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DISTRICT IV

April 11, 2019

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

2018AP220 In re the marriage of: Cynthia J. VanNatta v. Robert J. VanNatta (L.C. # 2012FA214)

Before Lundsten, P.J., 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).

Robert J. VanNatta, pro se, appeals a postjudgment order in this divorce case. VanNatta contends that the circuit court judge was biased. 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] We summarily affirm.

On August 23, 2013, the circuit court entered the judgment of divorce in this matter. The circuit court entered postjudgment orders on November 23, 2015, and July 25, 2016. On November 1, 2017, VanNatta filed a postjudgment motion seeking visitation with VanNatta's children for VanNatta and his family members. The circuit court held an evidentiary hearing on January 29, 2018. The court entered an order on February 21, 2018, that: (1) denied VanNatta's request for visitation for VanNatta's extended family members; (2) directed that, upon VanNatta's commencing the process to have the children approved by the Department of Corrections as visitors for VanNatta, VanNatta's former spouse shall complete the visitor questionnaire and forward it to the correctional facility; (3) directed that there be no personal visits between VanNatta and his children, but that VanNatta shall communicate with his children two to four times per month, subject to review by VanNatta's former spouse for appropriateness, and that VanNatta's former spouse shall seek approval from the court of any decision to deny contact on the basis of inappropriateness; (4) directed VanNatta's former spouse to enroll the children in therapy; (5) stated that those matters would not be revisited prior to November 1, 2018; and (6) lifted the restriction in the judgment of divorce prohibiting VanNatta from discussing his criminal convictions with the children.[2]

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

[2] The guardian ad litem argues that the February 21, 2018 order is not a final order and that it is therefore not appealable. *See* WIS. STAT. § 808.03(1). The guardian ad litem does not develop any argument that the February 21, 2018 order is not final for purposes of appeal. The order fully resolved the postjudgment motion, and thus disposed of the matter in litigation between the parties. *See* ***id.***

VanNatta contends that the circuit court judge was biased, denying VanNatta his due process right to an impartial judge.[3] We review a claim of judicial bias for both subjective and objective bias. *See* ***State v. McBride***, 187 Wis. 2d 409, 415, 523 N.W.2d 106 (Ct. App. 1994). The question of subjective bias is whether the judge has determined that he or she cannot be impartial. ***Id.*** Here, VanNatta does not contend that the judge determined that he was subjectively biased. Rather, he contends that the judge was objectively biased.

The question of objective bias is whether a reasonable person could conclude that the average judge with ordinary human tendencies and weaknesses could not be trusted to remain neutral under the circumstances or whether there are objective facts demonstrating that the judge treated the defendant unfairly. *See* ***State v. Goodson***, 2009 WI App 107, ¶9, 320 Wis. 2d 166, 771 N.W.2d 385. VanNatta argues that the judge's objective bias was established by: (1) the judge's prior practice of law with VanNatta's former spouse's attorney; (2) the judge's prior representation of VanNatta's brother in an estate case, in which VanNatta was on an opposing side; (3) the judge's presiding over some of the proceedings in VanNatta's criminal case; and (4) the judge's issuing rulings throughout the divorce proceedings that VanNatta perceives as

[3] To the extent that VanNatta argues that he was entitled to judicial substitution and that the judge erred by denying VanNatta's prior requests for judicial recusal, we reject those arguments as outside the scope of this appeal. The notice of appeal was filed on February 1, 2018, and brings before this court the order subsequently entered by the circuit court on February 21, 2018. *See* WIS. STAT. § 808.04(1) and (8). The February 21, 2018 order did not address a request for substitution or recusal, and VanNatta does not contend that any such request was pending before the court when the court issued the February 21, 2018 order. Rather, VanNatta argues that he requested that the judge recuse himself during prior postjudgment proceedings. However, on November 23, 2015, and July 25, 2016, the court issued final orders in those proceedings that denied the recusal requests. The notice of appeal in this case does not bring those prior final orders before us. *See* § 808.04(1) and (8); WIS. STAT. RULE 809.10(4).

adverse to VanNatta and favorable to VanNatta's former spouse,[4] as well as the judge's statements at the motion hearing that the judge believed VanNatta had done some "horrifically awful" things. We disagree.

During prior postjudgment proceedings, the judge addressed VanNatta's assertions that the judge was biased based on having practiced law with VanNatta's former spouse's attorney and the judge's involvement in the VanNatta family estate matter. The judge acknowledged that he and VanNatta's former spouse's attorney were law partners from 2006 to 2009. The judge stated that he had recused himself from matters with that attorney for his first year on the bench but that the attorney had appeared before the judge for the next five years. The judge found no basis for recusal in this case. The judge also explained that he had no animus toward VanNatta based on the estate proceedings that occurred years prior. As to the judge's adverse rulings and critical statements, unfavorable judicial rulings do not establish judicial bias. *See* ***Liteky v. United States***, 510 U.S. 540, 555 (1994). A judge's opinion of a defendant based on current or prior proceedings, and the judge's critical or disapproving remarks toward the defendant, are also insufficient to establish bias. *See* ***id.*** On this record, a reasonable person would not question the judge's ability to act impartially in this case. We reject VanNatta's judicial bias claim.

Finally, it appears that, within VanNatta's bias arguments, VanNatta is also challenging the circuit court's exercise of discretion in issuing the February 21, 2018 order regarding contact between VanNatta and his children. *See* ***Keller v. Keller***, 2002 WI App 161, ¶6, 256 Wis. 2d

[4] To the extent that VanNatta challenges the terms of the August 2013 judgment of divorce or prior final postjudgment orders that were entered more than 90 days before the notice of appeal, those challenges are outside the scope of this appeal. *See* WIS. STAT. § 808.04(1) and (8); WIS. STAT. RULE 809.10(4).

401, 647 N.W.2d 426 (circuit court's decision on a postjudgment motion as to child placement is reviewed for an erroneous exercise of discretion). However, VanNatta simply asserts, in conclusory fashion, that he disagrees with the circuit court's decision. VanNatta does not set forth an argument, applying relevant legal standards to the facts, supported by citations to legal authority and to the facts in the record, as to how the circuit court's exercise of discretion was erroneous. Accordingly, we reject VanNatta's challenge to the circuit court's exercise of discretion as undeveloped. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (appellate courts do not generally consider undeveloped arguments).

Therefore,

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.

Sheila T. Reiff
Clerk of Court of Appeals