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DISTRICT II

November 20, 2024

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

2023AP352

Janelle N. Fitzpatrick v. Jose A. Romero Bustos
(L.C. #2014PA685PJ)

Before Neubauer, 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).

Janelle N. Fitzpatrick, pro se, appeals from a circuit court order that awarded Jose A. Romero Bustos sole legal custody and primary physical placement of the parties' son, Noah.¹ She also challenges the court's order finding her in contempt for her intentional interference with Romero Bustos' placement. Based upon our review of the briefs and record, we conclude at

¹ We refer to the parties' son using a pseudonym to protect the minor's privacy.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).² For the reasons discussed below, we summarily affirm.

The parties do not dispute the facts relevant to this appeal. Noah was born in June 2014. In April 2015, the court issued an order regarding legal custody and physical placement of Noah, awarding joint custody to the parties and primary placement to Fitzpatrick. In 2019, Romero Bustos filed for a change of placement due to Fitzpatrick having moved from Wisconsin to Tennessee, leaving Noah with Romero Bustos in Illinois. A family court commissioner granted temporary primary placement to Romero Bustos and prohibited Fitzpatrick from moving Noah to Tennessee.

As relevant to this opinion, on January 28, 2020, the court made final the order granting Romero Bustos primary placement of Noah during the school year and Fitzpatrick secondary placement from the end of the first full week of summer vacation to the beginning of the last full week of summer vacation. In September 2022, Romero Bustos filed a motion to modify the physical placement and custody order from January 2020. Based on Fitzpatrick's history of threats of keeping Noah out of state after her periods of placement and of having Romero Bustos deported if he objected to any court actions Fitzpatrick may bring, Romero Bustos expressed concern about Fitzpatrick taking possession of Noah in Georgia, where she lived at that time. Romero Bustos worried that if unsupervised placement continued, Fitzpatrick may kidnap Noah, keep him out of state, and not return him to Romero Bustos' care. Moreover, Romero Bustos alleged, Fitzpatrick made false allegations in both Wisconsin and Georgia that Romero Bustos

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

abused Noah in an attempt to gain custody and placement. He argued that continuing the status quo regarding custody and placement was not in Noah's best interest.

Romero Bustos also filed a motion and order to show cause alleging that Fitzpatrick had violated the January 2020 order and should be found in contempt based on her actions in Georgia for "interfering with [Romero Bustos'] placement pursuant to the 2020 placement order and causing [Romero Bustos] expenses exceeding \$3,000 to regain placement of his son." Between his two motions, Romero Bustos sought orders: (1) modifying placement to no longer allow Fitzpatrick unsupervised placement; (2) awarding Romero Bustos sole legal custody; (3) finding Fitzpatrick in contempt and imposing sanctions with purge conditions; and (4) awarding Romero Bustos attorney fees and costs for expenses he incurred in both Wisconsin and Georgia when attempting to enforce his custody and placement rights.

After holding an evidentiary hearing on the motions and considering arguments from the parties and the guardian ad litem, the circuit court granted Romero Bustos' motions. The court awarded Romero Bustos sole legal custody and primary placement, found Fitzpatrick in contempt for repeated intentional interference with Romero Bustos' placement rights, imposed and stayed contempt sanctions on Fitzpatrick, and set purge conditions for the contempt which included payment of costs and fees to Romero Bustos. Fitzpatrick appeals.

Fitzpatrick raises the following issues on appeal: (1) the circuit court should not have found Fitzpatrick in contempt because she was following the Georgia court order and her attorneys' advice in keeping Noah in Georgia and away from Romero Bustos; (2) both the Georgia and Wisconsin courts violated Fitzpatrick's Fourteenth Amendment constitutional rights by returning Noah to Wisconsin and Romero Bustos; (3) the court violated her right to counsel

because she was not represented at the hearing at issue in this appeal; (4) the court violated her Fifth Amendment right to freedom from self-incrimination by requiring her to cross-examine Romero Bustos at the hearing. Fitzpatrick also complains of her general lack of understanding of the process, but this seems to be encompassed within the other issues she raises. We address each issue in turn below, although much of our focus is on the court's finding that Fitzpatrick was in contempt because the vast majority of her briefing is concerned with the court's contempt finding.

As to Fitzpatrick's first argument, we construe her position to be that the circuit court erroneously exercised its discretion in finding her in contempt. We disagree. WISCONSIN STAT. § 767.471(5)(b) provides that a court may find a responding party in contempt, and shall order additional periods of physical placement and costs and attorney fees, if the court "finds that the responding party has intentionally and unreasonably denied the moving party one or more periods of physical placement." The plain language of § 767.471(5)(b) makes clear that these remedies apply if the circuit court finds that one parent has "intentionally and unreasonably denied" the other parent "one or more periods of physical placement."

