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DISTRICT IV

November 19, 2019

To:

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

2018AP1605

In re the marriage of: Antoinette Patricia Schaffrath
v. Randy Jay Keefe (L.C. # 2009FA44)

Before Fitzpatrick, P.J., Kloppenburg and Nashold, 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).

Randy Keefe appeals an order denying his motion for relief from a previously entered contempt order. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm for the reasons discussed below.

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

Keefe and Antoinette Schaffrath were divorced in 2011. An addendum to the divorce judgment included provisions awarding the Old Log Cabin Pub & Grill, LLC to Keefe, subject to an equalization payment and a four-year mortgage at 6% interest with monthly payments in the amount of \$500, to Schaffrath. The addendum also required Schaffrath to provide all accounting information for the pub to Keefe and to refrain from carrying out any acts that would sabotage, injure or harm Keefe's ownership of the pub.

In a series of motions filed in 2011 and 2012, Keefe accused Schaffrath of failing to have completed or signed the necessary paperwork to renew and, later, to reinstate, the pub's liquor license, and of removing certain documents and assets from the pub. Keefe also moved to hold Schaffrath in contempt on the grounds that she was sabotaging his ownership of the pub and refusing to produce tax, financial and business records for the pub. Schaffrath filed a cross-motion seeking to hold Keefe in contempt for harassment, taking money from the pub, and coming in drunk to bartend. Keefe then filed a motion to reopen the divorce judgment, alleging that Schaffrath had misrepresented the parties' debts during the divorce proceedings, including concealing the fact that she had failed to pay liquor and food suppliers, taxes, and utility bills for the pub, and that she had embezzled employee Social Security withholdings. Keefe asked that any equalization payments be suspended until Schaffrath's alleged fraud was investigated. For various reasons, apparently including the retirement of the original trial judge, the circuit court did not take action on any of these motions.

In 2016, Schaffrath filed a new motion seeking to hold Keefe in contempt for failing to execute a mortgage and make any equalization payments, and a new judge was assigned to the case. At the contempt hearing, Keefe acknowledged he had made no equalization payments, but asserted as an affirmative defense that he should receive an "adjustment" or offset because

Schaffrath's conduct had led to him having to close the pub, leaving him with no money to make the payments. The circuit court observed that, while Schaffrath's alleged conduct could form the basis for independent claims against her, the court had no authority to issue an offset in a contempt proceeding. The court issued an order finding Keefe in contempt based on the uncontested fact that he had failed to make the equalization payments and further noted that, according to the terms of the divorce judgment, Schaffrath was entitled to seek foreclosure as a remedy for Keefe's default.

Keefe did not appeal the contempt order. Instead, about six months later, he filed a motion for relief from the order, alleging that Schaffrath had obtained the original divorce judgment and the contempt order by fraud. While the motion was pending, Keefe filed a second motion to render the contempt order void based upon fraud and perjury. The circuit court observed that neither Keefe nor Schaffrath was "extraordinarily credible," that the passage of time had dulled the memories of both parties, and that neither party had presented any objective witnesses or credible corroboration for their allegations against the other of misconduct. In any event, the court concluded that Keefe's renewed claims that he should receive an offset against his equalization payment based upon Schaffrath undermining his ownership of the pub were barred as having been previously litigated, and any new claims of fraud were barred by laches because Keefe did not raise them contemporaneously. Accordingly, the court denied both of Keefe's motions for relief from the contempt order.

On this appeal, Keefe asserts: (1) the circuit court erred in relying upon a false affidavit submitted by Schaffrath when it issued the contempt order; and (2) the circuit court erred in issuing the contempt order while his own counter-claims against Schaffrath were still pending. He asks this court to "take the divorce case back nunc pro tunc to [its] status" in 2012, with a

direction to hold a trial on damages. There are multiple reasons why Keefe is not entitled to the relief he seeks.

First, Keefe fails to understand the procedural posture of this case. The subject of this appeal is the order denying Keefe's motion for relief from the contempt order. Neither the contempt order itself nor the addendum to the divorce judgment is before us, and damages are not at issue.

Second, Keefe fails to address the legal standard applicable to a motion for relief from an order and this court's standard of review. Under WIS. STAT. § 806.07(1)(c), a court may relieve a party from a judgment or order based upon "[f]raud, misrepresentation, or other misconduct of an adverse party." We review a circuit court's discretionary decision whether to grant relief from a judgment or order with great deference, and we will uphold it as long as it was supported by a reasonable basis. *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. Keefe does not even cite § 806.07, much less develop any factual or legal argument to show that the circuit court erroneously exercised its discretion when it determined Keefe had failed to satisfy the criteria for relief under that section. This court need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

Third, even if we were to construe Keefe's arguments as an assertion that the circuit court should have granted him relief from the contempt order based upon fraud, misrepresentation or misconduct, the record shows a reasonable basis for the circuit court's decision. To begin with, the circuit court did not find Keefe's testimony to be credible and did not give weight to the

documents he provided. Therefore, there is an insufficient factual basis to determine that Schaffrath actually engaged in any fraud, misrepresentation, or misconduct.

Finally, the fraud, misrepresentation, and misconduct alleged by Keefe centered primarily on the running of the pub and the parties' respective obligations under the addendum to the divorce judgment. Those allegations more properly relate to Keefe's separate motions for relief from the divorce judgment and to hold Schaffrath in contempt, not to Schaffrath's motion to hold Keefe in contempt. Schaffrath's contempt motion was based upon Keefe's failure to make any of the equalization payments required by the addendum to the divorce judgment. None of Schaffrath's alleged conduct altered that fact. As the circuit court explained, there was no legal authority to "offset" the contempt finding against Keefe based on Keefe's counter-motions. Rather, those motions could have provided the basis for separate relief against Schaffrath. Therefore, the allegations made by Keefe, even if true, would provide no basis for relief from the contempt finding.

IT IS ORDERED that the circuit court's order is summarily affirmed under WIS. STAT. RULE 809.21.(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals