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DISTRICT I

December 23, 2014

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Cierra M.

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

2014AP63

In the Matter of a Change of Name for Khabira G.:
Cierra M. v. Paris G. (L.C. #2013CV8195)

Before Curley, P.J., Kessler, J., and Thomas Cane, Reserve Judge.

Paris G. appeals from a circuit court order changing the name of his daughter. The Respondent, Cierra M., did not file a responsive brief. We conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). Based on Cierra M.'s failure to file a responsive brief, we summarily reverse the order. *See* WIS. STAT. RULE 809.83(2) (2011-12).¹ We remand with directions that the circuit court enter appropriate orders reinstating the child's former name.

On January 7, 2014, Paris G. filed a notice of appeal from the November 22, 2013 circuit court order that changed the name of Paris G.'s minor daughter over his objection. On January

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

15, 2014, Cierra M. filed a motion in this court seeking an extension of time “to file a response to the appeal.” (Capitalization omitted.) By order dated January 17, 2014, we denied the motion as unnecessary, explaining that Paris G.’s brief had not yet been filed. We advised Cierra M. that we would issue a notice after Paris G.’s brief was filed.

On March 28, 2014, we notified the parties that the circuit court record had been filed, and on April 1, 2014, we notified the parties that Paris G.’s brief had been filed.

On May 12, 2014, we notified Cierra M. that her brief was delinquent and ordered her to file her brief or seek an extension within five days. We received no response. On May 28, 2014, we *sua sponte* extended the time for Cierra M. to file her brief, to June 18, 2014. Again, we received no response.

On June 19, 2014, Paris G. moved for summary reversal based on Cierra M.’s failure to file a responsive brief. We denied the motion, indicating that this court preferred to decide the case based on “the benefit of full briefing.” *See Cierra M. v. Paris G.*, No. 2014AP63, unpublished order at 1 (WI App Aug. 1, 2014) (hereafter, “*Cierra M.*”). We continued:

However, the “[f]ailure to file a respondent’s brief tacitly concedes that the trial court erred,” *State ex rel. Blackdeer v. Levis Township*, 176 Wis.2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993), and allows this court to assume that the respondent concedes the issues raised by the appellant, *see Charolais Breeding Ranches Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). We will not act as both advocate and judge, *see State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), by independently developing a litigant’s argument, *see Gardner v. Gardner*, 190 Wis. 2d 216, 239-40 n.3, 527 N.W.2d 701 (Ct. App. 1994).

If a respondent fails to brief an appeal, we may exercise our discretion and summarily reverse the circuit court, provided we determine that the respondent has abandoned the appeal or has acted egregiously or in bad faith. *Raz v. Brown*, 2003 WI 29, ¶18,

260 Wis. 2d 614, 660 N.W.2d 647; *see also Blackdeer*, 176 Wis. 2d at 259-60 (summary reversal is appropriate sanction for respondent's violation of briefing requirements).

We conclude that a responsive brief is necessary to the resolution of this appeal. The failure to file such a brief constitutes an abandonment of the appeal. Therefore, pursuant to *Raz*, 260 Wis. 2d 614, ¶36, we are ordering the filing of a responsive brief. *If a brief is not filed, this court will summarily reverse the judgment or order appealed from.* See WIS. STAT. RULE 809.83(2) (2011-12).

Cierra M., No. 2014AP63, unpublished order at 1-2 (emphasis added). We extended the deadline for *Cierra M.* to file a responsive brief by fifteen days and reiterated: "If the respondent's brief is not filed within that time period, the judgment or order appealed from will be summarily reversed." *Id.* at 2.

Cierra M. did not subsequently file a responsive brief or any motions with this court. Consistent with our August 1, 2014 order, we now summarily reverse the circuit court's name change order based on *Cierra M.*'s abandonment of the appeal. See WIS. STAT. RULE 809.83(2) ("NONCOMPLIANCE WITH RULES. Failure of a person to comply with a court order or with a requirement of these rules ... is grounds for ... summary reversal.") We remand with directions that the circuit court enter appropriate orders reinstating the child's former name.

IT IS ORDERED that the circuit court's order is summarily reversed and the cause is remanded with directions. See WIS. STAT. RULE 809.83(2).

Diane M. Fremgen
Clerk of Court of Appeals