COURT OF APPEALS
DECISION
DATED AND FILED

October 26, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP1544 **Cir. Ct. No. 1999FA144**

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

IN RE THE MARRIAGE OF:

DANA M. LEDUC,

PETITIONER-APPELLANT,

V.

PATRICK J. HAYES,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Chippewa County: STEVEN R. CRAY, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Dana LeDuc, pro se, appeals from numerous postdivorce orders concerning modification of child support. She also claims

circuit court bias and appearance of impropriety. We reject her arguments and affirm.

¶2 LeDuc and Patrick Hayes were divorced in 1999, and the circuit court awarded the parties joint custody of their two minor sons. LeDuc was granted primary physical placement and the children lived with her in Chippewa Falls. In 2003, LeDuc remarried and her husband planned to start a new job in Chicago. A request to remove the children to Chicago was denied, and we affirmed that decision in ***LeDuc v. Hayes***, No. 2003AP2547 unpublished slip op. (Ct. App. May 11, 2004). The circuit court thereafter granted Hayes primary placement. Hayes's obligation to pay child support was terminated and the court reserved ruling on child support payments from LeDuc to Hayes.

¶3 A motion to compel LeDuc to pay child support was thereafter brought and LeDuc did not appear at a hearing on February 19, 2008. The court ordered LeDuc to make child support payments of $210 monthly, retroactive to March 13, 2007. An amended order was filed on February 22, in which the court indicated the monthly child support was based upon an imputed income of $5.85 hourly. A subsequent hearing was held on May 5, after LeDuc alleged she was not served notice of the February 19 hearing. At the subsequent hearing, LeDuc requested full disclosure of Hayes's assets. The court determined Hayes's income was irrelevant and reaffirmed its February 19 order. We reversed and remanded with directions to require both parties to exchange financial information prior to a redetermination of child support. ***LeDuc v. Hayes***, No. 2008AP1345 unpublished slip op. (Ct. App. Nov. 4, 2008).

¶4 Upon remand, LeDuc's request for substitution of judge was granted. A renewed "Motion for Change of Judge and/or Venue" was denied on

the grounds LeDuc was not entitled to a second substitution of judge and she had failed to present facts to support a disqualification of the judge assigned to the case, or a change of venue. LeDuc then filed a motion for summary judgment on Hayes's child support claim, and a motion for reconsideration of the recusal motion, which were denied. Upon review by the chief judge, LeDuc's request for substitution was also denied as untimely and on the merits.

¶5 A scheduling order dated March 2, 2009 set a hearing on the child support claim for May 13, 2009. The court required both parties to respond to a request for financial information. The court also required both parties to be present at the hearing. A motion for reconsideration of the denial of summary judgment was denied.

¶6 Hayes designated a vocational expert to assist in determining LeDuc's earning capacity. LeDuc was ordered to appear in person for a vocational examination on April 21, 2009. LeDuc's motion to avoid the vocational examination was denied. LeDuc did not attend the examination. LeDuc also failed to attend the May 13, 2009 hearing on child support.

¶7 At the May 13 hearing, the court determined that Hayes had provided all costs for the children since at least March 13, 2007, when the motion for child support was filed. Hayes provided financial disclosure and his vocational expert testified as to LeDuc's earning capacity. The court found LeDuc shirked her duty to support her children and had not been diligent about seeking employment. The court inferred that LeDuc "desires to conceal from the court her employability and earning capacity." The court ordered LeDuc to pay $530 monthly child support, retroactive to July 1, 2007 as well as $75 monthly in arrearages. LeDuc now appeals.

¶8 The awarding of child support is committed to the sound discretion of the circuit court. ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737; ***Weiderholt v. Fischer***, 169 Wis. 2d 524, 530, 485 N.W.2d 442 (Ct. App. 1992). We generally look for reasons to sustain the circuit court's discretionary decisions. ***Loomans v. Milwaukee Mut. Ins. Co.***, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968). We may search the record to determine if it supports the court's discretionary decisions. ***Randall***, 235 Wis. 2d 1, ¶7. We will sustain a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion a reasonable judge could reach. ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). Findings of fact will be upheld unless clearly erroneous. WIS. STAT. § 805.17(2).[1] The circuit court is the ultimate arbiter of credibility. ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 249, 274 N.W.2d 647 (1979).

