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DISTRICT II

September 20, 2017

To:

Hon. James J. Bolgert
Circuit Court Judge
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Joseph Perman IV
1300 Wisconsin Ave.
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You are hereby notified that the Court has entered the following opinion and order:

2016AP1844

Jessica M. Brading v. Joseph Perman, IV (L.C. #2013FA464)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jessica Brading appeals from an order of the circuit court setting child support. She contends the court incorrectly determined the amount of support Joseph Perman, the father of their child, should be ordered to provide. Based upon our review of the briefing and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

The determination of child support is a decision “entrusted to the discretion of the circuit court” and will not be disturbed on review absent an erroneous exercise of that discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. “[O]n appeal ‘it is the burden of the appellant to demonstrate that the [circuit] court erred.’” *Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381 (second alteration in original; citation omitted). Here, Brading has failed to satisfy this burden.

In 2013, the circuit court ordered that Perman pay Brading child support in the amount of \$538 per month. The support was to begin if and when Perman moved out of the residence he shared with Brading and their child, which he did in November 2014. In 2016, the State sought an increase in the amount of child support Perman paid to Brading. Following an evidentiary hearing at which the State, Brading, and Perman respectively argued that Perman’s support payments should be increased to \$1096, \$1215.08, and \$634.42 per month, the court ordered that Perman’s support payments increase to \$850 per month. The dollar amount was based upon evidence of Perman’s monthly income, including the court’s finding that Perman would “realistic[ally]” be working approximately ten hours of overtime per week going forward.

Brading asserts the circuit court erred in its child support determination by “not considering all of [Perman’s] income,” specifically, that the court “improperly excluded part of [Perman’s] overtime earnings.” Brading focuses on Perman’s “two-year average annual income” beginning with his 2015 earnings, insists Perman works significantly more overtime than ten hours per week, and asserts Perman “offered no facts to demonstrate that he would work only ten hours of overtime a week.”

We disagree with Brading's assessment of the evidence presented at the evidentiary hearing. At the hearing, Perman testified that his income over the two years prior to the hearing was not representative of his income to be expected going forward, particularly with regard to overtime. He indicated that, at the time of the hearing, he was working approximately ten to fifteen hours of overtime per week. Perman, who works at "Johnsonville Sausage," testified, however, that he had been working an inordinate amount of overtime "in the last year or two" because Johnsonville's plant in Watertown, Wisconsin, "burned down, so they had to distribute what they made down there to the other plants, so we had to take on more product, so that means that we obviously have to ship it out more from our plant." Perman, who is a "team leader" at Johnsonville, testified that he also had been working "a lot more" overtime, resulting in income inflated more than normal, because his plant is supposed to have six team leaders but only had four for approximately the past two years, which "means we are working every other Saturday and Sunday, if needed instead of every third Saturday and Sunday." Perman testified that his overtime would be decreasing going forward because the Watertown plant had "just got back up and running" approximately a month prior to the hearing and "we are finally getting team leaders hired."

The circuit court found that it was "fair" and "realistic" to expect that Perman would be working fifty hours per week "basically, 40 hours plus ten hours of overtime" going forward. We conclude the court did not err in this determination as it is supported by the testimony of Perman, which the court accepted as credible. We see no erroneous exercise of discretion.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS ALSO ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals