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**DISTRICT IV**

December 1, 2014

To:

Hon. Juan B. Colas  
Circuit Court Judge  
215 South Hamilton, Br.10, Rm. 7103  
Madison, WI 53703

Carlo Esqueda  
Clerk of Circuit Court  
Room 1000  
215 South Hamilton  
Madison, WI 53703

Marcus Steven Miles  
515 Moorland Road #202  
Madison, WI 53711

Shawnette Sophia Stephens  
4200 West Portage Street  
Milwaukee, WI 53209

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

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2013AP2149

In re the marriage of: Shawnette Sophia Stephens v. Marcus  
Steven Miles (L.C. # 2007FA1475)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Shawnette Stephens appeals an order deciding a motion to modify child support that was filed by respondent Marcus Miles. 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 (2011-12).<sup>1</sup> We affirm.

In November 2012, Miles moved for modification of child support. One of his arguments was that the amount of income previously imputed to Stephens by a court commissioner should

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

be increased in light of new facts. After an evidentiary hearing, in an order entered February 20, 2013, the court kept her imputed income at the same level.

In March 2013 Miles moved for modification of child support because of loss of his employment. That motion was eventually heard by the circuit court on August 21, 2013. By the time of that hearing, Miles had regained employment, and the hearing focused mainly on what his new support amount would be and whether he should be required to pay arrears going back to the date of re-employment. The court took testimony from Miles about his new income and other matters.

At the hearing, as part of its calculation of arrears, the court noted that Stephens may have owed child support to Miles for a month, based on her imputed income and his reduced income due to lack of employment. This prompted Stephens to protest the imputation of income, but the court stated that it would not permit the parties to re-argue that issue. The court then entered an order on August 30, 2013, setting forth its calculation of support and arrears.

That is the order from which Stephens now appeals. On appeal, Stephens argues that the court erred by imputing income to her because, in her view, her unemployment was not voluntary, was justified for various reasons, and was not intended to avoid family financial obligations.

We first clarify the scope of this appeal. The February 2013 order that kept the income imputed to Stephens at the same level is not before us now, because Stephens did not appeal at the proper time. Stephens' current notice of appeal was filed in September 2013. That is long past the ninety-day filing time for a notice of appeal from the February 2013 order. *See* WIS. STAT. § 808.04(1). We cannot extend that time. WIS. STAT. RULE 809.82(2). An appeal from a

final order can bring before us prior orders, but only if those prior orders were non-final. WIS. STAT. RULE 809.10(4). Here, the February 2013 order appears to have been final, and therefore is not brought before us by this appeal from the August 2013 order. Accordingly, Stephens' arguments about whether the court erred in February 2013 by imputing income to her are not properly before us.

As to the August 2013 order that is properly before us, it does not appear that the court decided at that time whether income should continue to be imputed to Stephens, or in what amount. At the hearing, the court used the imputed income amount to determine child support obligations. However, when Stephens attempted to re-argue the issue of imputed income, the court stated that it was not going to address that issue, and we do not see any new decision on that subject for us to review.

Stephens argues that the court erred by not giving her time to make her argument and present supporting documents at the August 2013 hearing. The court did so properly because up to that point no new question, since February 2013, had been raised about whether the imputed income should continue or be modified in amount. The issue before the court at that point was the effect of Miles' new job and period of unemployment on child support. The court was not required to hear argument on a question that was not before it, and the court could properly rely on the imputed income amount that had already been set.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*