



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

December 18, 2017

To:

Hon. Jon M. Counsell
Circuit Court Judge
Clark County Courthouse
517 Court Street
Neillsville, WI 54456

Heather Bravener
Clerk of Circuit Court
Clark County Courthouse
517 Court Street
Neillsville, WI 54456

Jessica Pelzek
15837 W. County Road C
Evansville, WI 53536

Jesse Wampole
N2363 Curtis Road
Stanley, WI 54768

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

2017AP389

In re the marriage of: Jessica Pelzek v. Jesse Wampole
(L.C. # 2012FA167)

Before Sherman, Blanchard and Kloppenburg, JJ.

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 Pelzek, pro se, appeals from a circuit court order awarding her \$436 per month in child support from her former spouse Jesse Wampole. Pelzek argues that the circuit court erred in determining each parent's income when it calculated this child support award. 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 (2015-16).¹ We affirm.

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

After Pelzek and Wampole divorced, Pelzek had primary placement of two of the children from the marriage, and Wampole had primary placement of one of the children. In an order issued after a hearing, the circuit court determined that Wampole's monthly gross income was \$4,823, and that Pelzek's monthly gross income was \$6,184. The court deviated Pelzek's income downward because she was a "serial case payer." Based on these calculations, the court ordered Wampole to pay Pelzek child support of \$436 per month. Pelzek appeals.

The calculation of child support is "generally left to the sound discretion of the circuit court." *Cook v. Cook*, 208 Wis. 2d 166, 171, 560 N.W.2d 246 (1997). However, that discretion "must be exercised by applying correct legal standards." *Id.* The question of what legal standard to apply is an issue of law. *Id.* at 172 (explaining that the legal standard applied to a spouse's military retirement pay was solely an issue of law). "We determine the legal issues independently of the circuit court," benefiting from its analysis. *Id.*

Pelzek's main argument is that the circuit court erred because it included \$3,559 in disability compensation from the Department of Veterans Affairs in her monthly gross income. Wisconsin law defines gross income for child support calculations to include veterans benefits. *See* WIS. ADMIN. CODE § DCF 150.02(13) (2009). Pelzek argues that this inclusion violates the Supremacy clause, because only Congress can determine the character of a federal benefit. She contends that Congress did not intend for veterans disability benefits to be characterized as income for the purposes of state child support determinations.

However, the United States Supreme Court has considered this precise question and concluded that there was "no clear indication that Congress intended the Administrator [of Veterans Affairs] to make child support determinations contrary to the determinations of state

courts.” *Rose v. Rose*, 481 U.S. 619, 629 (1987). Accordingly, the U.S. Supreme Court affirmed a Tennessee judgment that included veterans disability benefits in the calculation of child support. *Id.* at 636.

Pelzek’s brief consists largely of what she describes as “pre-prepared information that has been provided to the veteran community specifically to be included in briefs like this one.”² Nothing in this “pre-prepared information” convinces us that we can ignore the holding of *Rose v. Rose*. Nor do we see any basis for concluding that the circuit court erred in treating Pelzek’s veterans benefits as income for child support purposes pursuant to the express language of WIS. ADMIN. CODE § DCF 150.02(13) (2009).

Pelzek also argues that the circuit court erred by not including \$2,000 in rental income when it calculated Wampole’s gross monthly income. She has not provided any record citations that would enable us to evaluate this argument. *See Dieck v. Unified Sch. Dist. of Antigo*, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (we need not address arguments unsupported by record citations). In addition, Pelzek declined to provide a transcript of the relevant hearing, stating instead that it was not necessary for this appeal. In the absence of a transcript, we presume that the transcript would support the circuit court’s exercise of discretion as well as any facts essential to sustain that exercise of discretion. *See Nielsen v. Waukesha Cty.*

² Pelzek does not tell us whether she presented each of these arguments to the circuit court. *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (appellant has the burden of establishing by reference to the record that an issue was properly raised in the circuit court). However, we assume without deciding that her arguments were presented to the circuit court in a document that Pelzek entitled “Due Process Affidavit.”

Bd. of Supervisors, 178 Wis. 2d 498, 523-24, 504 N.W.2d 621 (Ct. App. 1993). We therefore reject Pelzek’s argument that the circuit court erred in calculating Wampole’s gross income.

We briefly note one additional issue in Pelzek’s brief. She argues that her former attorney may have engaged in misconduct by not making certain arguments on Pelzek’s behalf and by pursuing fee payment from assets that were paid for by Pelzek’s military benefits. Pelzek does not ask us to take any action, but she states that she is required to report his alleged misconduct to us. Pelzek has not cited to any record materials and we see no basis for concluding that her former attorney engaged in misconduct. However, we note for the benefit of the pro se litigant that the Office of Lawyer Regulation, an agency of the Wisconsin Supreme Court, is the proper authority to investigate allegations of attorney misconduct.

Upon the foregoing reasons,

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

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

Diane M. Fremgen
Clerk of Court of Appeals