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DISTRICT IV

May 9, 2024

To:

Hon. Frank D. Remington
Circuit Court Judge
Electronic Notice

Richard Smith
228 N. Avon, No. 2
Rockford, IL 61101

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Jessica Sykes
425 S. Bird St., No. 307
Sun Prairie, WI 53590

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

2023AP1115

Jessica Sykes v. Richard Smith (L.C. # 2023FA561)

Before Blanchard, Graham, and Nashold, 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).

Jessica Sykes appeals an order denying her request for a family court 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 809.21.¹ We affirm.

On April 4, 2023, Sykes submitted several items to the circuit court, which consisted of two short letters and a set of documents from a family case in Illinois. Based on the set of

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

documents, it appears that the Illinois court may have issued one or more orders pertaining to children that Sykes shares with the respondent, Richard Smith.

One of the letters that Sykes submitted to the circuit court stated that Sykes was “requesting to register for registration in the Dane County Clerk[’s] office ... for me to consider seeing a Judge in order to retain my children as requested.” The next day, the court commissioner dismissed the case in a written order, which stated:

The documents submitted do not constitute proper pleadings for registration pursuant to [WIS. STAT. §] 822.35. There is no certified copy of the September 20, 2022 Order of Protection issued by the Winnebago County, Illinois Circuit Court that awarded the “physical care and possession” of the three children to Mr. Smith. Furthermore there is no sworn statement from the petitioner, under oath, that the September 20, 2022 order has not been modified or that there are no other orders that impact the custody/placement of these children. It is unclear from all that was submitted if the children remain in Illinois; even if registration were properly accomplished it is likely Illinois is a more appropriate forum.

Sykes requested a de novo hearing before the circuit court, and the hearing was held on June 20, 2023. There is no transcript of the hearing in the record, but the court docket states: “Petitioner Jessica Sykes in court. Respondent Richard Smith in court. [Court] explains to parties why this isn’t proper forum to hear this issue. [Court] finds that [Court] doesn’t have jurisdiction to hear this matter; Illinois has primary jurisdiction over children. [Court] affirms dismissal order.” Following the hearing, the court entered an order on June 21, 2023, which stated: “For the reasons stated on the record, this court does not have primary jurisdiction over the matter.”

Sykes appeals that order. She filed an opening brief, and Smith did not file a respondent's brief. We nevertheless conclude that the circuit court order should be affirmed because Sykes has not made a persuasive argument for reversal.

In context, we understand the circuit court's decision to have been that, under WIS. STAT. § 822.21(1), the court did not have jurisdiction regarding child custody. On appeal, Sykes does not develop any legal argument that the court reached an erroneous legal conclusion regarding jurisdiction. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992); *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999) (“A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories.”). Although we make some allowances for the failings of parties who, as here, are not represented by counsel, “[w]e cannot serve as both advocate and judge,” *Pettit*, 171 Wis. 2d at 647, and will not scour the record to develop viable, fact-supported legal theories on Sykes' behalf, *Jackson*, 229 Wis. 2d at 337.

In addition, although it does not appear that evidence was taken at the June 20 hearing, the absence of a transcript prevents us from knowing what additional information may have been provided to the circuit court at that time. When a transcript is not part of the record, we assume that the missing transcript would support every fact essential to the circuit court decision to which the missing transcript relates. *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979).

Therefore,

IT IS ORDERED that the circuit court order is summarily affirmed under 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