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DISTRICT III

September 4, 2019

To:

Hon. J. Michael Bitney
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You are hereby notified that the Court has entered the following opinion and order:

2016AP1709

William Russell Roberts v. Andrea Ann Roberts
(L. C. No. 2014FA95)

Before Hruz, J.¹

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).

William Roberts, pro se, appeals a postdivorce order finding him in contempt for failing to abide by the terms of a marital settlement agreement between him and Andrea Perone, his former wife. Based upon our review of the parties' briefs and the appellate record, we conclude this appeal is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

The circuit court incorporated Roberts and Perone's marital settlement agreement into a judgment of divorce on October 28, 2014. The divorce judgment required Roberts to pay Perone a cash equalization payment of \$87,000. Roberts would pay Perone \$1000 on the first of each month beginning on October 1, 2014, until July 1, 2019, along with a lump sum payment due in June 2019. In addition, the divorce judgment required Roberts to pay and keep current all real estate taxes for a residence and real estate awarded to him.

In May 2016, Perone moved the circuit court to find Roberts in contempt for violating the divorce judgment, and the court held a hearing on the motion in July 2016. Perone alleged Roberts failed to make the monthly equalization payments to her and failed to pay and keep current the real estate taxes for his awarded residence. Roberts acknowledged that he agreed to pay Perone the monthly equalization payments as part of the marriage settlement agreement and admitted that he was not current on his payments to her beginning in March 2016. Roberts further admitted that he knew he was required to pay and keep current the real estate taxes, and that he had not done so.

Roberts explained that he was not currently employed, but that he had collected approximately \$3000 a month in disability from the Department of Veterans Affairs and approximately \$400 a week from unemployment. He further explained that he would have secured sufficient funds to pay Perone each month, but renters of property he owned stopped paying him rent. Roberts also explained that he was in the process of consolidating his debt with

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

a remortgage of a property that would allow him to become current on both the payments to Perone and the real estate taxes.

Roberts additionally argued at the contempt hearing that he believed the circuit court had signed “ex parte orders” throughout the pendency of the divorce proceedings. Roberts also claimed that one of the qualified domestic relations orders entered after the divorce judgment was entered without his knowledge.

The circuit court examined Roberts during the contempt hearing to ensure he knew the terms of his divorce judgment and that he was obligated to follow those terms and conditions. The court then found that Roberts had not filed a motion or a request to set aside the qualified domestic relations order, or to call into question any other agreement related to the divorce judgment.

The circuit court further found that Roberts failed to make his required payments and that he had the financial ability to make those payments. The court also found there was no credible evidence to support Roberts’s claim that he did not agree to what was ordered in the divorce judgment, or that Perone’s attorney engaged in “unethical, inappropriate or otherwise surreptitious conduct” with the court in trying to resolve the divorce or in drafting “the terms and conditions that both parties have clearly signed off on as part of their Marital Settlement Agreement to divide up their marital estate.” Consequently, the court found Roberts in contempt for “an intentional, willful disobedience” of the divorce judgment. The court ordered Roberts to serve sixty days in jail, but it gave Roberts a ninety-day purge condition to become current on his payments to Perone and on the real estate taxes. Additionally, the court ordered Roberts to pay

Perone's attorney's fees for bringing the contempt motion and Perone's travel expenses and costs. Roberts now appeals.²

Although Roberts appeals from the circuit court order finding him in contempt, he makes no argument on appeal concerning that order or that the court erroneously exercised its discretion in doing so. See *City of Wisconsin Dells v. Dells Fireworks, Inc.*, 197 Wis. 2d 1, 23, 539 N.W.2d 916 (Ct. App. 1995) (stating that we review a circuit court's use of its contempt power for an erroneous exercise of discretion). Pro se litigants "are bound by the same rules that apply to attorneys on appeal. The right to self-representation is '[not] a license not to comply with relevant rules of procedural and substantive law.'" *Waushara Cty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (citation omitted). While we afford some leniency to pro se litigants, we have no duty to walk them through the procedural requirements or to point them to the proper substantive law. *Id.* An issue inadequately briefed on appeal may be deemed abandoned, even if that issue was raised in the circuit court. See *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 493, 588 N.W.2d 285 (Ct. App. 1998). Nowhere in Roberts's brief-in-chief and reply does he attempt to argue that the circuit court erroneously exercised its discretion when it found him in contempt. Instead, Roberts raises two separate issues on appeal, each of which we address below. Accordingly, we conclude that Roberts abandoned his appeal of the circuit court's contempt order.

