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November 18, 2015

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

2013AP2208

In re the Paternity of K.J.: Troy J. Johnston v. Michelle F. Karow
(L.C. #2006PA212PJ)

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

Troy J. Johnston appeals pro se from a circuit court order arising from post-adjudication matters in a paternity case. Johnston contends that he was denied meaningful access to the court when it entered the order following a hearing at which he did not appear. 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).¹ We reverse the order and remand the matter for further proceedings.²

Johnston and Michelle F. Karow are the nonmarital parents of a child named K.J. Johnston's paternity was adjudicated in December 2007. Since then, the parties have engaged in extensive and often contentious litigation.

In November 2010, the circuit court issued an order changing K.J.'s surname. The order required Johnston to pay expenses related to the name change.

In January 2013, Johnston filed a motion seeking to modify child support and to hold Karow and her attorney in contempt of court. Johnston argued that Karow was in contempt for failing to change K.J.'s surname in accordance with the November 2010 order. He also argued that Karow's attorney was in contempt for harassing him.

Following a hearing on the matter, a court commissioner denied Johnston's motion in all respects. Johnston subsequently sought a *de novo* hearing before the circuit court.

The circuit court held a hearing on Johnston's motion. There, it attempted to include Johnston—then a prisoner at the Chippewa Valley Correctional Treatment Facility—by videoconference. When this proved unsuccessful, the court decided to hold the hearing without him. It stated:

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

² The respondent, Michelle F. Karow, filed a motion requesting frivolous appeal costs pursuant to WIS. STAT. RULE 809.25(3). That motion is denied.

All right. We've been trying to get ahold of Mr. Johnston. For some reason the videoconferencing doesn't work in Chippewa. We can get every other place but not there. We called the number we have for the person who set up the videoconferencing, and they don't answer, so I guess Mr. Johnston isn't going to appear at this hearing.

After deciding to hold the hearing without Johnston, the circuit court acknowledged receiving a submission from Karow's attorney, which was a transcript of a permanency hearing held in Outagamie County in July 2013. At that hearing, Karow accused Johnston of failing to pay all of the expenses related to K.J.'s name change. The guardian ad litem, meanwhile, indicated that stress caused over the name change issue was contrary to K.J.'s best interests.

The circuit court relied, in part, on the permanency hearing transcript in denying Johnston's motions. The court also relied on the transcript in rescinding the November 2010 order regarding K.J.'s surname. Upon the entry of a written order, Johnston filed this appeal.

On appeal, Johnston contends that he was denied meaningful access to the court by virtue of the circuit court's action in this case.³ We agree.

The problem with the circuit court's action in this case is a procedural one. Not only did the court decide to hold a hearing without Johnston's appearance, but it also decided, on its own accord, to rescind the November 2010 order regarding K.J.'s surname. Johnston had the right to be noticed of what was going to take place at the motion hearing and the right to be present so as to be heard. *See Bounds v. Smith*, 430 U.S. 817, 821 (1977) (prisoners have a right of access to

³ Johnston also raises arguments related to the merits of the circuit court's decision. Because we base our decision on procedural grounds, we do not address those arguments.

the courts). Because these rights were not adhered to, we reverse the order of the circuit court and remand the matter for further proceedings.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and the cause remanded for further proceedings, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals