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DISTRICT II

July 31, 2019

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

2018AP1546-FT	In re the marriage of: Angela Marie Di Castri v. Matthew James Galewski (L.C. #2006FA576)
2018AP1765-FT	In re the marriage of: Angela Marie Di Castri v. Matthew James Galewski (L.C. #2006FA576)

Before Neubauer, C.J., Reilly, P.J., and Brash, J.

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).

In these consolidated appeals, Angela Marie Di Castri appeals that portion of a postjudgment order terminating the requirement that she and her ex-husband, Matthew James Galewski, each pay one-half of their minor daughter's future college expenses, and from an order denying reconsideration. Pursuant to a presubmission conference and this court's order of September 11, 2018, the parties submitted memorandum briefs. *See*

WIS. STAT. RULE 809.17(1) (2017-18).[1] Upon review of those memoranda and the record, we summarily affirm. WIS. STAT. RULE 809.21.

Angela and Matthew divorced in 2006, when their daughter was four years old. Pursuant to their Marital Settlement Agreement (MSA), they shared custody and placement. The MSA was comprehensive and detailed. Section IV, "Child Support," provided that support was held open "[d]ue to the shared placement and the relative equal incomes of the parties[,]" and that the parties agreed to "equally split" variable costs including day care, school and activity fees, and life insurance. Once the daughter started driving, each party was to carry her "as a secondary driver on their own individual automobile insurance." At the start of the new calendar year, both parents would deposit a fixed monthly sum from their individual bank accounts directly "into a 529 or similar college savings plan" for their daughter's benefit. The amount would increase by ten percent each year. In the future, Angela and Matthew would "equally split all college expenses, up to the cost of the most expensive in-state public university." The MSA stated: "The parties recognize that absent an agreement, college costs could not be ordered by the court but recognize that if this agreement is made an order of the court, it will be enforced."

In 2016, Angela filed a motion to modify the equal placement schedule, and Matthew filed motions to enforce placement and for contempt. The parties "resolve[d] all issues" through a stipulation and order filed August 2017, which gave Angela primary placement.

Several months later, Angela filed a motion requesting that Matthew pay child support in the guideline amount of seventeen percent of his income. At an evidentiary hearing, citing his

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

limited resources, Matthew argued for a downward deviation or, in the alternative, that he not have to make monthly payments to a college savings plan or be legally obligated to pay his daughter's college expenses.

The circuit court determined that the changed placement was a substantial change in circumstances warranting child support, and ordered that Matthew pay the guideline amount of seventeen percent. The circuit court terminated the order requiring monthly payments into a college savings plan but provided that the amount already deposited "shall stay in the plan and shall be used" for the daughter's college expenses. The court also terminated the order requiring each parent to pay one-half of all college expenses. The circuit court heard and denied Angela's motion to reconsider its order terminating the obligation to pay one-half of future college expenses.

On appeal Angela contends that the circuit court "erred as a matter of law by failing to enforce the terms of the [MSA]" requiring the parties to contribute to their daughter's college expenses because Matthew "is estopped from seeking termination of" that obligation. We disagree.

In section XVII of the MSA, the parties assert that the MSA "is reached as a result of negotiations wherein each party compromised various demands in exchange for agreement of the other," and that:

> In the event a court should not approve of this Agreement and incorporate it unchanged and in its totality into a judgment of divorce, each party declares that no part of this Agreement is then acceptable because a major and critical consideration, to wit, approval by the court of this Agreement is unchanged in any respect, would then be missing. In such event, this entire Agreement shall be considered to be void and nothing herein is

> deemed to be agreed upon, in the absence of further specific written agreement by both parties. *In the event any court attempts to modify this Agreement in any respect over the objection of one party, either party may then object to any other portions of this Agreement and the fact that either party has previously signed this Agreement or made a recommendation to the court to accept it shall be of no effect and without prejudice to that party's right to object and declare this Agreement to be void.*

(Emphasis added.)

Angela's contention that Matthew is estopped from objecting to the obligation to pay future college expenses is directly contrary to the language in section XVII, which establishes that the MSA was a negotiated compromise and provides that any modification by the court opens other portions of the agreement for review. This is certainly true where as here, upon modification of the child support amount, Matthew objected to and the circuit court revised interrelated provisions concerning financial support for the parties' daughter.

Angela argues that section XVII speaks only "to the necessity of the court to approve the agreement in its entirety and incorporate it into the" original judgment of divorce. She asserts: "The express terms of this paragraph require[] the conclusion that once the agreement is approved and incorporated, it has no effect going forward." Like the circuit court, we reject this argument. Section XVII contains two different "In the event" clauses; the second refers to "any" court's attempts to "modify" the agreement "in any respect" over a party's objection.

Further, this is not an estoppel case. Estoppel is appropriate when a party knowingly enters into a fair agreement, asks the court to make it an order, and subsequently seeks to be released from the order "on the grounds that the court could not have entered the order it did without the parties' agreement." ***Rintelman v. Rintelman***, 118 Wis. 2d 587, 596, 348 N.W.2d 498 (1984). Unlike the father in ***Bliwas v. Bliwas***, 47 Wis. 2d 635, 178 N.W.2d 35 (1970),

Matthew did not "invoke the jurisdiction" of the court to procure a benefit, receive that benefit, and then "repudiate the action of the court" as without jurisdiction when it came time for him to pay his share. ***Id.*** at 640-41 (citation omitted). The cases Angela cites are inapt and, in fact, as ***Bliwas*** acknowledges, the divorce court's "approval and incorporation" of a parties' agreement into its judgment does not "irrevocably freeze[] the rights and duties of the parties." ***Id.*** at 641.

Our conclusion that the language in section XVII permits modification makes the child support determination a discretionary matter for the circuit court. *See* ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis.2d 426, 663 N.W.2d 789. Angela does not argue that the circuit court erroneously exercised its discretion. Here, the circuit court considered the facts of record and "using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Id.***, ¶13 (citation omitted). Similarly, Angela does not discuss the circuit court's decision denying reconsideration and has not minimally demonstrated an erroneous exercise of discretion. *See* ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are 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