We briefly comment on the issues Roberts did raise on appeal in order to explain why we cannot address them at this time. While the law prefers to afford litigants a day in court

² Our review of Roberts's appeal was delayed because we granted Roberts's eleven requests for extensions to file his brief-in-chief and four requests for extensions to file his reply brief.

wherever reasonably possible, *see Rutan v. Miller*, 213 Wis. 2d 94, 106, 570 N.W.2d 54 (Ct. App. 1997), a litigant’s appellate rights must be exercised timely and properly. As to the two issues Roberts purports to raise on appeal, he has failed to do either.

Roberts first argues that Judge Bitney should have recused himself—presumably from any proceedings related to the divorce—because he exhibited impropriety and partiality during the divorce proceedings. Roberts claims Judge Bitney “friended” Perone’s attorney on Facebook. In Roberts’s view, this electronic social media (ESM) connection occurred “while the action was pending [and] creat[ed] ... an appearance of partiality.” Roberts further asserts that Judge Bitney “friending” Perone’s attorney was an improper ex parte communication.

Roberts’s arguments, however, are plagued by procedural and substantive infirmities. On the procedural level, Roberts’s allegations are so vague that we cannot ascertain when the alleged “friending” occurred. This omission is important because an appeal of the divorce judgment is not before us—only an appeal from the circuit court’s contempt order is. Additionally, we note that Roberts appears to contend an attorney from the same law firm as Perone’s attorney—and who opposes Roberts in a different case—also engaged in improper ex parte communications with Judge Bitney through ESM. We decline to opine on issues not properly before us.

On the substantive level, Roberts’s argument is hardly developed. Roberts’s writing is difficult to follow—due to his unintelligible thought process and omnipresent, lengthy quoting from a variety of appellate materials in other cases—to the point where it is often difficult to discern whether the words in his briefs are his own or are from the quoted material. In fact, Roberts wrote that he was “incorporating” into his argument a portion from a party’s brief in

Miller v. Carroll, 2019 WI App 10, 386 Wis. 2d 267, 925 N.W.2d 580, *review granted*, (WI Aug. 14, 2019) (No. 2017AP2132). To Roberts’s credit, that case may have some relevance to his argument. In *Miller*, we concluded a circuit court judge’s undisclosed ESM connection with a litigant (not, as is alleged here, with a litigant’s attorney), that occurred after a contested evidentiary hearing but before the court’s issuance of a decision, was improper. *See id.*, ¶¶11, 29. In reality, however, his “incorporation” turned into thirteen pages of cut-and-pasted language from the party’s brief without Roberts’s own analysis of that case or argument for its proper application here.

Moreover, based upon the record before us, *Miller* is not factually similar to this case. Not only does Roberts fail to provide evidence in support of his allegations that an ESM connection occurred during the divorce proceedings, but it appears that Judge Bitney had been connected with the other attorneys *prior* to those proceedings. Therefore, even if this issue was properly before us, it is undeveloped.

Roberts also faults the circuit court for not ordering him to undergo a “[m]ental competency evaluation, given [its] knowledge of life long illness.” Again, Roberts’s argument is procedurally and substantively deficient, and even more so on this matter. He has not explained how the court’s alleged failure to order a mental competency evaluation relates to the court finding him in contempt; it appears that Roberts believes an evaluation should have occurred years earlier and prior to the divorce judgment. Additionally, Roberts’s *entire* argument for this issue seems to be Justice Antonin Scalia’s dissent from *Indiana v. Edwards*, 554 U.S. 164 (2008), copied verbatim into Roberts’s brief. Roberts again fails to apply the law to the facts of his case. Thus, this issue is not sufficiently developed and, even if it was, it is not properly before us.

Therefore,

IT IS ORDERED that the order is summarily affirmed. 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