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DISTRICT II

April 14, 2021

To:

Hon. Lee S. Dreyfus Jr.
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Daniel P. Murray
324 W. Broadway
Waukesha, WI 53186

Robert C. Stryker, #650483
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2020AP21

Robert C. Stryker v. Daniel P. Murray (L.C. #2014FA843)

Before Reilly, P.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).

Robert C. Stryker appeals pro se from the circuit court's order denying his motion to change the rate of compensation for Daniel P. Murray's guardian ad litem (GAL) services from \$70 per hour to \$40 per hour. Based upon our review of the briefs and the record, we conclude that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm the circuit court's denial of Stryker's motion.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Amy and Robert Stryker were divorced in 2015. In 2018, Robert filed a post-judgment motion to change physical placement and communication.² The circuit court appointed Murray to serve as GAL for the minor children and set the rate of pay at \$70 per hour, to be split equally between Robert and Amy.

Murray performed his duties and submitted a signed affidavit to the court on August 27, 2019, with his final billing statement totaling \$945. The \$945 was advanced by the Waukesha County Clerk of Court to Murray. Robert and Amy were each ordered to reimburse Waukesha County for one-half of the \$945 within thirty days.³ Robert filed a motion asking the court to reconsider the \$70 per hour GAL rate, arguing that \$40 per hour was the maximum the court could order pursuant to WIS. STAT. § 767.407(6).⁴ The circuit court denied the motion on November 21, 2019, and directed Murray to submit additional costs he incurred in defending against Robert's motion. Robert appeals.

Robert appeals both the hourly rate set by the court and the court's award of additional compensation to Murray for time spent defending against Robert's motion.

² Amy also filed her own Motion to Modify Placement and Custody, seeking sole legal custody of the minor children.

³ Amy paid her half and is not a party to Robert's appeal.

⁴ WISCONSIN STAT. § 767.407(6) states in part:

The guardian ad litem shall be compensated at a rate that the court determines is reasonable.... If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under [WIS. STAT. §] 977.08(4m)(b). The court may order a separate judgment for the amount of the reimbursement in favor of the county and against the party or parties responsible for the reimbursement.

Robert argues that the \$40 rate as set by the legislature is controlling. We disagree. In *State ex rel. Friedrich v. Circuit Court*, 192 Wis. 2d 1, 13-20, 531 N.W.2d 32 (1995), our supreme court addressed the issue of whether the legislature’s lower rate for court-appointed attorneys unconstitutionally infringed on the judiciary’s power. *Friedrich* found that the legislature’s rate was not unconstitutional but also found that courts have the power to set compensation for court-appointed attorneys and are the ultimate authority for establishing compensation for those attorneys. *Id.* at 33-34.

WISCONSIN STAT. § 767.407(6) expressly states that “the guardian ad litem shall be compensated at a rate that the court determines is reasonable.” “Supreme Court Rule 81.02 sets the compensation rate applicable when the court appoints a lawyer.”⁵ S. CT. ORDER 17-06, 2018 WI 83 (eff. Jan. 1, 2020). At the time of this case, SCR 81.02(1) (2018) set the rate of compensation at \$70 per hour.⁶ As SCR 81.02 controls under the circumstances, and § 767.407(6) expressly states that the rate is within the discretion of the court, we find no error in the court setting Murray’s rate at \$70 per hour in accordance with SCR 81.02(1) (2018).

Robert also argues that the circuit court erred in awarding Murray compensation in the amount of \$182 for defending against Robert’s motion for reconsideration. The court entered its order on January 31, 2020, almost a month after Robert filed his notice of appeal in this case. Accordingly, the court’s order awarding Murray’s additional fees is not properly before this

⁵ As our supreme court explained, “There are a number of situations in which a court may need to appoint counsel, such as guardians ad litem in family cases. Often, the individual requiring legal representation is not indigent and the court may establish a payment plan to enable the individual to obtain and pay for the legal services, or the county may seek full or partial reimbursement for the costs.” S. CT. ORDER 17-06, 2018 WI 83 (eff. Jan. 1, 2020).

⁶ Supreme Court Rule 81.02 was subsequently amended to set the rate to \$100 per hour, but that rate “applies only to services performed after January 1, 2020.” SCR 81.02(1), (2).

court.⁷ We note, however, in the interest of finality, that Robert’s baseless and unreasonable motion caused Murray to exert time and effort to defend the court’s clearly appropriate award of \$70 per hour.

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

⁷ On March 5, 2021, Robert filed a Motion to Delay Decision of Court of Appeals, which we construed as a request to stay the appeal. Robert argued that “[a] delay [would] allow time for [him] to try to get an explanation from the circuit court regarding the new fees and for [him] to determine if this is a justifiable reimbursement request,” explaining that he “may need to move the appellate court for permission to amend his brief-in-chief to accommodate a new issue related to the circuit court’s order of December 9, 2020.” We noted that as Robert’s appeal “arises from a circuit court order entered November 21, 2019,” he “fails to show how subsequent orders of the circuit court entered more than one year later are relevant to the issues in this appeal.” We concluded that “[i]f [Robert] is aggrieved by a subsequent final order of the circuit court, he may file a new notice of appeal within the time prescribed by statute.”

In his response brief, Murray also makes a final request “that the full costs of this proceeding, including Guardian ad Litem fees, be assessed solely as against [Robert].” To the extent Murray is seeking costs for a frivolous appeal, we note that he has not filed a motion pursuant to WIS. STAT. RULE 809.25(3). We deny his request.