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DISTRICT II

August 7, 2024

To:

Hon. William J. Domina
Circuit Court Judge
Electronic Notice

Hon. Jennifer R. Dorow
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Basil M. Loeb
Electronic Notice

Scott A. Schmidlkofer
Electronic Notice

Lisa A. Bangert
Electronic Notice

Russell O. Rose
Electronic Notice

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

2023AP1548 Kelly R. Rose v. Russell O. Rose (L.C. #2008FA930)

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).

Russell O. Rose, pro se, appeals from circuit court orders denying, without a hearing, several posttrial motions in which he sought reconsideration of a circuit court decision and orders in this postdivorce matter.[1] Based upon our review of the briefs and Record, we conclude at

[1] The Honorable William J. Domina presided over the postdivorce evidentiary hearing, issued a written decision and order on the issues raised at the hearing, and denied several posttrial motions in a written decision and order. Russell Rose then filed nearly identical posttrial motions with the Honorable Jennifer R. Dorow, which were also denied.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[2] We summarily affirm.

The following facts, as found by the circuit court, are undisputed. Russell and Kelly Rose were married in 2001 and divorced in 2009. In 2022, Russell filed a contempt motion against Kelly after she failed to turn over their minor son Charlie's passport to Russell.[3] Kelly subsequently filed a motion to modify custody, placement, and child support, seeking sole legal custody of Charlie. Russell then filed a motion to dismiss Kelly's modification motion and to modify child support.[4]

Following an evidentiary hearing on the various motions spanning four days that included testimony from Russell, Kelly, and several other witnesses, the circuit court issued a written decision and order. The court awarded Kelly sole legal custody and primary physical placement of Charlie, greatly reducing Russell's placement from a substantially equal shared placement schedule to alternating Saturdays. As a result of a change in placement during the pendency of the action, a child support arrearage was calculated in the equivalent amount of seventeen percent of Russell's gross income listed in his financial disclosure statement, from September 1, 2022 through April 30, 2023. Child support was held open effective May 1, 2023 based on

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

[3] We refer to the parties by their first names for simplicity's sake because they share a last name.

[4] Russell filed, and the circuit court addressed, several other motions during the pendency of the underlying action. These included motions to change venue, a request for review by chief judge of his request for change of court official, for an emergency hearing, review of guardian ad litem, and for psychological evaluations. None of these motions are relevant to the issues on appeal.

Russell's testimony on May 2, 2023 that he was then unemployed. The court also denied Russell's motion to hold Kelly in contempt.

In response to the circuit court's decision and order, Russell filed a motion for reconsideration seeking, among other things, recalculation of child support and a new trial. Russell filed a separate posttrial motion seeking removal of the guardian ad litem.[5] In denying Russell's posttrial motions, the court explained that the motions presented "the same [issues] as those already heard and considered" during the evidentiary hearing. It further noted that in rendering its decision, it had "worked diligently to set forth the controlling law and to apply the same to the relevant facts," and concluded that Russell had not established a "manifest error" of law or fact.

After the circuit court denied Russell's posttrial motions, Russell filed several additional posttrial motions seeking the same relief in another branch of the circuit court. The second court also denied Russell's motions, concluding that nothing in his many filings presented newly discovered evidence or a manifest error of law. The court also accurately relied on caselaw holding that "a litigant is not entitled to be heard on a second or subsequent motion for reconsideration." *See, e.g.*, ***City of Edgerton v. General Cas. Co. of Wis.***, 190 Wis. 2d 510, 519, 527 N.W.2d 305 (1995); ***Blau v. City of Milwaukee***, 232 Wis. 197, 208, 287 N.W. 594 (1939). Russell appeals.

[5] In his posttrial motions, Russell challenged various actions of the guardian ad litem. However, he has abandoned those arguments on appeal, conceding that they are moot because the parties' son Charlie has reached adulthood.

