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DISTRICT III

December 15, 2020

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

2019AP1969

Roger Trett v. Shannan Hendricks (L. C. No. 2016CV297)

Before Stark, P.J., Hruz and Seidl, 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).

Shannan Hendricks, pro se, appeals an order denying her petition for waiver of transcript fees in an appeal of a civil money judgment. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We reject

Hendricks's arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2017-18).¹

In appeal No. 2019AP1032, Hendricks and Harry Odone are appealing a May 17, 2019 judgment. Hendricks filed an affidavit of indigency and petitioned the circuit court to waive transcript costs for that appeal. The court denied the petition without a hearing. Hendricks now appeals that denial.²

After respondents Roger Trett and Trett Properties, LLC, filed their brief in this matter, Hendricks filed a notice of voluntary dismissal of certain parties, stating that she wished to dismiss her appeal as to Trett and Trett Properties, but to continue her appeal against respondents Timothy Jewell, AeroResto, LLC, and AeroResto Partenaire, Inc. (collectively, "Jewell"). By order dated September 10, 2020, the caption was amended to reflect that Trett and Trett Properties were dismissed from the appeal. Because the remaining respondents had not filed their own brief, the appeal continued as to the remaining respondents with this court treating the brief filed by Trett and Trett Properties prior to their dismissal as having been filed by the remaining respondents.

As an initial matter, the respondents contend that this court lacks jurisdiction to review the order denying waiver of the transcript fee because the order is not a final order for purposes of appeal. We disagree. An appeal as of right can only be taken from a final judgment or order, which is a judgment or order that disposes of the entire matter in litigation as to one or more

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

² By order dated December 2, 2019, we held appeal No. 2019AP1032 in abeyance pending resolution of this appeal.

parties. WIS. STAT. § 808.03(1). Hendricks is appealing a postjudgment order and, in this postjudgment posture, the matter placed into litigation was whether Hendricks could obtain free transcripts. The order denying her request disposes of that matter.

Whether fees and costs for transcripts should be waived by a circuit court is governed by WIS. STAT. § 814.29. A litigant is entitled to free transcripts on appeal of a civil case when the circuit court determines both that the litigant is indigent and that the litigant has presented “a claim upon which relief can be granted.” *State ex rel. Girouard v. Jackson Cnty. Cir. Ct.*, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990). Indigency primarily is a factual question, and we must accept a circuit court’s finding of fact unless it is clearly erroneous. *State ex rel. Richards v. Dane Cnty. Cir. Ct.*, 165 Wis. 2d 551, 555, 478 N.W.2d 29 (Ct. App. 1991), *superseded by statute on other grounds as recognized in Spence v. Cooke*, 222 Wis. 2d 530, 532, 587 N.W.2d 904 (1998). However, whether a proposed action states a claim upon which relief can be granted is a question of law that we review independently. *See Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693.

A circuit court shall make a finding of poverty if the litigant’s affidavit demonstrates any of the following: (1) that the person is a recipient of means-tested public assistance; (2) that the person is represented by an attorney through a legal services program for indigent persons; or (3) that the person is otherwise unable, because of poverty, to pay the costs of the action, proceeding or appeal. WIS. STAT. § 814.29(1)(d). In determining the person’s ability to pay, the court shall consider “the person’s household size, income, expenses, assets and debts and the federal poverty guidelines under 42 U.S.C. 9902(2).” WIS. STAT. § 814.29(1)(d)3.

Here, Hendricks’s affidavit did not indicate that she was a recipient of means-tested assistance, nor was she represented by counsel through a legal services program for indigent persons. Hendricks averred that she earned gross income of \$1,600 every two weeks and had assets of \$700. Hendricks listed no debt beyond the judgment she is currently appealing, but she noted that she is a single mother seeking transcripts costing between \$3,000 and \$6,000.³ The circuit court noted that “both Ms. Hendricks and Mr. Odone are appellants, Mr. Odone may have sufficient assets to cover these costs.” The court thus denied the petition based on its finding that Hendricks, along with her co-appellant, had sufficient assets to pay for the transcripts; indeed, Odone did not seek waiver of the transcript fees.

Even if Hendricks had been the sole appellant, the information in her affidavit did not warrant a finding of poverty. Her annual gross income of approximately \$41,600 is nearly two-and-one-half times more than \$16,910, which was the United States Department of Health and Human Services 2019 poverty guideline⁴ for a two-person household. Hendricks asserts that “[she] was much too lenient with her story in order to prove she cannot afford [the transcripts].” However, Hendricks, in effect, concedes she does not meet her burden of proving poverty, clarifying on appeal that she “did not state she was in poverty.”

Ultimately, Hendricks fails to establish that the circuit court’s finding that she was not indigent was clearly erroneous. The court determined that Hendricks was not indigent, and the

³ In her reply brief, Hendricks states the transcript fee is approximately \$4,000.

⁴ Poverty Guidelines, 84 Fed. Reg. 1167-68 (U.S. Dep’t of Health & Hum. Servs. Feb. 1, 2019), <https://aspe.hhs.gov/2019-poverty-guidelines>.

court did not need to address the merits of Hendricks's claim on appeal. *See Girouard*, 155 Wis. 2d at 159. In all, the court properly denied the petition for waiver of the transcript fees.

Upon the foregoing,

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