



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 II

October 17, 2018

To:

Hon. Thomas J. Gritton
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Michael J. Kuborn
Curtis Law Office
P.O. Box 2845
Oshkosh, WI 54903-2845

Jennifer F. Thompson
Basiliere, Thompson, Bissett, Castonia &
Swardenski LLP
600 S. Main St., Ste. 202
Oshkosh, WI 54903-3204

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

2017AP2444

Darci M. Grota v. John C. Grota (L.C. #2013FA788)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

John C. Grota appeals from an order dated September 15, 2017, finding that John owed Darci M. Grota \$791¹ for past medical bills and clarifying the court's August 15, 2017 order addressing the same issue, among other matters. Based upon our review of the briefs and record,

¹ The court ordered John to pay \$791 for past medical bills for their children, but also ordered John to sell the couple's boat for \$400, immediately provide the \$400 to Darci, and apply half the proceeds to the amount due, for a total due from John to Darci of \$591.

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).² We summarily affirm.

John and Darci were married in 1995 and obtained a judgment of divorce on January 22, 2015. The Grotas have three children. The judgment of divorce contained the following provision concerning variable and medical expenses for their children:

The parties are required to exchange variable and medical/dental expenses for the minor children on a monthly basis. This shall include copy of the bill/receipt, as well as verification of payment of said bill/receipt. These are to be submitted to the other parent by the last day of each month, effective December 31, 2014. The receiving party shall reimburse the other party within 30 days. If one parent fails to provide these expenditures to the other in a timely fashion, said expenses shall be deemed waived.

On March 24, 2016, Darci filed a motion for contempt with the court, requesting that the court find John in contempt for failing to obey an order of the court. Darci claimed that, per the judgment of divorce, she had submitted variable and medical expenses to John each month and John had failed to reimburse her in the amount of \$2629.21. The Family Court Commissioner held a hearing on the contempt motion on April 19, 2016. At the hearing, Darci submitted an amended table including additional expenses for 2016, for a total of \$3040.32 owed by John, as well as indicating that John had submitted a medical bill to her in March 2016, but the bill was “from 2015 which can no longer be submitted for payment through the health savings account.” The commissioner issued an order on May 2, 2016, finding John in contempt for failure to reimburse Darci for variable and medical expenses in the amount of \$3040.32, due within sixty days of the hearing to purge his contempt.

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

On November 8, 2016, Darci filed a second motion for contempt, claiming, among other things, that John had again failed to reimburse her in the amount of \$591 for variable and medical expenses.³ On January 26, 2017, John filed his own motion for contempt, arguing that he had “regularly provided receipts and requested reimbursement for variable expenses and [Darci] has not paid the same,” specifically a dermatology bill and an optometry bill. The Family Court Commissioner held a hearing on January 27, 2017, where Darci submitted additional evidence suggesting that John went to a vision provider not covered by their insurance. The court held a second hearing on February 2, 2017, and ordered mediation. When John and Darci failed to reach an agreement, they returned before the Family Court Commissioner, who denied both requests for reimbursement. In response, John and Darci both sought de novo review of the commissioner’s decision.

The circuit court held a hearing on May 23, 2017. Darci testified she was owed \$791 for variable and medical expenses from May 2016 through May 2017, while John again addressed Darci’s delinquent payment for the dermatology bill. Darci testified that she was not receiving the bills for the dermatology appointments, and when John did submit them to her, “it was always the next calendar year so it was 2016 for services that were in 2015” and she was unable to use her health spending account to pay the bills because they were not received in “a timely fashion.” John attempted to locate a copy of a text message exchange on his phone indicating that he had submitted the dermatology bill to Darci in October 2015, but the search took so long that time ran out and the court continued the hearing to July 20, 2017. The court explained:

³ The evidence indicates that John paid the \$3040.32 ordered pursuant to the prior motion.

And just for the record, I am not accepting anything that he does not have today. This was supposed to be done today. So if he is going to go and generate some records, that is not going to happen.

....

We would be done by now if he had those records so I am not allowing any records to be brought in after the fact here. We were set for today. They should have been here today.

Later that day, John's counsel submitted a letter to the court with a screen shot from a text message conversation between John and Darci, dated October 2, 2015, as well as a photo of the dermatology bill.

When the parties returned on July 20, the court took arguments regarding the submission of John's text message evidence subsequent to the previous hearing. The court ruled that it would not allow the text message into evidence, stating,

I don't think people have the opportunity to have the second and third chances and that was I think my point was either you have it or you don't. That's the problem I have with this whole de novo process. I mean, people don't get to do something at the Court Commissioner level and then decide when they are ruled against, now they get the free opportunity to try to do it better and I'm not going to allow that.

The hearing continued, and Darci submitted updated expenses for June and July 2017 that John had not paid. In total, Darci requested an order for payment by John of \$1467.84, John sought \$167.97 from Darci, and Darci requested an order clarifying the payment terms of the variable expenses. The court entered an order on August 15, 2017, providing that variable expenses were to be submitted by the fifteenth of the month and failure to submit the expenses would result in a waiver of a right to collect and that John would be responsible for the dermatology and optometry bills. The order further indicated in paragraph eight that "[t]he Court is unable to

accurately determine variable expenses based upon the evidence. Therefore, variable expenses as of July 31, 2017 are set at \$0.00.”

Darci filed a motion for clarification of the order, indicating that she was “asking for clarification [of] paragraph #8” as to whether it applied to only variable expenses or medical expenses as well. The court held a hearing on the motion on September 14, 2017, and issued an order clarifying the prior order of the court. The court ordered John to pay \$791 to Darci for medical bills. John appeals.

John first argues that the court’s failure to admit the text message evidence he provided after the first hearing concluded was an erroneous exercise of discretion. A circuit court has broad discretion to admit or exclude evidence and a reviewing court will only overturn a circuit court’s decision if the circuit court erroneously exercised its discretion. *State v. Giacomantonio*, 2016 WI App 62, ¶17, 371 Wis. 2d 452, 885 N.W.2d 394. When a circuit court examines relevant facts, applies a proper legal standard, and uses a demonstrated rational process to reach a reasonable conclusion, no erroneous exercise of discretion will be found. *Id.*

John argues that the circuit court’s decision was in error as the evidence that he provided Darci with the dermatology bill in 2015 was not necessary to his case in chief and therefore should have been analyzed as bona fide rebuttal evidence. We disagree. The judgment of divorce orders the parties to exchange variable and medical expenses for the children on a monthly basis, and if one of the parties fails to do so in a timely manner, the expenses are deemed waived. John’s claim for reimbursement is dependent entirely on his timely submission of the expenses to Darci. Therefore, evidence indicating that he did in fact timely notify Darci of the bill is central to his claim and not bona fide rebuttal evidence. As the court explained, John

had the opportunity and was required to present this evidence at the first hearing date but failed to do so. The court did not err.

According to John, the court's decision to allow the parties to amend their prior exhibits concerning the variable and medical expenses, while not allowing John to admit evidence concerning the dermatology bill, was also in error. The amendments permitted by the court were to update the variable and medical expenses each party incurred between the first hearing on May 23 and the continuation of the hearing on July 20. The court clearly stated that it would not allow any evidence that the parties should have had with them at the initial hearing. The decision to exclude John's late evidence is based on a different rationale than the decision to allow the parties to update the expense information. There is no way that the parties could have known and submitted their variable and medical expenses at the first hearing for the nearly two months between the hearing dates. This evidence was necessary for the court to make a determination on reimbursement of variable and medical expenses.

John also argues that the circuit court had no jurisdiction to modify its previous order in response to Darci's motion for clarification. WISCONSIN STAT. § 805.17(3) provides, in relevant part, that "[u]pon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may amend its findings or conclusions or make additional findings or conclusions and may amend the judgment accordingly." "A [circuit] court has wide discretion to reconsider an earlier decision" as "[a] judge's job is to do justice" and "[t]he law gives a judge the right to change his or her mind, so long as it is done in a timely fashion and the parties are given a fair chance to be heard." *Salveson v. Douglas County*, 2000 WI App 80, ¶43, 234 Wis. 2d 413, 610 N.W.2d 184 (citation omitted), *aff'd*, 2001 WI 100, 245 Wis. 2d 497, 630 N.W.2d 182. Darci's motion was filed on August 28, 2017—thirteen days after the court's

August 15, 2017 order—and the court held a hearing on the motion. The motion was therefore timely, the parties were given a fair opportunity to be heard,⁴ and the circuit court had jurisdiction to issue its order.

John’s final objection is to the sufficiency of the evidence to support the court’s determination pursuant to Darci’s motion for clarification.⁵ “When considering the sufficiency of the evidence, we apply a highly deferential standard of review.” *Jacobson v. American Tool Cos.*, 222 Wis. 2d 384, 389, 588 N.W.2d 67 (Ct. App. 1998). We will not set aside the circuit court’s findings of fact unless we conclude that the findings are clearly erroneous. *Id.* at 389-90 (citing WIS. STAT. § 805.17(2)). “Furthermore, the fact finder’s determination and judgment will not be disturbed if more than one inference can be drawn from the evidence.” *Id.* at 389. We will search the record for facts supporting the findings of the circuit court, not facts supporting findings the court did not make or could have made. See *Becker v. Zoschke*, 76 Wis. 2d 336, 347, 251 N.W.2d 431 (1977). If there is conflicting evidence, the credibility of the witnesses and the weight given their testimony are solely for the circuit court to determine. *Jones v. Jones*, 74

⁴ John claims that he was denied procedural due process when, during the hearing, the court “failed to provide any opportunity for John ... to address anything, much less Darci’s requested modifications.” Due process requires that a person have notice and the opportunity to be heard on an issue at a meaningful time and in a meaningful manner. *State v. Nordness*, 128 Wis. 2d 15, 34, 381 N.W.2d 300 (1986). “However, a defendant is not denied due process when the defendant has had timely notice and yet fails to make a timely appearance and presentation of evidence.” *Riemer v. Riemer*, 85 Wis. 2d 375, 377, 270 N.W.2d 93 (Ct. App. 1978). The circuit court did not accept any new evidence when it issued its decision clarifying its previous order, instead indicating that it spent “a fair amount of time” reviewing the record. John had the opportunity to be heard on two separate dates regarding that same evidence and the same arguments pertaining to the matter decided by the court in the clarification order, and he failed to timely present evidence in support of his position. John was not denied due process.

⁵ WISCONSIN STAT. § 805.17(4) provides that “[i]n actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may be raised on appeal whether or not the party raising the question has objected in the trial court to such findings or moved for new trial.”

Wis. 2d 607, 612, 247 N.W.2d 168 (1976). In this case, the circuit court's finding as to the amount owed by John to Darci for past medical bills for their children was amply supported by credible evidence in the record as well as testimony from Darci, and that finding was not clearly erroneous.

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

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

Sheila T. Reiff
Clerk of Court of Appeals