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DISTRICT I/IV

November 20, 2015

To:

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

2014AP1935 In re the marriage of: Mark Wayne Zeman v. Sarah Nicole Zeman (L.C. # 2003FA7470)

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

Mark Zeman appeals from an order denying his motion for relief from an order modifying child placement and support. The modification was made at a hearing at which Mark failed to appear. Mark argues that the circuit court lacked jurisdiction to modify child placement and support, and that the circuit court erroneously exercised its discretion when it denied him relief. 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 affirm the order.

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

Mark and Sarah Zeman were divorced in 2005, and agreed to joint legal custody of their two children and to a temporary physical placement schedule. In 2011, they stipulated to a placement schedule based on the children moving to Arizona with Sarah.

In 2013, Sarah moved to change venue and jurisdiction to Arizona[2] and to modify child support, and Mark moved for modification of placement and for a contempt finding. At a May 2013 status hearing, counsel of record for both parties and the guardian ad litem (GAL) appeared in person and Sarah and Mark were available by telephone. At that hearing, the circuit court learned that Mark was moving to Arizona, and it issued an order giving the parties a thirty-day window to file an action for child custody, placement, and support in Arizona. It ordered that if no action was started in Arizona in that period, it would conduct a status hearing on October 7, 2013, and it ordered both parties to appear in person. Neither parent filed a motion to change jurisdiction to Arizona within the thirty-day window. On October 7, 2013, Mark did not appear. The circuit court heard Sarah's motion for modification of child support. The circuit court's written order found that Mark had notice of the hearing and was in default. Mark moved for reconsideration and a change of venue. His motion was denied and Mark appeals.

Mark argues that the circuit court did not have jurisdiction to enter the modification order because at the time of the order the court knew that both parties and the children had moved to another state. Whether a court had jurisdiction is a question of law we review de novo. ***State v. Jacobs***, 2007 WI App 155, ¶3, 302 Wis. 2d 675, 735 N.W.2d 535.

[2] Sarah's motion to change venue and jurisdiction was later withdrawn.

WISCONSIN STAT. § 822.22(1) states that a Wisconsin court's jurisdiction in a child custody case continues until a court makes a determination to the contrary:

> [A] court of this state that has made a child custody determination … has exclusive, continuing jurisdiction over the determination *until* any of the following occurs:
>
> (a) *A court of this state determines* that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.
>
> (b) *A court of this state or a court of another state determines* that the child, the child's parents, and all persons acting as parents do not presently reside in this state.

(Emphasis added.)

Mark argues that the circuit court lost jurisdiction once it had notice from the parties that they were residing in another state. His position is that the fact that the parties had moved to another state "has been admitted, and thus determined." However, the plain language of the statute requires a determination by a court, and he has not identified any such determination. Therefore, there is no basis for a challenge to the circuit court's jurisdiction at the time of the October 7, 2013 hearing.

In the alternative, Mark argues that the circuit court erroneously exercised its discretion in concluding that he was not entitled to relief from the modification order. He argues that he is entitled to have the order vacated because his failure to appear at the hearing was excusable neglect and because other reasons, such as public policy disfavoring default judgments, justify relief. In an affidavit in support of his motion seeking relief, Mark stated that he had believed that the parties' lack of compliance with some prior deadlines meant that the case would be

dismissed and the October 7, 2013 status hearing date would be removed from the court's calendar. This belief, he asserted, "constitutes an excusable error."

The question of whether Mark is entitled to relief from the order is governed by WIS. STAT. § 806.07(1), which states in relevant part, "On motion and upon such terms as are just, the court … may relieve a party or legal representative from a judgment, order or stipulation for … [m]istake, inadvertence, surprise, or excusable neglect … [and for] [a]ny other reasons justifying relief from the operation of the judgment." A circuit court has wide discretion in determining whether to vacate a default judgment. ***Dugenske v. Dugenske***, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). We will not reverse a discretionary decision when the record shows that the circuit court made a "reasoned application of the appropriate legal standard to the relevant facts in the case." ***Hedtcke v. Sentry Ins. Co.***, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982). In the exercise of its discretion, a circuit court "may reasonably reach a conclusion which another judge or another court may not reach, but it must be a decision which a reasonable judge or court could arrive at by the consideration of the relevant law, the facts, and a process of logical reasoning." ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

In denying Mark relief, the circuit court considered whether Mark had demonstrated "excusable neglect" under WIS. STAT. § 806.07(1). The court found that Mark "had notice of the October 7, 2013 hearing." The circuit court concluded that Mark's assertion of what he believed would happen was not a reasonable basis for his failure to appear or to contact the court in any way prior to the status hearing. The circuit court found in the modification order that "[Mark] had counsel of record at the May 31, 2013 Status Hearing when the present hearing date was scheduled and orders to appear in person were issued for both parties, if they wished the court to hear their respective motions." The modification order found that even after Mark's attorney

withdrew, the GAL had copied Mark on email correspondence to the court that referenced the date of the hearing and indicated that the GAL "would seek dismissal of either party's motion if they did not substantially comply with the Court's Pre-Trial orders" and that the email was not returned to the GAL. There was no indication that the October 7, 2013 hearing was removed from the calendar. The record supports the circuit court's determination that it was unreasonable for Mark to fail to appear or to contact the court prior to the hearing.

The circuit court's decision shows consideration of the law and the facts and a process of logical reasoning. It was not an erroneous exercise of the circuit court's discretion to deny the relief Mark requested.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals