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DISTRICT IV

July 31, 2015

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

2014AP2967	In re the marriage of: Tracey Conner Beason v. Curtis Edward Beason (L.C. # 2012FA2162)
2015AP257	In re the marriage of: Tracey Conner Beason v. Curtis Edward Beason (L.C. # 2012FA2162)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Curtis Beason appeals an order dismissing his motion to establish placement for his and Tracey Beason's minor child or, alternatively, to reopen the custody and placement order.[1] Curtis also appeals the order denying reconsideration. Based upon our review of the briefs and

[1] Because the parties share a surname, we refer to them by their first names for ease of reading.

record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[2] We summarily affirm.

In October 2012, Tracey petitioned the court to determine legal custody and physical placement of the parties' minor child, Lucy. In December 2013, the circuit court approved the parties' "Stipulation and Interim Order … as to Physical Placement." The Stipulation and Interim Order awarded joint custody and set a physical placement schedule for Lucy with primary placement with Tracey. Under a section titled "Interim Order," the Stipulation and Interim Order provided that it would become final on June 1, 2014, unless Curtis filed a motion to modify by June 1, 2014, with proof that he would be moving to Madison from his current home in Iowa by August 1, 2014. It provided further that, if Curtis moved to Madison, the court would set a placement schedule allowing both parties regularly occurring and meaningful periods of placement pursuant to WIS. STAT. § 767.41(4) and (5).

On June 30, 2014, Curtis filed a motion to establish placement or to reopen the placement order, and an affidavit asserting that he had obtained a residence in Madison. The circuit court dismissed the motion, finding that Curtis had not met the criteria to prevent the Stipulation and Interim Order from becoming final as of June 1, 2014. The court also determined that Curtis had not established any basis for the court to reopen that final order.

Curtis moved for reconsideration, seeking an evidentiary hearing to present evidence to support his motion for relief from the judgment. Specifically, Curtis sought to introduce evidence of his relocation to Madison and the parties' exercise of placement since his move. The

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

court denied reconsideration, explaining that Curtis had not provided a basis for the circuit court to reconsider its decision.

The "Interim Order" provision of the Stipulation and Interim Order reads as follows:

> This Interim Order shall become a final Order on June 1, 2014, unless Curtis Beason files a Motion to Modify the Interim Order on or before June 1, 2014. In his affidavit supporting his Motion, Curtis Beason shall provide proof that he is moving to Madison, Wisconsin by no later than August 1, 2014. Said proof shall consist of an accepted offer to purchase or approved rental agreement. If he has filed a Motion, but does not physically move to Madison, Wisconsin by August 1, 2014, this Interim Order shall also become a final Order.
>
> If Curtis Beason relocates to the Madison area, pursuant to Wis. Stat. § 767.41(4) and (5), the Court shall set a placement schedule that allows both parties to have regularly occurring and meaningful periods of placement and maximize the amount of time the child may spend with each parent, taking into consideration the child's best interest and the facts set forth in Wis. Stats. § 767.41(5), and the recommendations of the family court service and guardian ad litem.

Curtis contends that the Stipulation and Interim Order required the circuit court to set a shared placement schedule upon Curtis's move to Madison. He argues that the first paragraph of the "Interim Order" provision required Curtis to file a motion by June 1, 2014, only if he wished to prevent that specific provision from becoming the final order of the court. He argues that the second paragraph provided that, if Curtis did not file a motion by June 1 and the "Interim Order" provision became final, the circuit court would be required to set a shared placement schedule if Curtis thereafter relocated to Madison. He contends that, because he has now moved to Madison, the circuit court was required to grant Curtis's motion and set a placement schedule

that maximized Lucy's placement with each parent and considered Lucy's best interest.[3] *See* WIS. STAT. §§ 767.41(4)(a)2. and 767.41(5)(am).

Tracey responds that the plain language of the stipulation required Curtis to file a motion by June 1, 2014 if he wished to prevent the interim placement schedule from becoming final. She argues that, because Curtis failed to file a motion by June 1, the interim placement schedule became final and the standard for changing the placement schedule shifted from the best interest of the child to whether physical or emotional harm to the child justified substantial modification of placement. *See* WIS. STAT. §§ 767.41(4) and (5) (in setting physical placement, court must consider best interest of the child); WIS. STAT. § 767.451(1)(a) (within two years of the final judgment setting physical placement, a court may not substantially modify the physical placement unless the current custodial conditions are physically or emotionally harmful to the best interest of the child). We agree with Tracey.

Under the plain language of the stipulation, Curtis was required to file a motion by June 1, 2014, to prevent "[t]his Interim Order" from becoming final. *See* ***Waters v. Waters***, 2007 WI App 40, ¶6, 300 Wis. 2d 224, 730 N.W.2d 655 (we construe language in a stipulation according to its plain, ordinary meaning). The first paragraph of the "Interim Order" provision plainly provides that, to prevent "this Interim Order" from becoming final, Curtis had to take the following steps: (1) file a motion by June 1, 2014, to modify the "Interim Order" with proof that

[3] Curtis also asserts that Wisconsin case law provides that a stipulation between parents may be deemed unenforceable and contrary to public policy if it is contrary to the best interest of the child. *See* ***Frisch v. Henrichs***, 2007 WI 102, ¶67, 304 Wis. 2d 1, 736 N.W.2d 85. He argues that his failure to meet a deadline for filing a motion should not take precedent over Lucy's best interest. Curtis does not, however, develop an argument that the stipulation is contrary to Lucy's best interest, beyond asserting that maximizing time with each parent is in Lucy's best interest. Because this argument is insufficiently developed, we do not consider it further.

he would be moving to Madison by August 1, 2014; and (2) physically move to Madison by August 1, 2014. It then provides that, if Curtis does move to Madison, the court will set a placement schedule according to the standard statutory criteria.

