expenses paid on behalf of one of the children because the child had aged out by the time John paid those expenses.

¶10 We begin with Connie's argument that the circuit court erroneously determined the amount that she was due in back child support. Connie argues that

the court erroneously relied on amounts provided in the reconciliation that were based on earnings as stated on social security statements, rather than on gross earnings "as found in the Social Security Earnings Record, pay stubs, [and] General Motors payroll printouts" as well as trial exhibits.[4] Connie's argument fails for at least the following reasons.

¶11 First, Connie's argument is not sufficiently supported by citation to legal authority. *See* ***Cemetery Servs., Inc. v. Department of Regulation & Licensing***, 221 Wis. 2d 817, 831, 586 N.W.2d 191 (Ct. App. 1998) (this court will not abandon its neutral role, which is limited to resolving developed legal arguments presented by the parties). Connie cites WIS. ADMIN. CODE § DCF 150 (through Nov. 2009) for the proposition that "gross income is defined" as "salary and wages" but asserts, without citation to legal authority, that "social security earnings are not gross income." She then appears to argue that the phrase "salary and wages" in § DCF 150 cannot be interpreted to include social security earnings. However, she fails to provide legal support for this position. She also asserts that John's position that the court has discretion to set child support based on social

[4] We observe that Connie's first argument could apparently be barred by the doctrine of judicial estoppel, *see* ***Feerick v. Matrix Moving Sys., Inc.***, 2007 WI App 143, ¶¶16-17, 302 Wis. 2d 464, 736 N.W.2d 172, but because John does not argue estoppel we address the argument on its merits. Briefly explaining the estoppel issue, on appeal Connie appears to take a position inconsistent with one that she advanced in the circuit court, which she convinced the court to accept. Connie specifically asked the court to rely on the reconciliation done by the county and, more specifically, asked the court to consider "the Social Security Earnings Statement for years 1998 ... through 2007" and then "the income information provided by General Motors" to conclude that John owed Connie back child support. The position that Connie convinced the circuit court to adopt appears to be wholly inconsistent with the argument she advances on appeal. We further observe that, on appeal, Connie appears to concede that for some years, the court was entitled to rely on social security earnings statements, which renders her current argument on its face inconsistent.

security earnings is "contrary to the law," but again provides no legal authority in support of this position.

¶12 Second, Connie fails to provide a sufficient basis for us to reject the circuit court's finding that "the reconciliation was properly done using the correct income." She does not persuade us that the court was not entitled to rely on the county's reconciliation, which the court concluded was based on the best information available, given the limited available records due to Connie's delay in bringing this motion.

¶13 We reject Connie's argument that the circuit court erroneously determined that John was entitled to a $600 credit because he paid that amount directly to Connie in 1998 based on fact finding by the court that Connie does not give us a reason to question. The court found credible John's testimony on this issue and also found that a copy of John's bank statement provided sufficient evidence of the payments. *See* ***Insurance Co. of N. Am. v. DEC Int'l, Inc.***, 220 Wis. 2d 840, 845, 586 N.W.2d 691 (Ct. App. 1998) (a circuit court's factual findings are not clearly erroneous if they are supported by any credible evidence in the record or any reasonable inferences from that evidence).

¶14 Connie makes an argument based on WIS. STAT. § 767.511(6).[5] The argument is that the circuit court erred in determining that interest on any back child support would begin to accrue only when John failed to comply with the time limitations set forth in the court's order. We observe that, both before the

[5] As is pertinent to this discussion, WIS. STAT. § 767.511(6) provides that when a payor no longer has a current child support obligation, interest ordered under the statute accrues "on the total amount of child support in arrears ...."

circuit court and now on appeal, Connie's interest argument has been unclear. Connie does not tell us what amount of interest she seeks or when she believes that interest began to accrue. We could end our discussion here, based on Connie's failure to present us with a clear argument related to interest. However, we choose to address at least briefly arguments made by the parties on this issue, after providing some additional background.

¶15 The circuit court understandably expressed frustration with the difficulty in resolving factual issues due to Connie's extreme delay in alleging arrearages and bringing the contempt motion. John asked the court to "consider the equities in ruling" on the interest issue. The court reached the following conclusions: "Since [John] reasonably relied on General Motors to make the correct child support calculation and because [Connie] did not pursue an arrearage for fifteen years and because a reconciliation was not done until 2016, I do not believe it is fair to impute interest to [John]" unless he failed to timely comply with the court's order.

¶16 Connie argues on appeal that the circuit court was without authority to make this decision and asks us to remand to the circuit court to re-assess interest on the arrearages pursuant to WIS. STAT. § 767.511(6).[6] In his response brief,

[6] Connie relies on WIS. STAT. § 767.511(6) to argue that the circuit court lacked authority to determine on equitable grounds when interest should begin to accrue. But neither party points us to evidence in the record that would indicate that Connie raised this statutory lack-of-authority argument before the circuit court and we will generally not blindside the circuit court by reversing on an argument that was not squarely presented to it. *See* ***State v. Rogers***, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995) ("We will not ... blindside trial courts with reversals based on theories which did not originate in their forum.").