¶9 LeDuc first argues there is no need for child support. She claims Hayes's income and assets are "far beyond average," and child support in this case constitutes "de facto alimony."

¶10 The circuit court properly considered the parents' financial resources and the children's best interests, among other factors. The court found:

> [Hayes] receives an ample income, but it is not so outrageously high as to create a situation where there could be no benefit to the children of receiving child support from [LeDuc].
>
> In fact, I believe, and it is my finding that the children could benefit from additional financial support. The

[1] References to the Wisconsin Statutes are to the 2007-08 version unless noted.

> children are reaching their teenage years. Their financial requirements will continue to increase; that [Hayes] has shouldered the functional responsibility of taking care of the children and paying for their expenses, is commendable and I am not going to require him to shoulder it alone.

The court found Hayes provided as accurate information as possible. However, the court stated the following with regard to LeDuc's conduct:

> The reason that we do not have more accurate information is, in this court's opinion, because of [LeDuc's] option that she took not to participate at all.
>
> This is a civil action, and she is not entitled to remain silent. She was ordered by this court to attend [the vocational] examination of her. She contested it, and I ruled against her.
>
> I find that, from her decision not to participate, an adverse inference and that adverse inference is that she is aware that she is employable and that she wishes to conceal that fact from the court.[2]

¶11 The court's findings are not clearly erroneous. WIS. STAT. § 805.17(2). LeDuc's intentional conduct in violating the court's orders to disclose financial information, appear for the vocational examination and appear at the May 13 hearing, precluded a more precise determination of her earning capacity. As an uncooperative party, she will not now be heard to complain the circuit court erroneously made a determination of her earning capacity. *See* ***Lellman v. Mott***, 204 Wis. 2d 166, 172, 554 N.W.2d 525 (Ct. App. 1996).

¶12 LeDuc also contends the legal standard for imputing earning capacity was not met. She insists creating a new child support obligation based on

[2] The court also noted LeDuc's pro se status, and stated: "I am not going to assume that all the pleadings were drafted by her. If they were, she could qualify probably for at least the legal skills of a young attorney, but I suspect that she was – received some assistance from apparently a successful attorney who is her husband."

earning capacity is improper. According to LeDuc, "[B]efore earning capacity may be used to modify support, there must have been a reduction of income in view of an outstanding support order." Because she had no actual earnings and has never been ordered to pay support previously, LeDuc reasons she "has not diminished her income in view of an outstanding support obligation." However, LeDuc misstates the law. Shirking may be established where the obligor intentionally avoids the duty to support. ***Van Offeren v. Van Offeren***, 173 Wis. 2d 482, 492, 496 N.W.2d 660 (Ct. App. 1992). Here, the court concluded LeDuc "has shirked her duty to support her children." The court properly imputed income to her.[3]

¶13 LeDuc also insists retroactive increases in child support are not allowed. However, the court properly ordered child support back to the date of the motion, with an appropriate time period allowed to obtain employment. The court stated:

> The [motion] … actually came in March of 2007. The testimony of the expert here is that it would take approximately 60 to 120 days to obtain employment.
>
> If I give [LeDuc] the benefit of assuming that she had actually been diligent in seeking employment, that the first time that she would have had employment is theoretically around July 1st, 2007.
>
> I'm going to start her duties and her obligation to pay child support beginning on July 1st, 2007.

[3] Where shirking is established, it is proper to examine the noncustodial parent's earning capacity rather than actual earnings. ***Van Offeren v. Van Offeren***, 173 Wis. 2d 482, 492, 496 N.W.2d 660 (Ct. App. 1992). Here, the court found LeDuc "has received training and has job experience that is really quite significant and shows a skill level." Among other things, the court noted testimony as to the availability of employment in her area as well as mass transit.

¶14 LeDuc also insists the circuit court erred by denying her motion for summary judgment. Even assuming for the sake of argument that summary judgment is appropriate to preclude a claim for child support, we agree with the circuit court's observation: "As there has been no determination yet as to who should be paying for the needs of the children and in what amount, the plaintiff has failed to establish the absence of a genuine issue of material fact."[4]

¶15 LeDuc also argues there was no substantial change in circumstances warranting child support, and "the State" should not condone intimidation. Her arguments are difficult to discern. However, LeDuc relies upon a motion for contempt the circuit court denied because LeDuc failed to appear with proof at the hearing, despite an order to appear personally. LeDuc also references generally a motion to dismiss which was also denied at the same hearing.[5] Regardless, the court did not err in finding a substantial change in circumstances.

¶16 The record demonstrates the circuit court appropriately considered the proper factors in its child support determinations, employed a process of

[4] LeDuc also insists she presented undisputed evidence supporting summary judgment, but the court correctly pointed out that LeDuc "may not rely on evidentiary facts that fail to meet the standards for admissibility." The court indicated it was the need for the proper introduction of admissible evidence that necessitated the hearing scheduled for May 13, 2009.

[5] LeDuc cites generally to multi-page documents. We will not consider such references. *See* ***Siva Truck Leasing v. Kurman Distribs.***, 166 Wis. 2d 58, 70 n.32, 479 N.W.2d 542 (Ct. App. 1991).

reasoning based upon the facts of record, and reached a reasonable conclusion. The court's child support determinations were appropriate exercises of discretion.[6]

¶17 Finally, LeDuc argues bias and an appearance of impropriety upon remand following appeal No. 2008AP1345. LeDuc insists she was entitled to a "new deck of court players on remand." She demands the recusal of the circuit court judge, and the "disqualification" of the county child support attorney and a judicial assistant. LeDuc suggests the child support attorney "chose to continue to advocate for [Hayes]," and the circuit court's judicial assistant "played a key role on remand as her name is mentioned in the letterhead of several documents."

¶18 We conclude the matter of judicial recusal/disqualification was adequately addressed by the circuit court's several decisions on this issue, as well as the chief judge's decision, and we adopt their decisions as if fully set forth herein. With regard to the arguments concerning disqualification of the child support attorney and the court's judicial assistant, we conclude there is no basis in

[6] LeDuc improperly misrepresents facts, based upon statements in her own motions to the circuit court, which in some cases were denied by the circuit court because LeDuc failed to appear at the hearing with proof. For example, LeDuc states: "Here, [Hayes] has withheld visitation to prevent the application of the shared-time payer provisions in LeDuc's favor, which would essentially eliminate any claim of his for child support." However, LeDuc cites generally to a seventy-three-page motion for contempt that was denied by the circuit court for lack of proof. In addition, citation to multi-page documents such as "R.167" fails to conform to the requirements of WIS. STAT. RULE 809.19 and unnecessarily complicates our review of the case. We will not search through the record for facts allegedly supporting a party's contentions. *See* ***Siva Truck***, 166 Wis. 2d at 70 n.32. Furthermore, we admonished LeDuc in the appeal in ***LeDuc v. Hayes***, 2008AP1345 unpublished slip op. (Ct. App. Dec. 19, 2008), regarding the lack of citations in LeDuc's brief. Yet, she continues to cite generally to documents such as "R167" or "A8." Similarly, LeDuc's citations to legal authority often lack pinpoint citations. Further violations of the rules may subject her to sanctions.

fact or law for the relief requested. LeDuc was provided a fair and impartial proceeding.[7]

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 8009.23(1)(b)5.

[7] We are very troubled by the vast amounts of public resources expended on this matter that has now occupied the court system for over a decade. The courts have a very high caseload. *See* ***State v. Bons***, 2007 WI App 124, ¶28, 301 Wis. 2d 227, 731 N.W.2d 367. Governmental entities are faced with extreme pressures on their resources and the time devoted to each case is limited. *See* ***Cascade Mtn., Inc. v. Capitol Indem. Corp.***, 212 Wis. 2d 265, 270 n.3, 569 N.W.2d 45 (Ct. App. 1997). To a large extent, the stream of pleadings in this matter amounts to taking repeated umbrage with circuit court rulings, ignoring applicable standards of review and rehashing old arguments. The parties have also refused to comply with court orders compelling appearance, disclosure of financial information, and compliance with rules of procedure, among other things. This abuse of the system has taken resources away from other deserving matters and placed an unwarranted burden on the courts. It is even more regretful when divorced parents allow the desire to nurture their personal animosities to overshadow their children's welfare.