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DISTRICT IV

September 17, 2020

To:

Hon. Valerie Bailey-Rihn
Circuit Court Judge
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Madison, WI 53703

Luanne Marie Kalscheuer
5873 Holscher Rd.
Mc Farland, WI 53558

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

2019AP1052

In re the matter of the grandparental visitation of A.J. and R.J.:
Luanne Marie Kalscheuer v. Amy Lyn Job
(L.C. # 2019FA138)

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

Luanne Marie Kalscheuer appeals an order dismissing her petition for grandparent visitation. 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.

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

Kalscheuer filed her petition in February 2019, and it was docketed under the above circuit court case number. The court dismissed the petition for several reasons, and awarded attorney fees to the respondents.

In Kalscheuer’s brief to this court, much of her focus is on facts related to decisions that were made by different branches of the circuit court on her earlier petitions for similar relief. Those decisions are not before us in this appeal. This appeal relates only to the decisions made by the circuit court on Kalscheuer’s most recent petition in the above circuit court case number. That is the case that her notice of appeal was captioned for. Therefore, we do not further discuss matters that occurred in the earlier cases.²

As to the order that is properly before us, Kalscheuer briefly mentions the issue of overtrial³ and also refers to WIS. STAT. § 767.43, the statute on which her petition was based. However, she does not develop any legal argument relating to those topics, or to any other issues that might lead to relief in this appeal. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court need not address undeveloped legal arguments).

While we make some allowances for the failings of parties who, as here, are not represented by counsel, “[w]e cannot serve as both advocate and judge,” *id.*, 171 Wis. 2d at 647, and will not scour the record to develop viable, fact-supported legal theories on the appellant’s

² However, we do note that the dismissal order states that the judge deciding Kalscheuer’s previous petition concluded that the prior and earliest branch of the circuit court “would retain venue” of these issues.

³ The overtrial doctrine may be invoked in family law cases when one party’s unreasonable approach to litigation causes the other party to incur extra and unnecessary fees. *Ondrasek v. Ondrasek*, 126 Wis. 2d 469, 483, 377 N.W.2d 190 (Ct. App. 1985); *Randall v. Randall*, 2000 WI App 98, ¶22, 235 Wis. 2d 1, 612 N.W.2d 737.

behalf. *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Here, Kalscheuer has failed to develop her arguments legally or to support them factually. Therefore, we affirm the circuit court on that basis.

The respondents ask in their brief that we find this appeal frivolous under WIS. STAT. RULE 809.25(3). We are not permitted to grant that relief unless the respondent files a separate motion seeking that relief. *Howell v. Denomie*, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621. The respondents here did not file a separate motion, and therefore we deny this request.

Finally, in a recent letter to this court, Kalscheuer asks to meet with the judges deciding her appeal. We construe her request as a motion for oral argument. We deny the motion because we conclude that one of the criteria for deciding an appeal without oral argument is met in this case. *See* WIS. STAT. RULE 809.22(2)(a)2. (appeal may be decided without oral argument if the appellant's arguments are “on their face without merit and for which no supporting authority is cited or discovered”).

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the appellant’s motion to meet with the judges is denied.

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

Sheila T. Reiff
Clerk of Court of Appeals