Moreover, even assuming that the circuit court considered both Connie's request for interest and John's request for fairness in light of this statute in making its decision regarding interest, we decline to consider the boundaries of the court's authority under this particular statute because we reject Connie's interest arguments on other grounds.

John argues that equitable estoppel bars Connie from seeking interest on back child support based on John's reliance on Connie's acceptance of child support checks for over fifteen years and her failure to raise the issue of arrearages at any time before she filed the contempt motion. "Equitable estoppel requires proof of three elements: (1) an action or an inaction that induces; (2) reliance by another; … (3) to his or her detriment." ***Randy A.J. v. Norma I.J.***, 2004 WI 41, ¶26, 270 Wis. 2d 384, 677 N.W.2d 630 (citing ***Harms v. Harms***, 174 Wis. 2d 780, 785, 498 N.W.2d 229 (1993)).[7] John relies on the fact that the circuit court made findings consistent with the elements of equitable estoppel, and indicated that its decision was based in part on fairness. John argues that the court acted within its discretion in determining the interest issue.

¶17 Connie fails to sufficiently develop an argument in response to John's argument that Connie is equitably estopped from seeking interest because John complied with the court's order. Rather than squarely address John's estoppel-related arguments, in her reply brief Connie merely asserts, without providing a citation to the record, that the court "dismissed" equitable estoppel and laches arguments throughout trial.[8] Connie argues that, under WIS. STAT.

[7] In ***Harms v. Harms***, 174 Wis. 2d 780, 785, 498 N.W.2d 229 (1993), our supreme court observed that equitable estoppel is an available defense in family law proceedings and specifically concluded that equitable estoppel could be applied in a contempt proceeding to prevent a parent from claiming or collecting child support arrearages. Although ***Harms*** has been superseded on other grounds by statute, as noted in ***Barbara B. v. Dorian H.***, 2005 WI 6, ¶15, 277 Wis. 2d 378, 690 N.W.2d 849, neither of the parties indicate that the part of the case holding that equitable estoppel may be applied in contempt proceedings involving claims of child support arrearages is no longer good law and our limited research turned up no such indication. *See, e.g.*, ***Randy A.J. v. Norma I.J.***, 2004 WI 41, ¶26, 270 Wis. 2d 384, 677 N.W.2d 630; ***Ulrich v. Cornell***, 168 Wis. 2d 792, 799, 484 N.W.2d 545 (1992).

[8] John indicates that he relied on the principles of both equitable estoppel and laches throughout the proceedings in the circuit court to argue that Connie should be precluded from collecting any interest. We conclude that it is unnecessary to reach the laches issue.

§ 767.511(6), courts are precluded from taking any equitable action in cases involving arrearages, which is contrary to John's interpretation based on the facts presented here, without providing any citation to case law in support of her interpretation. We choose not to consider Connie's positions because they are not sufficiently supported and because she effectively concedes the point by failing to squarely address John's arguments. *See* ***State v. McMorris***, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 (we may choose not to consider arguments that are unsupported by references to pertinent legal authority, that do not reflect legal reasoning, or that lack proper citations to the record); ***United Coop. v. Frontier FS Coop.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant's failure to respond in reply brief to an argument made in response brief may be taken as a concession).[9]

¶18 Turning to the issue of unreimbursed medical expenses, Connie argues that the circuit court erred when it ordered reimbursement to John for expenditures that he made for a child, on the ground that John should get no credit because the child had aged out of child support. In ruling on unreimbursed medical expenses, the court made findings based on what the court concluded were "meticulous records" kept by John's current wife and credible testimony by the current wife. Connie's medical expenses reimbursement argument is difficult

[9] As an additional ground on which to affirm, John distinguishes on its facts the sole case that Connie relies on in support of her interest argument and further observes that the statutes that the case interprets have since been amended by the legislature, thereby making the case inapposite. *See* ***Douglas Cty. Child Support v. Fisher***, 200 Wis. 2d 807, 547 N.W.2d 801 (Ct. App. 1996) (pursuant to WIS. STAT. § 767.25(6) (1993-94), court had no discretion in assessing interest on child support). While Connie makes arguments in her reply brief that are plainly inconsistent with John's arguments, Connie fails to address in any manner John's arguments distinguishing ***Douglas County*** and the interest statutes. This failure effectively concedes the points. *See* ***United Coop. v. Frontier FS Coop.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578.

to follow. It largely consists of merely quoting snippets of testimony from the proceedings in the circuit court. As best we can discern, it boils down to a challenge to the circuit court's finding that the testimony and records provided by John's current wife were more credible than the testimony and records provided by Connie. And, Connie provides us with no reason to conclude that the court erroneously exercised its discretion in finding unreliable Connie's purported documentation of the amount of medical expenses to which she is entitled.

CONCLUSION

¶19 For the foregoing reasons, we affirm the order of the circuit court in its entirety.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.