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DISTRICT II

April 9, 2014

To:

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

2013AP1326

Connie Marie Bell v. John Angelo Bell (L.C. # 2012FA1164)

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

John Angelo Bell appeals pro se from a circuit court judgment divorcing him from Connie Marie Bell. John did not appear at the scheduled divorce trial, and the court entered a judgment of divorce as a result of John's default. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

The relevant facts are undisputed in the record. When John failed to appear for the May 7, 2013 divorce trial, the circuit court granted a divorce by default and entered a judgment

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

of divorce. On appeal, John claims that he was misled about the divorce trial date by an April 1, 2013 letter from “Legal Clerk, Branch 3.” The April 1 letter erroneously stated that the trial date was May 8, 2013, not May 7.

We cannot assess the significance of the April 1 letter because John never filed a WIS. STAT. § 806.07 motion seeking relief from the divorce judgment on the grounds that he did not appear because he was confused or misled about the trial date. Section 806.07 authorizes the circuit court to relieve a party from a judgment; § 806.07 relief is discretionary with the circuit court. *Johnson v. Johnson*, 157 Wis. 2d 490, 497, 460 N.W.2d 166 (Ct. App. 1990). In the absence of a § 806.07 motion, relief from the judgment of divorce is not available to John. Nevertheless, we will briefly address John’s claim that he had an excuse for failing to appear at the May 7 trial.²

The divorce trial was scheduled for May 7, 2013. At the May 7 trial, the court noted John’s absence and waited to see if he would appear. When John did not appear, the court found that John was present in court at the May 1 status hearing and that on May 1, the court made clear that the trial would occur on May 7. The court also took notice of its January 10, 2013 scheduling order which established the May 7 trial date.

The circuit court’s findings regarding notice to John about the May 7 trial date are not clearly erroneous. WIS. STAT. § 805.17(2). The record offers further support for the court’s

² John’s briefs are difficult to understand, and he offers arguments that are extraneous to this appeal. To the extent we have not addressed an argument John raises on appeal, the argument is deemed rejected. *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

findings. John appeared by telephone at the January 10, 2013 scheduling hearing, and during that hearing, the court set the May 7 trial date and issued an order consistent with that schedule. John also appeared by telephone at a March 21 hearing at which the court noted that the trial was scheduled for May 7. John appeared in person at the May 1 status hearing. On three occasions during the May 1 hearing, in John's presence, the court noted that the trial was scheduled for May 7.³ In light of this record and in the absence of a WIS. STAT. § 806.07 motion, we cannot say that the April 1 clerk's letter overrode the court's January 10 scheduling order and the court's repeated references to the May 7 trial date at the May 1 status conference.

The record supports the circuit court's decision to enter a judgment of divorce by default. In the absence of a WIS. STAT. § 806.07 motion, we do not reach any of John's challenges to the judgment of divorce.

Connie seeks WIS. STAT. RULE 809.25(3) attorney's fees and costs for a frivolous appeal. The motion is denied; we do not deem John's appeal frivolous. Furthermore, we note that Connie's respondent's brief misstates the trial date as May 8, does not address the obvious issue arising from the clerk's April 1 letter, and does not offer citation to any authority or portion of the record.

Upon the foregoing reasons,

³ At the beginning of the May 1 status conference, the court stated, "The matter is here today for purposes of a final pretrial and the matter is set for trial on May 7th." Later in the hearing, the court stated, "We're going to go to trial next week, Tuesday at 8:30 a.m." The Tuesday following May 1 was May 7. Finally, the court ended the May 1 hearing by stating, "We'll see you next week Tuesday at 8:30 a.m."

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the respondent's WIS. STAT. RULE 809.25(3) motion for attorney's fees and costs is denied.

IT IS FURTHER ORDERED that the respondent may recover the costs allowed under WIS. STAT. RULES 809.25(1) and (2).

Diane M. Fremgen
Clerk of Court of Appeals