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**DISTRICT II/IV**

May 7, 2015

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

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2014AP1046

In re the marriage of: Josephine Brandon p/k/a Josephine  
Badalamenti v. Peter Badalamenti (L.C. # 2004FA1483)

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

Peter Badalamenti appeals a postjudgment order regarding child support and attorney's fees. 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 (2013-14).<sup>1</sup> We summarily affirm and grant Josephine Brandon's motion for costs and reasonable attorney's fees on appeal.

Peter Badalamenti and Brandon, previously known as Josephine Badalamenti, were divorced in 2007. They entered into a marital settlement agreement at the time, which required Peter to pay \$3,000 per month in child support. Since then, the parties have appeared in court

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

several times over support matters. This appeal concerns an order entered after the circuit court made an oral ruling on March 19, 2014. The circuit court ordered that Peter pay Josephine \$52,062.20 in child support arrears and denied Peter's motion for child support from Josephine. The court further ordered that, pursuant to the marital settlement agreement, Peter pay Josephine \$23,915.61 for a bill from the law firm of Zetley and Cohn, as well as the settlement balance of \$17,010.91, inclusive of interest. The order also granted Josephine's motion for attorney's fees in the amount of \$5,000.00.

On appeal, Peter purports to challenge the circuit court's child support findings, as well as the award of attorney's fees to Josephine. Decisions regarding modification to child support are left to the discretion of the circuit court, and will not be overturned unless the court has erroneously exercised its discretion. *Rottscheit v. Dumler*, 2003 WI 62, ¶11, 262 Wis. 2d 292, 664 N.W.2d 525. Likewise, "[a]n award of attorney's fees is committed to the trial court's sound discretion." *Hughes v. Chrysler Motors Corp.*, 188 Wis. 2d 1, 10, 523 N.W.2d 197 (Ct. App. 1994) *aff'd*, 197 Wis. 2d 973, 542 N.W.2d 148 (1996). "The trial court properly exercises its discretion when it applies the appropriate legal standard to the facts of record and, using a logical reasoning process, draws a conclusion that a reasonable judge could reach." *Id.*

On appeal, Peter improperly reargues the facts, rather than presenting a cognizable legal argument that the circuit court erred under a relevant legal standard. Peter's brief fails, even, to place the isolated facts he references into the context of why they matter to our review of the order before us on appeal. For example, Peter asserts that he is entitled to child support from Josephine for periods of time when he had placement of their minor son. He devotes several pages to factual allegations regarding his financial situation during those time periods. However, he fails to present any meaningful discussion about the standards the circuit court applied in

deciding the issue of whether he was entitled to support for those periods or why we could conclude that the circuit court erred in applying such standards.

We are not a fact-finding court. *Wurtz v. Fleischman*, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155 (1980). In the absence of a meaningful argument from Peter identifying how the court erred under applicable legal standards, we will not conclude that the circuit court erroneously exercised its discretion in deciding the issues of child support and attorney's fees. We therefore affirm the order of the circuit court.

Pending before us are motions filed by both parties, each requesting attorney's fees and costs under WIS. STAT. RULE 809.25. The rules of appellate procedure authorize this court to award costs and attorney's fees as a sanction for a frivolous appeal, when the appeal was "filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another[,]" or when the party or the party's attorney knew or should have known that the appeal "was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." RULE 809.25(3)(c).

Asking this court to set aside credibility determinations of or to adopt arguments rejected by the circuit court without addressing the standard of review is generally considered frivolous. *See Lessor v. Wangelin*, 221 Wis. 2d 659, 669, 586 N.W.2d 1 (Ct. App. 1998). As discussed above, Peter's arguments on appeal are nothing more than attempts to reargue facts, without attention to the discretionary standard of review applicable to child support decisions and awards of attorney's fees. Therefore, we conclude that Peter's attorney knew or should have known that this appeal has no reasonable basis in law or equity and we grant Josephine's motion for costs

and reasonable attorney's fees on appeal, pursuant to WIS. STAT. RULE 809.25(3). Peter's motion for costs and fees is denied.

IT IS ORDERED that the circuit court order is summarily affirmed under WIS. STAT. RULE 809.21(1), and the cause is remanded to the circuit to determine the amount of costs and reasonable attorney's fees to be awarded to Josephine Brandon pursuant to WIS. STAT. RULE 809.25(3).

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