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DISTRICT IV

August 27, 2018

To:

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Joshua M. Perry
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You are hereby notified that the Court has entered the following opinion and order:

2016AP1914

In re the marriage of: Jennifer A. Perry v. Joshua M. Perry (L.C. # 2014FA190)

Before Lundsten, P.J., Sherman 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).

Joshua Perry appeals a post-judgment contempt order in a divorce case. 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, find the appeal frivolous, and remand for a determination of attorney fees for respondent Jennifer Perry.

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

Joshua first argues that the circuit court erred by finding that he failed to pay the mortgage on the marital residence and the marital debts. He argues that the divorce judgment stated only that Joshua would be solely and individually “responsible” for that debt, but did not require that he *pay* the debt, rather than file for bankruptcy. He argues that this provision meant only that Jennifer Perry would not be responsible for the debt. In normal legal usage, being responsible for debt means paying it. Joshua cites no legal authority to support his reading of the term. This argument is frivolous.

Joshua’s second argument is that the court erred by finding that he failed to transfer retirement funds to Jennifer. He argues that this finding was erroneous because the marital settlement agreement and divorce judgment did not set any date by which he must have performed that act.

It is not clear how this argument leads to relief for Joshua. He argues that the circuit court could not find him in contempt in the absence of a time requirement, but the practical effect of this argument is not apparent. The court has now supplied the missing term, in the contempt order, by setting a date by which Joshua must make the payment to purge the contempt finding. And, Joshua has not made any argument that would relieve him of the obligation to make that transfer by that date. Thus, there appears to be no practical difference between a court order modifying the divorce judgment to set a date and a contempt order setting a date. Either way, Joshua would now be required to pay, and there is no point to further analyzing whether he could properly be found in contempt for not paying when there was no date stated in the original judgment. His argument fails to provide a legal basis for relief.

In issues three through six, Joshua's arguments relate to whether the evidence supported findings made by the circuit court. However, Joshua has not provided the court with the transcript of the contempt hearing. When the transcript is not part of the record, we assume it supports every fact essential to the circuit court decision. *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). Accordingly, there is no merit to these arguments.

Joshua's seventh argument disputes the circuit court's finding that he was required to transfer retirement funds to Jennifer immediately after the divorce judgment was entered. This appears to be essentially the same as his second argument, which we rejected above.

In Joshua's eighth argument he objects to the circuit court's application of interest to the retirement transfer obligation. Joshua does not provide any legal argument except to say that the interest "would be prejudicial." We regard the argument as undeveloped and do not address it further. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

Joshua's ninth and tenth arguments again challenge factual findings from the contempt hearing, and they again fail due to the lack of a transcript of the contempt hearing.

In Joshua's eleventh argument he makes an argument that appears to rely on his first argument above contending that him being "responsible" for the debt meant something other than that he was required to pay that debt. We have already rejected that argument in the first issue.

Joshua's twelfth argument challenges the evidence supporting the circuit court's finding that his bankruptcy is a substantial change in circumstance that allows modification of the existing maintenance order. This argument fails due to the lack of a transcript.

Joshua's thirteenth argument challenges the finding that Jennifer had no obligation to participate in Joshua's bankruptcy proceeding. He does not explain what relief this argument might lead to.

Joshua's fourteenth argument challenges a finding regarding rental payments. This argument fails due to the lack of a transcript.

Joshua's fifteenth argument is that the circuit court erred by requiring him to pay Jennifer's legal fees because Jennifer came into court with unclean hands. The argument is undeveloped.

Jennifer asks that we find this appeal frivolous on the ground that it lacked a reasonable basis in law. *See* WIS. STAT. RULE 809.25(3)(c)2. We conclude that the appeal is frivolous. We remand with directions for the circuit court to award Jennifer's attorney fees for this appeal.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21, the appeal is declared frivolous, and the cause is remanded with directions to determine Jennifer's attorney fees for the appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals