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 II

February 28, 2024

To:

Hon. Kristin M. Cafferty
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Jessica A. Grundberg
Electronic Notice

Daniel A. Peterson
Electronic Notice

Nathan Huiras
Electronic Notice

Megan McGee Norris
Electronic Notice

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

2023AP789 In re the marriage of: Nicole Huiras v. Nathan Huiras (L.C. #2021FA592)

Before Gundrum, P.J., Grogan 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).

Nathan Huiras, pro se, appeals from a postjudgment order entered on May 4, 2023, following a May 2, 2023 postjudgment hearing at which he did not appear.[1] Based upon our

[1] The circuit court entered two postjudgment orders on May 4, 2023. The first is an order entitled "Post-Judgment Orders, Order Lifting Freezing of Assets for a Limited Purpose and Order to Appear and Show Cause" (Document 541 in the Record), and the second is an order entitled "Post Judgment Orders on Attorney Fees, Contempt/Enforcement and Respondent's Motion to Stay" (Document 542 in the Record). In his Notice of Appeal, Nathan references only "Document 542," and accordingly, we address only that order on appeal.

(continued)

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).[2] We affirm.

The Huiras's final divorce judgment was entered on April 26, 2023. Neither Nathan nor Nicole appealed from that final judgment. In the divorce judgment, the circuit court addressed whether attorney fees and costs should be awarded "for overtrial or as sanctions for contempt." The court set a hearing for May 2, 2023, to address attorney fees, specifically identifying that date for the hearing in the divorce judgment. After the divorce judgment, but before the May 2nd hearing, the guardian ad litem appointed to represent the parties' minor children filed a motion seeking remedial contempt against Nathan and requested that this be addressed at the May 2nd hearing. Nathan filed motions objecting to the guardian ad litem's request but did not attend the May 2nd hearing. The court memorialized its rulings from the May 2nd hearing in a May 4th order. Nathan appeals only the May 4th order identified in the Record as document "542[.]"

The May 4th order that Nathan appeals contains five points. First, it ordered Nathan to allow Nicole to enter his home to obtain her tangible personal property as directed in the divorce judgment. Second, it found Nathan in contempt for failing to pay $5,000 of child support arrears by May 1, 2023, as previously ordered and ordered him to appear for a show cause hearing on

---

Because the parties share the same last name, we refer to the parties by their first names to avoid confusion.

[2] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

May 15, 2023.[3] Third, the May 4th order required Nathan to pay Nicole's attorney's fees and identified those amounts as well as how they would be paid. Fourth, the May 4th order required Nathan to pay the guardian ad litem's fees and identified that amount. Fifth, the May 4th order denied Nathan's motion to stay the divorce judgment and noted that Nathan's writ of prohibition served on the court does not excuse him from attending the May 2nd hearing. Because Nathan's appeal is from only the May 4th order, our jurisdiction is limited to reviewing decisions the circuit court made in that order. *See* ***State v. Baldwin***, 2010 WI App 162, ¶61, 330 Wis. 2d 500, 794 N.W.2d 769.

Nathan's brief identifies eight "issues":

(1) "I. The Family Branch Case is making non-summary punitive findings of contempt without providing the punitive procedural due process protections prescribed by the Legislature in WIS STAT. 785."

(2) "II. The Family Branch case fraudulently conveys their final opinion of the case as a 'judgement' while failing to follow the Due Process requirements of entering a judgement."

(3) "III. The Child Support agency is not a party to the Case 2021FA000592 action therefore it shall not be awarded."

(4) "IV. The Family Branch proceeding should not imprison the Appellant while he seeks his clearly stated right to De Novo Review of the final opinion made by the Circuit Court Commissioner."

(5) "V. The Contested Divorce proceeding in Case 2021FA000592 is not a trial in the limited jurisdiction. The act of officiating an action affecting the family is an act of a Circuit Court Commissioner.

(6) "VI. A Pro Per [sic] litigant's argument shall be liberally construed. The Appellant shall not be held to the standard of an attorney."

[3] The order indicated that Nathan should appear and "[s]how [c]ause as to why the court should not sentence him to thirty (30) days in the Racine County Jail with Huber (Work Release) privileges" and gave him the ability to purge the contempt by paying the arrearage.

(7) "VII. A 'status conference' type hearing is not a contempt hearing. Therefore, the Appellant cannot be found in non-summary contempt during this hearing."

(8) "VIII. Case 2021FA000592 lacks competency to proceed."

Nathan's issues and briefs are difficult to decipher. Issues (2), (3), (4), (5), and (8) appear to be challenging the April 26, 2023 final divorce judgment. Because Nathan did not appeal from that final judgment, we are without jurisdiction to address those issues and discuss them no further. Nathan's Issue (6) is not an issue at all, but rather a statement that a pro se litigant is not held to the standard of an attorney, and pro se arguments should be liberally construed. Although some leniency may be afforded a pro se litigant, he must still abide by the same rules as attorneys. *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Further, an appellate judge cannot properly serve as both advocate and judge, *see* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), and thus, it is inappropriate for us to "abandon our neutrality to develop arguments" for Nathan. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

That leaves us with only Issues (1) and (7), both of which refer to contempt. Issue (1) asserts that the circuit court made "punitive findings of contempt without providing the punitive procedural due process protections prescribed by the Legislature in WIS STAT. 785." The Record, however, does not support Nathan's claim. The May 4th order does not impose any sentence of imprisonment or any other sanction for contempt. It sets a show cause hearing for a future date. Moreover, the Record indicates that Nathan "did in fact purge the contempt and as a result was never placed into custody." Accordingly, this issue is moot. *See* ***State ex rel. La Crosse Trib. v. Circuit Ct. for La Crosse Cnty.***, 115 Wis. 2d 220, 228–30, 340 N.W.2d 460

(1983) (concluding appeal is moot when resolving the issue will not have any practical effect on the existing controversy).

We also note that Nathan failed to attend the May 2nd hearing—thereby forfeiting his right to challenge the rulings made therein—and he failed to provide this court with a transcript of that hearing. When an appellant fails to provide a transcript, this court presumes it supports the circuit court's decision: "[I]n the absence of a transcript we presume that every fact essential to sustain the circuit court's decision is supported by the record." ***Butcher v. Ameritech Corp.***, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006). Thus, even if this issue were not moot, Nathan has failed to show the circuit court erred. *See* ***Gaethke v. Pozder***, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381 (On appeal, the appellant bears the burden to demonstrate how the circuit court erred.).

Nathan's Issue (7) complains that the May 2nd hearing was improperly referred to as a "status conference" and argues that, as a result, he could not be found in contempt at that hearing. We reject Nathan's contention for multiple reasons. A single reference to the May 2nd hearing as a "status conference" does not change the nature of the hearing or the purpose of it, and moreover, the circuit court found that Nathan knew about the May 2nd hearing and what would be considered during that hearing. The Record supports the circuit court's finding. First, the divorce judgment specifically identified the date of the hearing and its purpose. Second, Nathan received electronic notice of both the hearing and the guardian ad litem's motion seeking remedial contempt against him as evidenced by Nathan's responsive filings referring to the May 2nd hearing and objecting to the guardian ad litem's motion. And, again, just as with Issue (1), the Record indicates Nathan purged this contempt and forfeited his right to challenge it

by not attending the hearing. Nathan has failed to meet his burden to show the circuit court erred. *See* ***Gaethke***, 376 Wis. 2d 448, ¶36.[4]

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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

[4] Respondent filed a motion seeking costs, fees, and attorney fees on the grounds that Nathan's appeal was frivolous under WIS. STAT. § 809.25(3). We grant her motion and agree this appeal is frivolous. Most of the issues Nathan raised do not even arise from the order that he appealed. And, given that Nathan purged the contempt referenced in the order appealed from, failed to attend the hearing, and failed to file a transcript from the hearing, Nathan "knew, or should have known, that the appeal … was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." Sec. 809.25(3)(c)2. We remand the matter to the circuit court to determine those amounts. At that time, the circuit court may also consider whether Nathan should be ordered to pay all of the guardian ad litem's fees based on this court's determination that Nathan's appeal was frivolous.