COURT OF APPEALS
DECISION
DATED AND FILED

August 9, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP250 **Cir. Ct. No. 1995FA960474**

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

IN RE THE MARRIAGE OF:

CHRISTINE M. SCHROEDER, NOW KNOWN AS CHRISTINE REUTER,

PETITIONER-RESPONDENT,

V.

RONALD E. SCHROEDER,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: BONNIE L. GORDON, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Ronald E. Schroeder, *pro se*, appeals from orders of the circuit court relating to child custody, support modification, access to school

records, and waiver of fees. We conclude the circuit court properly exercised its discretion as to each issue, and we affirm.

BACKGROUND

¶2 Schroeder's former wife, Christine Reuter, petitioned for divorce in 1995. Custody and placement of their minor child, A.S., was held open. The divorce was settled and approved in 1996. In 1999, A.S., who had been the subject of a CHIPS petition, was returned to Reuter's custody. Reuter then petitioned for a custody and support order. In 2000, the parties entered a stipulation regarding A.S.'s custody and placement: Reuter received sole custody and Schroeder received supervised visits, two to four times a month, each one and a half to three hours in length. Both parties were to have access to A.S.'s pupil records.

¶3 In April 2007, Schroeder moved to modify his child support obligation based on a decrease in his income. The court commissioner dismissed the petition on May 30, 2007, after Schroeder failed to appear. On June 4, 2007, the circuit court held Schroeder in contempt and entered a six-month commitment order, with purge conditions of payment of $4,000 in arrears.

¶4 In April 2008, Schroeder was sentenced to six years' initial confinement and twelve years' extended supervision on thirty-one various charges, including two counts of second-degree sexual assault of an unconscious victim, in Waukesha County. In June 2008, the State filed a motion to hold open Schroeder's child support obligation during his imprisonment. In September 2008, Schroeder moved to modify the placement order to include supervised visits, every other weekend, for two hours. He also sought to write letters to, and receive letters from, A.S. on a regular basis.

¶5 The court commissioner denied the change in placement, noting that Schroeder had not overcome the presumption of maintaining the status quo, and further opined that Schroeder had "no insight into the trauma his child would very likely experience by visiting him in prison." Schroeder requested *de novo* review by the circuit court.

¶6 Prior to the review hearing, Reuter petitioned the circuit court to enforce the existing placement order by prohibiting Schroeder from sending any correspondence to A.S., contending that letters were technically unsupervised. The circuit court heard the support and placement matters on June 4, 2009.

¶7 By order dated August 13, 2009, the circuit court denied Schroeder's request to change placement.[1] It concluded that such a change was not in A.S.'s best interest and that the change was impractical in any event because the court-approved visitation supervisor would not be ordered to travel to the correctional facility. The circuit court further noted that A.S. could not travel alone, and the circuit court declined to force Reuter to bear the cost of transporting A.S. two hundred miles in order to facilitate A.S.'s visits with Schroeder in prison. The circuit court stated that it was not denying Schroeder the physical placement previously provided for, but noted that enforcing the order was impractical under the circumstances.

¶8 The circuit court did, however, order that Schroeder could send A.S. two pieces of mail per month. The letters were to be addressed to Reuter, who would read them and timely forward them to A.S. Additionally, pursuant to the

[1] This order was signed by the Honorable Daniel L. Konkol on behalf of the Honorable Mary M. Kuhnmuench, who had conducted the June 4, 2009 hearing.

State's motion, the circuit court held Schroeder's child support obligation open effective June 4, 2009. The circuit court also reminded Schroeder that he had to confirm mailing of all pleadings to the circuit court, and calendar them himself if he wanted a hearing.

¶9 On August 18, 2009, Schroeder moved for reconsideration; the motion was heard in October 2009. Schroeder told the circuit court that his intent was not for in-person visitations but maintenance of communication through written and telephone contact. He also requested that the child support order be held open retroactive to his 2007 motion.

¶10 The circuit court also addressed two additional matters. Schroeder had moved, in March 2009, for an order vacating the June 2007 contempt finding. In April 2009, he requested access to A.S.'s school records, specifically requesting that Reuter provide a copy of A.S.'s annual school photograph.[2]

¶11 The circuit court disposed of the pending matters as follows:

A. It dismissed without prejudice the motion to vacate the June 4, 2007 contempt order because Schroeder had not provided a transcript of the hearing. The circuit court further ruled there would be no waiver of the transcript cost but that Schroeder could attempt to have the contempt order vacated if he ever obtained the transcript.

[2] It is not clear why the circuit court did not address these issues earlier, although it appears that the delay may have stemmed from the confusing manner and form in which Schroeder submitted various requests for relief.

B. It denied a change of the effective date of the hold-open child support order, noting that the appropriate statute, WIS. STAT. § 767.59(1m), permitted but did not require retroactivity to the day of service of the motion.

C. It ruled that photographs were not part of the school record and Reuter was not obligated to purchase any just so Schroeder could have one.

D. It advised Schroeder that he must file formal motions, not simply letters, for matters on which he sought relief, and cautioned him that motions brought to harass, cause delay, or increase the cost of litigation would not be heard.

E. It declined to reconsider the August 2009 order, which had denied Schroeder's change-in-placement motion, denied telephone visits, and limited the letters, noting that Schroeder had not provided a transcript of that hearing.

The circuit court's rulings were placed in an order, as amended, dated December 10, 2009.

¶12 Shortly before that order issued, on December 3, 2009, Schroeder filed a motion to reconsider the circuit court's oral ruling dismissing his motion to reconsider or vacate the contempt ruling. The circuit court denied this motion in

an order dated December 7, 2009. Schroeder appeals the December 7 and December 10 orders.[3] He raises six issues on appeal; we address each in turn.

I. Limit of Two Letters

¶13 The August 2009 order imposed a two-letter-per-month maximum on Schroeder's contact with A.S. The ruling is a byproduct of Schroeder's motion to modify placement, as well as Reuter's motion to enforce the prior placement order. Modifications to placement are committed to the circuit court's discretion. *See* ***Keller v. Keller***, 2002 WI App 161, ¶6, 256 Wis. 2d 401, 406, 647 N.W.2d 426, 428. The circuit court refused to reconsider the ruling in October 2009 because Schroeder had not provided a transcript.[4]

¶14 Schroeder first complains that the two-letter limit infringes on his First Amendment right to free speech and his Fourteenth Amendment right to "familial relations." This argument is conclusory and underdeveloped and we

[3] Schroeder's notice of appeal refers to a December 10, 2009 order entered by the Honorable Bonnie L. Gordon and the Honorable Mary M. Kuhnmuench. However, Judge Kuhnmuench did not enter the December 10 order: she entered an order, signed on her behalf by Judge Konkol, on August 13, 2009. Schroeder then sought reconsideration of that order, which led to Judge Gordon's December 10 order. The January 20, 2010 notice of appeal is untimely as to Judge Kuhnmuench's August order, *see* ***Silverton Enters., Inc. v. General Cas. Co. of Wis.***, 143 Wis. 2d 661, 665, 422 N.W.2d 154, 155–156 (Ct. App. 1988), WIS. STAT. § 808.04(1), and WIS. STAT. RULE 809.10(1)(e), so we do not directly review Judge Kuhnmuench's order, though we will reference it to the extent that it underlies Judge Gordon's order denying reconsideration.

[4] After Schroeder filed the notice of appeal, he filed a motion in this court that caused us to remand the matter, by order dated March 2, 2010, for a hearing pursuant to ***State ex rel. Girouard v. Circuit Court***, 155 Wis. 2d 148, 454 N.W.2d 792 (1990). The circuit court ordered a transcript of the June 4, 2009 hearing to be prepared for Schroeder at no cost to him. However, it does not appear that the transcript was ever filed with the circuit court, because it is not part of the Record on appeal. Schroeder has offered to provide a copy to us upon request. However, it is Schroeder's obligation as appellant to ensure the Record is complete. *See* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26–27, 496 N.W.2d 226, 232 (Ct. App. 1993).

need not address it further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244–245, 430 N.W.2d 366, 369 (Ct. App. 1988).

¶15 Schroeder next complains that the goal of the Children's Code is to preserve the unity of the family and a reduction, from four letters a month to two letters a month, is inconsistent with legislative intent. The Children's Code, WIS. STAT. ch. 48, is not applicable to child custody and placement issues. Chapter 48 deals with children in need of protection and services and termination of parental rights. Custody and placement issues following divorce are governed by WIS. STAT. ch. 767.

¶16 Schroeder also complains that the circuit court committed plain error and erroneously exercised its discretion "when it failed to articulate why it limited Ronald to sending two cards/letters per month to his daughter." In fact, the circuit court explained that the limit imposed was "as recommended by the Guardian Ad Litem to be in the best interests of A.S."[5] Thus, the Record reveals that the circuit court did articulate its reasoning. Accordingly, we conclude there was no subsequent error in denying reconsideration, even if the circuit court had denied reconsideration because of the lack of a transcript. *See* ***Lecander v. Billmeyer***, 171 Wis. 2d 593, 602, 492 N.W.2d 167, 171 (Ct. App. 1992) (this court may affirm the circuit court on different grounds).[6]

[5] Though we need not rely on it, we note that a primary component of the guardian ad litem's "best interests" recommendation appears to be A.S.'s wishes as set forth in a letter she wrote on her own.

