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DISTRICT II

March 20, 2019

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

2018AP1276 In re the Paternity of M.J.H.: Deandrea Teanine Dolly v. Donnell A. Hamilton, Sr. (L.C. #2012PA474PJ)

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).

Donnell Hamilton, Sr., appeals pro se from an order of the circuit court, following a court trial, denying his request for sole legal custody of his two children with former girlfriend Deandrea Dolly. The court instead continued joint custody and awarded Dolly primary physical placement of the children. 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 (2017-18).[1]

The circuit court denied Hamilton's request for sole custody, concluding Hamilton "did not meet the statutory burden for establishing a substantial change in circumstances sufficient for the court to modify legal custody." The court determined, however, that Hamilton's relocation from Kenosha, Wisconsin, to Ashland, Mississippi, constituted "a substantial change in circumstances sufficient for the court to modify physical placement of the children," and it awarded primary placement to Dolly.

Hamilton states that he moved for sole custody due to concerns the children were in physical danger while in Dolly's care and "more than once ... Juvenile Crisis" "reported" that the condition of Dolly's home was "very disturbing," and because "time and time again I had to deal with Ms. Dolly interfering with my time I should have spent with our children." On the latter point, he specifically states Dolly "withheld [the children] more than 12 hours during the period 07/19/2016 -09/8/16 … and during Christmas break 12/26/17—01/01/18." Hamilton believes he and his wife can provide a more stable home for the children than Dolly provides.

Hamilton's entire appeal amounts simply to him expressing his personal belief that the circuit court should have awarded him sole custody and primary placement of the children instead of maintaining joint custody and awarding Dolly primary placement. Hamilton does not challenge the court's determination that his move to Mississippi constitutes a substantial change in circumstances, rather he simply asserts that the children would be better served by being

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

placed with him and his wife instead of with Dolly. As Dolly points out in her response brief, Hamilton is asking us "to reverse the circuit court based on what he considers an incorrect weighing of the facts and evidence adduced by the parties" at trial.

On appeal, the appellant, here Hamilton, bears the burden of convincing us the circuit court erred in its decision. ***Gaethke v. Pozder***, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. Relatedly, it is the appellant's responsibility to provide us "with a record that is sufficient to review the issue" appellant raises. ***Butcher v. Ameritech Corp.***, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006). Despite the burden he bears on appeal and the fact that his entire appeal relates to the circuit court's decision following a court trial on the custody and placement issues, he has failed to provide us with a transcript of that trial. "Because it is the [appellant's] responsibility here to provide us with a record adequate for review, in the absence of a transcript we presume that every fact essential to sustain the circuit court's decision is supported by the record." ***Id.***

In ***Jocius v. Jocius***, 218 Wis. 2d 103, 119, 580 N.W.2d 708 (Ct. App. 1998), we declined to address whether the circuit court erred in denying appellant physical placement rights "because in order to determine whether the [circuit] court erroneously exercised its discretion with respect to this issue, we must be able to examine a full transcript of the proceedings. [Appellant], however, has failed to provide us with the transcript." For that same reason, we decline to address whether the circuit court here erred in denying Hamilton sole custody and awarding Dolly primary placement. Additionally, Hamilton fails to cite to the record for support of any of the assertions he makes, and thus he cannot prevail for this reason as well. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463 (refusing to consider a party's argument when the party has failed to cite to parts of the record relied on).

Additionally, while Hamilton believes the circuit court made the wrong decisions, he develops no legal argument that the circuit court erred in deciding as it did. *See* ***Clean Wis., Inc. v. PSC***, 2005 WI 93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768 ("We will not address undeveloped arguments."). While we recognize that some latitude may be afforded to pro se appellants such as Hamilton, pro se appellants nonetheless are required to abide by the same rules governing attorneys. *See* ***Waushara Cty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). We will not abandon our neutrality to develop arguments for a party. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

For the foregoing reasons, Hamilton has failed to satisfy his appellate burden to demonstrate that the circuit court erred.

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

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

Sheila T. Reiff
Clerk of Court of Appeals