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March 17, 2021

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

2019AP2433-FT

In re the marriage of:
Kelly M. Luaders v. Mark Wolzenburg (L.C. #2010FA596)

Before Neubauer, C.J., Gundrum and Davis, 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).

Kelly Luaders appeals from a circuit court order modifying child support paid by her former spouse, Mark Wolzenburg. Pursuant to a presubmission conference and this court's January 28, 2020 order, the parties submitted memorandum briefs. Based upon our review of the

memorandum 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.

In April 2019, Wolzenburg moved the circuit court to modify his child support obligation on the grounds that the parties' older child, who has special needs, had reached eighteen years old² and was not attending school, and Luaders's income had changed.

After the court commissioner decided Wolzenburg's motion, Luaders sought a de novo circuit court hearing. As a result of the hearing, the circuit court made the following findings. Wolzenburg was working two jobs for a total of sixty hours per week. There was conflicting testimony regarding Luaders's earning capacity, and Luaders was less than credible in her testimony about her training, qualifications, the nature of her employment, and her ability to earn income. The court found that Luaders has a substantial earning capacity. Based on the evidence and its credibility determinations, the circuit court found that Wolzenburg's income was \$7481 per month and Luaders's earning capacity was \$54,636 (or \$4553 per month). The court set child support at \$447 per month.

The circuit court also found that from the day in February 2019 when the older child reached eighteen until September of that year, the older child was not pursuing a high school diploma or equivalent. She resumed her educational pursuits in September. The court found that the child support Wolzenburg paid during from February to September is "somewhat of a wash to be honest for purposes of trying to determine any other child support order at this point."

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

² The older child's eighteenth birthday occurred on February 10, 2019. A second child remains a minor and support for that child is not a subject of this opinion.

On appeal, Luaders raises three issues: the amount of Wolzenburg's gross income for purposes of calculating child support, when Wolzenburg's responsibility for child support for the older child ends, and what income can be imputed to Luaders for purposes of calculating child support under the shared placement formula.

Preliminarily and importantly, we observe that the appellant's brief does not cite any legal authority, including the standard of review we apply to the circuit court's rulings. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Rather, the brief argues the evidence as if this court reviews the circuit court's findings of fact de novo, which we do not, as discussed below.

A circuit court may modify a child support order if the court determines there has been a substantial change in circumstances. *See* WIS. STAT. § 767.59(1f)(a). Whether a change in circumstances is substantial is a question of law that we review de novo. *Jalovec v. Jalovec*, 2007 WI App 206, ¶22, 305 Wis. 2d 467, 739 N.W.2d 834 (citation omitted). The "circuit court's findings of fact regarding what changes have occurred in the circumstances of two parties will not be disturbed unless they are clearly erroneous." *Benn v. Benn*, 230 Wis. 2d 301, 307, 602 N.W.2d 65 (Ct. App. 1999) (citation omitted). "Once a substantial change in circumstances has been shown, the trial court must exercise its discretion as to modification of child support." *Jalovec*, 305 Wis. 2d 467, ¶21 (citation omitted).

Luaders challenges the circuit court's determination of Wolzenburg's gross income for purposes of calculating child support. She offers no argument based on legal authority that the circuit court erred. We do not review the circuit court's findings of fact de novo, and we will not

act “as both advocate and judge” with regard to the legal basis, if any, for this challenge. *Pettit*, 171 Wis. 2d at 646. We will not address this issue any further.

Luaders next challenges the circuit court’s determination as to when Wolzenburg’s responsibility for child support relating to the older child ceased based on the child’s age and schooling status. This argument suffers from the same defect as the last. Luaders does not develop an argument based on applicable legal standards. We will not address this issue any further.

Finally, Luaders challenges the income imputed to her for purposes of calculating child support under the shared placement formula. Again, she offers no legal authority for her challenge. Furthermore, the circuit court found that Luaders was less than credible on the question of her qualifications, the nature of her employment, and her ability to earn income. Credibility determinations are for the circuit court to make. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (citation omitted) (when acting as the finder of fact, the circuit court “is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness’s testimony.”). In the absence of legal authority supporting Luaders’s challenge, we address this issue no further. *Pettit*, 171 Wis. 2d at 646.

We conclude that Luaders has not demonstrated that the circuit court erroneously exercised its discretion when it modified Wolzenburg’s child support obligation.

Wolzenburg argues that Luaders's appeal is frivolous and WIS. STAT. RULE 809.25(3) attorney's fees and costs should be awarded. Wolzenburg did not file the required RULE 809.25(3)(a) motion. Therefore, the request is denied.³

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

³ As the prevailing party, Wolzenburg is eligible to seek costs and fees under WIS. STAT. RULE 809.25(1).