Notably, as Kelly observes in her brief, Russell does not appeal from the circuit court's original decision and order on the issues of custody, placement, and child support. Rather, his appeal seeks review of only the decisions denying his various motions for reconsideration and other posttrial motions. In particular, Russell argues that he is entitled to an evidentiary hearing or a new trial to address the motions.

As we explain below, we reject Russell's argument that the circuit court committed reversible error by denying his motion for reconsideration without holding an additional hearing. We review a circuit court's decision on a motion for reconsideration under an erroneous exercise of discretion standard. ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853. To prevail on a motion for reconsideration, the movant must either present newly discovered evidence or establish a manifest error of law or fact. ***Id.***, ¶44. A party may not use a motion for reconsideration to introduce new evidence that could have been presented earlier. ***Id.***, ¶46.

Under the erroneous exercise of discretion standard, we will not reverse a court for coming to a conclusion which another court might not reach, if the decision is one that a reasonable judge could reach after considering the law and facts through a reasoned process. ***Filppula-McArthur v. Halloin***, 2000 WI App 79, ¶16, 234 Wis. 2d 245, 610 N.W.2d 201.

Russell first argues that he is entitled to a posttrial hearing because the circuit court failed to consider necessary factors related to child support including his income, his ability to pay, and the needs of the child. Our review of the court's original decision, which, to reiterate, is not challenged in this appeal, leads us to conclude otherwise. As stated above, the court calculated child support and arrearages based on the evidence available to it. The court further held child

support open beginning in May 2023 based on Russell's testimony that he had lost his employment since filing his financial disclosure statement. Russell could have presented an updated financial disclosure statement and revised financial information and calculations during the evidentiary hearing on the original motions, but he failed to do so. The court was not obligated to hold an additional hearing posttrial when Russell had all information regarding his employment and income available to present at the time of the evidentiary hearing. *See* ***Koepsell's***, 275 Wis. 2d 397, ¶46.

Based on our review, we conclude that the circuit court examined the relevant facts, applied a proper standard of law, and reached a reasonable conclusion regarding the calculation of the child support and arrearages. As explained, Russell's posttrial motions regarding child support did not present any newly discovered evidence. Nor did they establish manifest error by the court in making its calculations. Therefore, the court did not erroneously exercise its discretion in refusing to hear Russell's posttrial child support motions.

We also reject Russell's other main argument; namely, that he is entitled to a hearing or a new trial because he was denied the "ability to even present a case on the numerous motions and categorically [denied] his rights to a hearing on three different subjects." The cases Russell cites in support of this argument are inapposite, as Kelly explains in her brief on appeal. Moreover, the circuit court presented Russell with ample opportunity to present a case on all issues raised in his posttrial motions, which the court found were the same issues he had previously raised during the evidentiary hearing and in his related motions.

Finally, we decline to address Russell's arguments for a hearing based on his second round of posttrial motions, because when "there has been one reconsideration of the court's

decision," a court need "not entertain a request for a second." *See* ***City of Edgerton***, 190 Wis. 2d 510, 519.

To summarize, we conclude that the circuit court did not erroneously exercise its discretion in denying Russell's various and multiple posttrial motions without a hearing.[6] Russell did not present the court with any newly discovered evidence, and he failed to establish any manifest errors of fact or law in the court's well-reasoned decision following the multi-day evidentiary hearing on the parties' motions. *See* ***Koepsell's***, 275 Wis. 2d 397, ¶44. Therefore,

IT IS ORDERED that the orders of the circuit court are summarily affirmed. *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

[6] To the extent that we do not address Russell's arguments as to the merits of the decisions denying his posttrial motions, we conclude that we lack jurisdiction to review them because the issues raised posttrial were the same issues that were addressed in the circuit court's original decision on the custody, placement, and child support modification motions. This court lacks jurisdiction to consider an appeal of an order denying a motion for reconsideration that presented the circuit court with the same issues that were disposed of by the original judgment or order. *See* ***Ver Hagen v. Gibbons***, 55 Wis. 2d 21, 25-26, 197 N.W.2d 752 (1972); ***Silverton Enters., Inc. v. General Cas. Co. of Wis.***, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988).