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DISTRICT II

October 18, 2023

To:

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Electronic Notice

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

2022AP1732

In re the marriage of: Jacqueline M. Randa v. Russell Scott
Kortendick (L.C. #2013FA387)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jacqueline M. Randa appeals from a stipulated order that resolved all issues involving her contempt motions arising out of the sale of the parties' marital home in her divorce proceeding with Russell Scott Kortendick. She contends that the circuit court erroneously denied her requests for contempt sanctions and attorney fees prior to entry of the order. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for

summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ Because Randa waived her appeal rights by agreeing to entry of the stipulated order, her appeal must be dismissed.

Randa and Kortendick divorced in December of 2015. The parties agreed that Kortendick would possess the marital home but required that he refinance the mortgage to remove Randa's name by January 1, 2021. When he did not do so, Randa moved for contempt in April 2021. In an order dated October 25, 2021, the court memorialized the parties' agreement to place the house on the market for sale and extend the refinancing deadline and its decision not to find Kortendick in contempt at that time. Through the course of several subsequent filings and hearings, the court found Kortendick in contempt for failing to refinance or list the home for sale by the extended deadline and ordered him to pay Randa's attorney fees incurred in seeking contempt sanctions through April 7, 2022.

In May 2022, the house had not been sold, and Randa again moved for contempt. At a hearing on June 14, 2022, the court declined to make an additional finding of contempt and held open Randa's request for attorney fees beyond those incurred through April 7. Subsequently, the court rejected several proposed orders Randa filed regarding the June 14, 2022 hearing, along with Randa's motion for reconsideration, in which she continued seeking contempt and attorney fees.

On July 29, 2022, the sale of the marital home closed. Thus, by the time of the next hearing on August 23, 2022, Kortendick had complied with the court's orders, including payment of the previously ordered attorney fees. Nevertheless, prior to the hearing, Randa

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

sought a contempt finding and an award of attorney fees incurred since April 8, 2022. At the hearing, Randa sought damages for the additional interest she had incurred as a result of being unable to refinance her home. The court heard from both sides about Randa's request for interest but did not make any decisions. Randa also requested an additional hearing on her request for attorney fees. The court stated that it would not provide additional dates for other damages and asked the parties to confer to pursue a resolution of the dispute. Randa advised that she wanted to address the court directly, either before the parties conferred or later, and the court suggested she do so later.

When the parties finished conferring and returned to the courtroom, the court asked whether any stipulations had been reached, and Randa's counsel replied: "Yes. We've reached an agreement on the interest, and my client would still like to address the Court at the end on the attorney fees." Randa's counsel then set forth the parties' agreement detailing four items: (1) an agreement on monthly payments from Kortendick to Randa which would be "added to the wage assignment"; (2) a check from Kortendick to address the interest; (3) Randa's access to the marital home to look for china; and (4) Kortendick's agreement to give Randa a closet organizer. Counsel then stated that Randa "wanted to address the [c]ourt on her attorney fees, frustration, and time off" and then stated, "That's the deal." Kortendick's counsel agreed that the stipulation, as relayed by Randa's counsel, was "[a]ccurate."

Randa then addressed the court, thanking the court during "an arduous uphill battle" and stating that she was "glad it's to an end." The court acknowledged Randa's frustration and stated: "What I'm pleased about at this point is that the two of you have reached, what I would consider, a[n] appropriate stipulation which now ends."

Without objection from Randa’s attorney, the court then asked who would draft the “final stipulation,” and Kortendick’s counsel stated that he would. The court then asked about the status of Randa’s proposed order relating to the June 14, 2022 hearing. Kortendick’s counsel advised that the only issue was with the continuing attorney fees but then stated: “If we’re ending this today and there’s no additional attorneys fees, then that’s a moot point.” The court then signed an order from the June 14, 2022 hearing, which did not find Kortendick in contempt or award attorney fees. The court then stated that the proposed order Kortendick’s counsel volunteered to draft and the adjustment to the wage assignment would “bring[] us to completion,” and after inquiry, the court advised that the proposed stipulated judgment should reflect that it was “stipulated on the record” so that the parties would not need to sign it.

The court subsequently signed the proposed order Kortendick’s counsel submitted that set forth the four conditions Randa’s counsel detailed on the record and confirmed that the parties stipulated to resolve all issues before the court:

THIS HONORABLE COURT, Judge Faye M. Flancher, presiding, based upon the motions, the records, pleadings and files of this court and the stipulation provided and acknowledged on the record by the parties; the Court specifically orders as follows to resolve all pending contempt issues and sanctions:

....

4. All outstanding issues before the court; including but not limited ... [to] additional attorney’s fees ... are deemed fully resolved pursuant to the above stated conditions.

On appeal, Randa argues that the circuit court erred in declining to find Kortendick in contempt and award attorney fees she incurred between April 8, 2022, and the sale of the home on July 29, 2022. In making this argument, Randa fails to address the fact that the stipulated

order explicitly and “fully resolved” “[a]ll outstanding issues,” including the contempt sanctions and additional attorney fees issues. Randa did not reserve a right to appeal in the order.

Randa contends that the statements of her counsel from the August 2022 hearing indicate that the parties had not resolved all matters, resulting in what she calls a “partial stipulation.” This argument is wholly without merit. Randa’s counsel detailed the terms of the stipulation at the hearing and then said, “That’s the deal.” Randa personally told the court that she was glad it was at “an end.” The court then requested that counsel draft the “final stipulation,” and Kortendick’s counsel’s stated that attorney fees issues arising out of the June 14 hearing were “moot” if “we’re ending this today” and there were “no additional attorney[] fees.” Randa’s counsel did not object. The transcript clearly evidences an understanding that all of the parties’ outstanding disputes had been resolved. Randa’s failure to object to the proposed stipulated order or reserve a right to appeal leaves no room for doubt as to the comprehensive and final nature of the parties’ agreement.

Thus, Randa’s attempt to challenge pre-stipulation proceedings is unavailing because she has waived her appeal rights. “Where an order is made on stipulation of all the parties to an action, it cannot be appealed because no one is aggrieved.” *Buchberger v. Mosser*, 236 Wis. 70, 77, 294 N.W. 492 (1940); *see also Auer Park Corp. v. Derynda*, 230 Wis. 2d 317, 322, 601 N.W.2d 841 (Ct. App. 1999) (“A party to a civil case waives the right to appeal if he or she consents or stipulates to the entry of a judgment.”); *County of Racine v. Smith*, 122 Wis. 2d 431, 437, 362 N.W.2d 439 (Ct. App. 1984) (same).

Randa did not seek reconsideration, reserve a right to appeal, or move the circuit court for relief from the stipulated order, such as on the grounds of mistake, misrepresentation, or fraud.

See *Roberts Premier Design Corp. v. Adams*, 2021 WI App 52, ¶11, 399 Wis. 2d 151, 963 N.W.2d 796 (dismissing appeal where settlement agreement and associated consent judgment did not indicate “an intent to preserve appeal rights”), *review denied* (WI Dec. 15, 2021) (No. 2019AP1706); *Schauer v. DeNeveu Homeowners Ass’n*, 187 Wis. 2d 32, 37, 522 N.W.2d 246 (Ct. App. 1994) (“Relief from a stipulation may be granted only if the moving party shows that the stipulation was the result of fraud, mistake or misrepresentation.”), *aff’d*, 194 Wis. 2d 62, 533 N.W.2d 470 (1995). Randa suggests she had little choice because it was clear that the court was not going to rule in her favor. However, her recourse at that juncture was an appeal. Instead, she agreed to a comprehensive and final resolution of all outstanding issues in the stipulated order, thus waiving her appeal rights.

Now, therefore,

IT IS ORDERED that this appeal is summarily dismissed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals