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DISTRICT II

August 7, 2019

To:

Hon. Mark T. Slate
Circuit Court Judge
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Candice M. Olofson
197 E. Moore Street
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Amy Thoma
Clerk of Circuit Court
Green Lake County Courthouse
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Green Lake, WI 54941

David R. Olofson
N7155 Winnebago Drive
Fond du Lac, WI 54935

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

2018AP717

Candice M. Olofson v. David R. Olofson (L.C. #2011FA33)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

David R. Olofson appeals from a circuit court order clarifying the actions he must take before the circuit court will schedule any hearing on placement, custody or contact with the parties' 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 We affirm.²

The order on appeal relates to custody, placement, and communication with the parties' children. The order requires that Olofson have a psychological assessment by a court-approved expert and that he pay for the cost of the assessment and any follow-up recommendations. The order further provides that if Olofson believes he cannot afford these costs, he may apply to the circuit court to modify that requirement. The order bars Olofson from having contact with the children except via regular mail, which Candice Olofson will review to determine whether the mail will be shared with the parties' children. The order provides that Olofson may submit a proposal for additional contact with the children. Finally, the order states that the court will not schedule a hearing on placement, custody, or contact unless Olofson complies with the order.³

Issues relating to custody and placement are committed to the circuit court's discretion. *See Rosecky v. Schissel*, 2013 WI 66, ¶29, 349 Wis. 2d 84, 833 N.W.2d 634. The burden to demonstrate an erroneous exercise of discretion rests with the appellant. *See Colby v. Colby*, 102 Wis. 2d 198, 207-08, 306 N.W.2d 57 (1981).

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

² As stated in this court's January 17, 2019 order, this appeal was submitted for decision without a respondent's brief. We decide this appeal without a respondent's brief.

³ We observe that the most recent guardian ad litem report (filed on December 29, 2017) did not support granting custody and/or placement to Olofson because he had not complied with prior circuit court orders, including an order requiring him to have an assessment and participate in any recommended therapy or treatment.

The record is voluminous, and Olofson fails to provide citations to the record as required by WIS. STAT. RULE 809.19(1)(d) and (e).⁴ Compliance with the briefing rules is required because a high-volume intermediate appellate court is an error-correcting court that cannot take the time to sift the record for facts that might support an appellant's contentions. *Keplin v. Hardware Mut. Cas. Co.*, 24 Wis. 2d 319, 324, 129 N.W.2d 321 (1964). "An appellate court is improperly burdened where briefs fail to properly and accurately cite to the record." *Hedrich v. Board of Regents*, 2001 WI App 228, ¶1 n.2, 248 Wis. 2d 204, 635 N.W.2d 650.

Olofson argues that the order deprives him of access to the circuit court. The order does not have that effect. Rather, the order establishes the conditions under which the court will entertain Olofson's requests relating to custody, placement, or communication with the children.

Olofson has not demonstrated by reference to the record that he has complied with the conditions expressed in the order. Olofson also has not demonstrated by reference to the record that he has availed himself of the opportunity to seek circuit court relief from certain conditions imposed by the order. Finally, Olofson has not demonstrated by reference to the record that he has complied with prior orders of the circuit court covering the same subject areas.

⁴ Including materials in the appendix to the appellant's brief does not fulfill the requirement of citations to the record because the appendix does not inform the court where the facts Olofson asserts may be found in the record. See *Forman v. McPherson*, 2004 WI App 145, ¶6 n.4, 275 Wis. 2d 604, 685 N.W.2d 603.

Given the deficiencies in Olofson’s brief, we conclude that he has not met his burden to show an erroneous exercise of circuit court discretion in fashioning the order he challenges.⁵

Upon the foregoing reasons,

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

⁵ Any argument not discussed in this opinion has been rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).