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DISTRICT IV

May 10, 2019

To:

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

2018AP748

In re the marriage of: Charlotte St. Clair f/k/a Charlotte Fox v.
Gregory Fox (L.C. # 2013FA193)

Before Lundsten, P.J., Sherman and Blanchard, 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).

Gregory Fox appeals a post-divorce judgment order awarding sole legal custody of their children to respondent Charlotte St. Clair. 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 affirm.

Fox argues that the circuit court was not permitted to make this custody change because no party had filed a “petition, motion or order to show cause” under WIS. STAT. § 767.451(1)(b)1. Fox argues that such a filing is a necessary prerequisite to a decision on custody. He asserts that the court erred by changing custody *sua sponte*.

In response, St. Clair points out that, before the court’s custody hearing in late December 2017, and at the end of her “answer to affidavit for permanent order,” filed in July 2017, she asked that “the mother of the children be granted sole custody of the children.” She also notes that a similar request was in the first paragraph of her “position statement” filed in early December 2017. In addition, the report of the guardian ad litem, filed in early December 2017, recommended that St. Clair be awarded “full” custody.

Thus, the issue boils down to whether some or all of the above filings by St. Clair and the guardian ad litem can properly be considered a petition or motion for purposes of WIS. STAT. § 767.451(1)(b)1. In reply, Fox simply asserts in one sentence that St. Clair’s affidavit is not a petition, motion, or order to show cause. He does not develop a legal argument establishing that only documents that are literally titled as one of those things are sufficient to satisfy the statute.

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

We see no reason why the above documents should not be considered sufficient to meet the requirement. The court did not act sua sponte, but instead responded to the mother's requests and the recommendation by the guardian ad litem.

To the extent Fox is arguing that he received insufficient notice that custody would be at issue, this argument fails because he has not identified any way in which additional notice would have changed his response on the custody issue. It further fails because Fox's own position statement, filed nearly three weeks before the hearing, asked that joint custody continue. Obviously, there was no surprise to Fox that custody would be considered at the hearing.

IT IS ORDERED that the order appealed is summarily affirmed under 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