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**District III**

September 7, 2016

*To:*

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

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2015AP1713

Krystal Kaye Cornelius v. Lewis Cornelius  
(L. C. No. 2012FA51)

Before Stark, P.J., Hruz and Seidl, JJ.

Lewis Cornelius, pro se, appeals an order denying his petition for waiver of transcript fees. Based upon our review of the briefs and record, we conclude at conference that this case is

appropriate for summary disposition. We reject Cornelius's arguments, and summarily affirm the order. *See* WIS. STAT. RULE 809.21.<sup>1</sup>

In case No. 2015AP1245, Cornelius appealed an order denying a motion to suspend his child support obligation. Cornelius moved the circuit court to waive transcript costs for that appeal, specifically seeking transcripts of proceedings held August 1, 2014 and June 1, 2015. The circuit court denied the petition after a hearing and Cornelius filed the present appeal.<sup>2</sup>

Whether fees and costs for transcripts should be waived by the court is governed by WIS. STAT. § 814.29. A litigant is entitled to free transcripts on appeal of a civil case when the circuit court determines both that the litigant is indigent, and that the appeal has arguable merit. *See State ex rel. Girouard v. Jackson County Circuit Court*, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990). Whether a claim has arguable merit is a question of law this court reviews independently. *State ex rel. Hansen v. Circuit Court for Dane County*, 181 Wis. 2d 993, 998, 513 N.W.2d 139 (Ct. App. 1994).

Here, it is undisputed that Cornelius is indigent for purposes of the transcript fee. With respect to the merits of his appeal, Cornelius argued he is entitled to suspend child support payments for his three children because he is incarcerated. The decision whether a child support order should be modified is left to the circuit court's discretion. *Abitz v. Abitz*, 155 Wis. 2d 161, 174, 455 N.W.2d 609 (1990). Under WIS. STAT. § 767.59(1f), revision of a child support order

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

<sup>2</sup> By order dated July 31, 2015, we held appeal No. 2015AP1245 in abeyance pending resolution of this appeal.

“may be made only upon a finding of a substantial change in circumstances.” The burden of showing there has been a change in circumstances sufficient to justify a modification falls to the party seeking modification. *Parker v. Parker*, 152 Wis. 2d 1, 4, 447 N.W.2d 64 (Ct. App. 1989). The fact of incarceration, however, should not, in and of itself, determine whether the modification of a child support order is warranted. See *Rottscheit v. Dumler*, 2003 WI 62, ¶14, 262 Wis. 2d 292, 664 N.W.2d 525. “The totality of circumstances surrounding the incarceration deserves examination.” *Id.*

In the underlying matter, the circuit court denied Cornelius’s motion to modify child support, noting Cornelius had a duty to support his children; the current order was already calculated “at the minimum wage”; and the reason for his imprisonment was an intentional act against a child.<sup>3</sup> In light of these considerations, the court determined it would be “unfair that the parties who require the support wouldn’t receive [it].”<sup>4</sup> In his present appeal from the order denying his request for free transcripts, Cornelius fails to establish that the circuit court erred when concluding Cornelius had not identified an arguably meritorious claim on appeal from the order denying his motion for child support modification.

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<sup>3</sup> Cornelius’s child support obligation was set at \$319 per month for his three children, which is 29% of the federal minimum wage at thirty-five hours per week, as established by applicable guidelines. See WIS. ADMIN. CODE § DCF 150.03(1) and (3) (through July 2016).

<sup>4</sup> By order dated October 27, 2015, we set forth the procedure regarding preparation of transcripts in an appeal from an order denying waiver of the transcript fees. Under *State v. Jacobus*, 167 Wis. 2d 230, 235, 481 N.W.2d 642 (Ct. App. 1992), the court reporter is required to produce the transcript of the hearing on the waiver of transcript fees at no initial cost to the appellant. If this court ultimately affirms the circuit court’s order denying waiver of the transcript fees, the cost of the transcript will be assessed against the appellant. *Id.* A court reporter misconstrued our order and instead prepared the transcript from the June 1, 2015 hearing on Cornelius’s underlying motion to modify child support.

Cornelius contends the circuit court “did not cite in [its] conclusion why the court believes there is no arguable merit to the case.” The record, however, belies this assertion. At the hearing on Cornelius’s motion to waive the transcript fee, the circuit court indicated: “[I]n order for you to succeed at appeal ... you would have to create new law essentially. You would have to overcome existing case law ....” Concluding this was “very unlikely,” the court denied the motion for free transcripts. Because Cornelius failed to establish an arguably meritorious claim on appeal, the circuit court properly denied the petition for waiver of the transcript fee.

Upon the foregoing,

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

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