[6] In his reply brief, Schroeder contends that the "best interests" standard does not apply to contact by mail, only to physical placement orders. However, Schroeder did not contend, in his main brief, that the circuit court applied an improper standard, and we do not consider arguments raised for the first time in the reply brief. *See* ***Northwest Wholesale Lumber, Inc. v. Anderson***, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502, 508 n.11 (Ct. App. 1995).

II. WIS. STAT. § 767.451 and Telephone Visitation

¶17 Schroeder contends that A.S. is entitled to periods of physical placement with him unless that placement would endanger her physical, mental, or emotional health. He argues that the circuit court therefore erred in denying telephone placement without considering the "factors" set forth in WIS. STAT. § 767.451(4).[7] The circuit court refused to reconsider the order, again because no transcript had been provided.

¶18 WISCONSIN STAT. § 767.451(4) is not applicable: the endangerment standard applies only if one parent seeks to deny all contact with the other. *See* ***Wolfe v. Wolfe***, 2000 WI App 93, ¶2, 234 Wis. 2d 449, 452, 610 N.W.2d 222, 224. Reuter did not make such a request, nor did the circuit court make such a ruling.

¶19 Further, the original placement order did not provide for telephone visitation. To modify the placement order to include unsupervised telephone visitation, Schroeder would have to show that telephone contact was in A.S.'s best interests. *See* WIS. STAT. §§ 767.451(1)(b)1.a., 767.451(5m), & 767.41(5)(am). Schroeder has never made such a showing, and in his main brief, he merely asserts that his incarceration is not related to her. Thus, he has not shown that the circuit court erroneously exercised its discretion in failing to change the placement order

[7] WISCONSIN STAT. § 767.451(4) states, "Upon petition, motion or order to show cause by a party or on its own motion, a court may deny a parent's physical placement rights at any time if it finds that the physical placement rights would endanger the child's physical, mental or emotional health."

to include telephone visitation, so we conclude that circuit court properly denied reconsideration.[8]

III. Prescribed Format of Schroeder's Submissions

¶20 The circuit court originally advised Schroeder it was his obligation to confirm pleadings and obtain a hearing date himself if necessary. In denying reconsideration, the circuit court explained that memoranda should only be filed if accompanying a motion or if Schroeder had the circuit court's permission, and it requested that Schroeder make requests for relief by motion, not letter. It further explained that this would help prevent Schroeder's requests from getting lost in the volumes of paperwork he was creating. Schroeder complains that the circuit court should not have requested him to file formal motions instead of letters and other correspondence, because he is appearing *pro se*, and courts are to examine and liberally construe *pro se* prisoner complaints to see if they state a cause of action. *See* ***Amek bin-Rilla v. Israel***, 113 Wis. 2d 514, 520, 335 N.W.2d 384, 388 (1983).

¶21 Simply because a letter from a prisoner can be construed as a complaint, it does not follow that every communication to a court from a prisoner reaches this status. *See* ***State ex rel. Terry v. Traeger***, 60 Wis. 2d 490, 499, 211 N.W.2d 4, 9 (1973). This is particularly true of "frivolous, vindictive, repetitious" and vexatious filings. *See* ***ibid.***

[8] In his reply brief, Schroeder asserts that the circuit court failed to consider WIS. STAT. § 767.41(5), which lists more than fifteen factors that the circuit court is to consider relative to a child's best interests when making a placement decision. This argument is raised for the first time in the reply brief; we therefore need not consider it. *See* ***Northwest Wholesale Lumber***, 191 Wis. 2d at 294 n.11, 528 N.W.2d at 508 n.11.

¶22 Here, the circuit court simply explained to Schroeder that if he sought relief, he should file a proper motion and assume the responsibility for obtaining a hearing date to avoid the possibility that his request would be overlooked. The circuit court had clearly tired of letters and redundant submissions that seemed to have no purpose other than to frustrate Reuter. The circuit court did not foreclose Schroeder from seeking relief, but merely requested that he not file repetitive claims and that he properly file and calendar motions when he was seeking relief. Courts' leniency toward *pro se* litigants is not limitless, and we discern no error in the circuit court's request.

¶23 We additionally question whether the leniency mandate is even applicable here. Schroeder is not seeking relief relative to his conviction but, rather, in a civil matter unrelated to his incarceration. Had he not been imprisoned, we would expect him to comply with the same procedural rules as attorneys. *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 451, 480 N.W.2d 16, 19–20 (1992).

IV. Child Support Modification Date

¶24 Following the State's motion, the circuit court held open Schroeder's child support obligation but did not specify an effective date. The subsequent order made the effective date June 4, 2009, the date of the hearing. Child support modification is committed to the circuit court's discretion. *See* ***Franke v. Franke***, 2004 WI 8, ¶72, 268 Wis. 2d 360, 399, 674 N.W.2d 832, 850. Schroeder complains that his obligation should have been held open back to April 2007, when he first filed his modification motion. The circuit court denied reconsideration, explaining that retroactivity is allowed but not required. Schroeder's sole argument—which is quite underdeveloped—is that the circuit

court erroneously exercised its discretion because it failed to explain why it used the June 2009 date and not the April 2007 date.

¶25 First, we note that a court's oral orders are effective when pronounced. *See* ***State v. Borowski***, 164 Wis. 2d 730, 733, 476 N.W.2d 316, 317 (Ct. App. 1991). Thus, absent any other stated effective date, the date of pronouncement controls, and no exercise of discretion is required for an order to take effect.

¶26 Second, we must emphasize that Schroeder's appellate argument is that the revision should have been retroactive to 2007, because he believes it was "beyond his control" that it took twenty-six months for the circuit court to rule on the hold-open motion. We reject this contention outright, as retroactivity to 2007 is prohibited by statute. Schroeder's 2007 motion was *dismissed* and the action thereby *terminated* based on his failure to prosecute the motion. The State's motion, even if filed at Schroeder's request, started a new action—it did not continue Schroeder's earlier filing. Therefore, the statute prohibited the circuit court from making any hold-open order retroactive to 2007, and reconsideration was not warranted.

V. Photographs as School Records

¶27 Schroeder contends that his "attempts to obtain [A.S.'s] school photographs directly from the school were futile, so he filed a motion to obtain copies" from Reuter. He asserts that under WIS. STAT. § 767.41(7)(a), he is entitled to A.S.'s school records, so the circuit court's ruling that A.S.'s annual school photograph is not part of her pupil records is contrary to WIS. STAT. § 118.125(1)(b).

¶28 The circuit court properly determined that Reuter is not the person obligated to provide Schroeder with access to pupil records. For that reason, we conclude the circuit court did not erroneously exercise its discretion when it declined to make her provide Schroeder with a photograph.

¶29 In his reply brief, Schroeder contends that his argument has been misunderstood, and that he merely wants this court to deem photographs part of the pupil records so that he may obtain them from the school, which has evidently refused to provide them.

¶30 WISCONSIN STAT. § 118.125(1)(b) defines directory data as "pupil records which include the pupil's name, address, telephone listing, date and place of birth … photographs … and the name of the school most recently previously attended by the pupil." Subject to a few specifically enumerated exceptions not relevant here, "pupil records" are "all records relating to individual pupils *maintained by a school*[.]" WIS. STAT. § 118.125(1)(d) (emphasis added). Schroeder asserts he is therefore entitled to copies of A.S.'s annual photograph under these sections.

¶31 Irrespective of the interplay between the definitions of directory data and pupil records, Schroeder has not shown that A.S.'s school actually maintains photographs in its records. Further, whatever Schroeder's dispute with the school is, it is not before this court: he asked the circuit court for an order forcing Reuter to provide the photograph, and the circuit court properly denied that request. Thus, we conclude Schroeder has not shown he is entitled to relief on these issues, and we discern no error in the circuit court's ruling.

VI. Transcript Fees

¶32 Schroeder complains that the circuit court erred when it held "[t]here is no waiver of fees for transcripts in civil actions." He contends this is contrary to ***State ex rel. Girouard v. Circuit Court***, 155 Wis. 2d 148, 454 N.W.2d 792 (1990). The circuit court initially made this ruling when explaining to Schroeder why it would not vacate the June 2007 contempt order.

¶33 Reuter claims that the issue is moot because Schroeder has already received a copy of the transcript which he seeks. It is not actually clear, however, which transcript Schroeder was seeking: the June 4, 2007 hearing transcript that resulted in the contempt order, or the June 4, 2009 hearing transcript that led to the August 2009 order. Nevertheless, we agree that the issue is moot: pursuant to this court's order, the circuit court held a ***Girouard*** hearing and ordered the June 4, 2009 transcript produced at no cost to Schroeder. To the extent he was seeking a copy of the June 4, 2007 transcript so that he could revisit the contempt ruling, the Record indicates that the contempt order has been vacated.

¶34 Schroeder appears to concede mootness, because he indicates in his reply brief that he simply wants a ruling that the circuit court's statement, that prepayment of fees in a civil matter may not be waived, was erroneous, as he plans to pursue modification of the support and placement orders upon his release. If Schroeder chooses to seek modification of existing orders at a later date, and if he seeks fee waivers to which he believes he is entitled but is denied, Schroeder may avail himself of appropriate avenues of appellate review. We will not provide an advisory opinion on a moot issue. *See* ***Wausau Joint Venture v. Redevelopment Auth.***, 118 Wis. 2d 50, 56, 347 N.W.2d 604, 607 (Ct. App.1984).

By the Court.—Orders affirmed.

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