The only reasonable reading of the two paragraphs is that, together, they provided for two scenarios: (1) if Curtis does not take the necessary steps to prevent the interim placement schedule from becoming final, then the interim placement schedule would become the final placement schedule; or (2) Curtis would take the necessary steps to prevent the interim placement schedule from becoming final, and the circuit court would then follow the standard statutory criteria for setting a final placement schedule. Under the plain language of the Stipulation and Interim Order, the first necessary step for Curtis to take to prevent the interim placement from becoming the final placement schedule was to file a motion by June 1, 2014. Because Curtis did not do so, the interim placement schedule became the final placement schedule.

We reject Curtis's contrary reading of the "Interim Order" provision as unreasonable. Under Curtis's view, the provision provides only that the provision itself would become final as of June 1, 2014, and the placement schedule set forth in the remainder of the Stipulation and Interim Order would not. Under this view, placement would be decided anew at any point that Curtis moved to Madison, whether or not Curtis filed a motion by June 1, 2014. That interpretation, however, would render the deadlines set in the first paragraph superfluous, since Curtis could obtain a new placement schedule at any time by moving to Madison, without his having to show that a change in placement is in the child's best interest, as required by WIS. STAT. § 767. Additionally, Curtis's interpretation would prevent the interim placement schedule

from ever becoming final, pending his decision to move to Madison. That interpretation is unreasonable and contrary to the plain language of the stipulation.[4]

Next, Curtis argues that the circuit court erroneously exercised its discretion by denying Curtis relief from the final placement schedule under WIS. STAT. § 806.07(1)(a) and (h). *See* ***Hottenroth v. Hetsko***, 2006 WI App 249, ¶33, 298 Wis. 2d 200, 727 N.W.2d 38 (we review circuit court's decision as to motion for relief from judgment for an erroneous exercise of discretion). He contends that relief is warranted because he understood the Stipulation and Interim Order as requiring a new placement schedule upon his relocation to Madison and he acted in reliance on his interpretation of the agreement between the parties. He argues that there is a dispute between the parties as to whether he in fact moved to Madison and as to the extent of their negotiations after June 1, 2014, and that the circuit court erroneously exercised its discretion by failing to hold an evidentiary hearing to resolve those disputes. Curtis argues that the circuit court erred by finding, in the absence of an evidentiary hearing, that Curtis had not moved to Madison and that there was no misunderstanding by the parties as to the requirement for Curtis to file a motion by June 1, 2014.

[4] Curtis also contends that the parties' continued negotiations over placement and the Stipulation and Interim Order's setting an exchange location outside of Madison shows the parties intended to modify the placement schedule upon Curtis's relocation to Madison. To the extent Curtis is arguing that we should look to evidence outside of the Stipulation and Interim Order to determine its meaning, we reject that contention. Because the meaning of the Stipulation and Interim Order is plain and unambiguous, we do not resort to extrinsic evidence to ascertain its meaning. *See* ***Rosplock v. Rosplock***, 217 Wis. 2d 22, 31, 577 N.W.2d 32 (Ct. App. 1998) ("[W]hen a contract is plain and unambiguous, a court will construe it as it stands without looking to extrinsic evidence to determine the intent of the parties."). Moreover, we are not persuaded that the facts asserted by Curtis establish the parties' understanding as to the meaning of the Stipulation and Interim Order.

Tracey argues that the circuit court properly exercised its discretion by denying Curtis relief from the final order. She argues that Curtis has failed to show that any of the criteria for relief were satisfied in this case. Again, we agree with Tracey.

A party is entitled to relief from a judgment under WIS. STAT. 806.07(1)(a) based on mistake, inadvertence, surprise, or excusable neglect; and under § 806.07(1)(h) if extraordinary circumstances justify relief. ***Hottenroth***, 298 Wis. 2d 200, ¶¶31-32. "[T]he circuit court 'must consider a wide range of factors' in determining whether extraordinary circumstances are present, always keeping in mind the competing interests of finality of judgments and fairness in the resolution of the dispute." ***Miller v. Hanover Ins. Co.***, 2010 WI 75, ¶¶35-36, 326 Wis. 2d 640, 785 N.W.2d 493 (quoting another source).

Here, the circuit court considered the need for finality and clarity in child placement cases. The court also considered the clarity of the Stipulation and Interim Order, as well as the sophistication of the parties and that both were represented by experienced counsel. The court determined that there was no showing of a misunderstanding of the terms of the Stipulation and Interim Order, and on that basis denied relief from the final order.

We conclude that the circuit court properly exercised its discretion in denying Curtis's motion for relief from the final order. The circuit court properly considered the need for finality in physical placement cases and the fact that Curtis had not met the clear requirements to prevent

the interim schedule from becoming final.[5] While the court noted evidence that Curtis had still not relocated to Madison—citing Curtis's affidavit that he maintained residences in both Iowa and Madison—the circuit court also noted that it was undisputed that Curtis had not met the first step required under the Stipulation and Interim Order, that is, filing a motion to modify placement by June 1, 2014. The court also noted that it appeared that the parties engaged in negotiations after June 1, 2014, but that there was no evidence of any misunderstanding as to the requirements of the Stipulation and Interim Order. Accordingly, we are not persuaded that an evidentiary hearing was necessary to resolve disputes as to whether Curtis moved to Madison and the extent of the parties' negotiations after June 1, 2014.

Therefore,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

[5] Additionally, as set forth above, the standard for changing a final physical placement order within the first two years is whether physical or emotional harm to the child justifies substantial modification of placement. *See* WIS. STAT. § 767.451(1)(a). Curtis does not argue that standard is met here.