The circuit court in this case made the factual finding that Fitzpatrick intentionally and unreasonably denied Romero Bustos one or more periods of physical placement with Noah in violation of the court-ordered placement schedule and subsequent compliance order. The court stated: "You are in contempt. Your interference with father's placement is extremely troubling." The court further explained that it was "[f]inding [Fitzpatrick] in contempt for this ridiculousness, for this behavior that just won't stop," that, as the court found, had been occurring "since September of 2019."

This court does not overturn a circuit court’s factual findings unless they are clearly erroneous. *Teubel v. Prime Dev., Inc.*, 2002 WI App 26, ¶12, 249 Wis. 2d 743, 641 N.W.2d 461 (2001). In addition,

[W]hen the [circuit court] acts as the finder of fact, and where there is conflicting testimony, the [circuit court] is the ultimate arbiter of the credibility of the witnesses. When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact.

Noll v. Dimiceli’s, Inc., 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983) (citation omitted). Under these standards, this court will not reverse a circuit court’s factual findings unless “the evidence supporting a contrary finding ... constitute[s] the great weight and clear preponderance of the evidence.” *Sellers v. Sellers*, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996) (citation omitted).

Fitzpatrick fails to explain how the circuit court’s factual finding that Fitzpatrick intentionally and unreasonably denying Romero Bustos periods of physical placement in violation of a court order is clearly erroneous, or how the evidence supporting a contrary finding “constitute[s] the great weight and clear preponderance of the evidence.” *Id.* Fitzpatrick’s argument on appeal consists only of assertions disagreeing with the findings of the circuit court. For example, Fitzpatrick asserts that the court erred in finding her in contempt because, “just as you shouldn’t be punished for failure to follow an order you didn’t know about, you also shouldn’t be punished for failing to follow an order you have no ability to follow.” She blames the Georgia court and her attorneys for her failure to comply with the orders of the Wisconsin court, but wholly fails to address the court’s factual finding that Fitzpatrick’s interfering, “ridiculous[]” behavior had been occurring “since September of 2019.” The Georgia order was

in effect only from June 15, 2022 through August 24, 2022, but Fitzpatrick further fails to address the court's findings that her contemptuous behavior began in September 2019 and was still continuing in 2022. Given the court's factual findings supporting its contempt ruling and the fact that Fitzpatrick fails to explain how or why the court's findings are flawed, we uphold the court's contempt finding against Fitzpatrick. There is nothing in the record to support an argument that the court's findings were clearly erroneous.

The next issue Fitzpatrick raises, though framed in terms of a violation of her Fourteenth Amendment rights, seems to be an argument that the circuit court erred in holding a hearing on Romero Bustos' motions because Fitzpatrick has not lived in Wisconsin for years.³ Fitzpatrick fails to provide any legal authority for, or develop any argument as to why, her position that Romero Bustos could not have properly brought his motions in Wisconsin, where the courts have been involved with Noah's custody and placement almost since his birth. In short, Fitzpatrick has failed to demonstrate any error with the circuit court's holding a hearing on and deciding Romero Bustos' motions.

The remainder of the issues Fitzpatrick raises on appeal fail for the sole reason that the contempt hearing was not a criminal proceeding. As the circuit court noted, the hearing underlying this appeal was civil in nature and held in response to motions brought by Romero Bustos seeking a change in custody and placement, as well as to determine whether Fitzpatrick's interference with Romero Bustos' placement rose to the level of contempt. An

³ Fitzpatrick also argues that the Georgia court violated her constitutional rights. We do not have jurisdiction over the Georgia court, so we decline to address issues surrounding the Georgia court orders.

individual is not entitled to counsel in civil contempt matters that are not brought by the state, *see State v. Pultz*, 206 Wis. 2d 112, 556 N.W.2d 708 (1996), nor is a right to freedom from self-incrimination violated by asking questions in a civil case, *see Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 178 (2004) (explaining that “[t]he Fifth Amendment prohibits only compelled testimony that is incriminating.”). Thus, Fitzpatrick’s constitutional arguments also fail.⁴

For the foregoing reasons, we conclude that the circuit court did not err in granting Romero Bustos’ motion for sole custody and supervised, secondary placement for Fitzpatrick. Fitzpatrick has failed to develop any argument that would show how the court’s decision was in error. The court also did not erroneously exercise its discretion in granting Romero Bustos’ motion to find Fitzpatrick in contempt for her repeated and intentional interference with Romero Bustos’ placement with Noah.

Therefore,

IT IS ORDERED that the orders of the circuit court are summarily affirmed. *See* WIS. STAT. § 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals

⁴ To the extent that we have failed to address any additional arguments made by Fitzpatrick, we decline to address them as undeveloped. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (explaining that “[w]e may decline to review issues inadequately briefed.”)