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DISTRICT II

May 12, 2021

To:

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Richard V. Ciardo
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You are hereby notified that the Court has entered the following opinion and order:

2019AP1287

In re the Paternity of K.H.W.: State of Wisconsin v. Richard V. Ciardo (L.C. #2003PA62PJ)

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).

Kathleen A. Wojtasiak appeals from a judgment awarding her less than the amount of child support arrearage and interest she believes Richard V. Ciardo owes her. She argues that the reduction in Ciardo's obligation arose from the involvement in the case of the Walworth County

Child Support Agency (CSA), an entity that lacked standing. Based on our review of Wojtasiak's brief¹ and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).² We affirm the circuit court.

Ciardo has had a child support obligation since 2005. In 2018, Wojtasiak moved the circuit court to enter a judgment for his child support arrearage so that she could pursue collection activities in Colorado, where Ciardo now lives.³ While the circuit court agreed to enter the requested judgment, a controversy arose over the exact amount of the arrearage and the calculation of the interest due. Wojtasiak sought a judgment for \$124,953;⁴ the circuit court entered a judgment for \$34,774.39⁵ using simple interest, not compound interest as Wojtasiak sought.

On appeal, Wojtasiak argues that the CSA inappropriately involved itself in this matter to her detriment. In a March 8, 2019 letter from counsel for the CSA to the circuit court, the CSA

¹ We decide this appeal without a respondent's brief from Richard Ciardo.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

³ Ciardo did not appear at the hearing on Wojtasiak's request or object to any of the circuit court proceedings relating to this request. As noted, Ciardo has not briefed this appeal.

⁴ Wojtasiak's appellant's brief reflects an updated figure allegedly due: \$129,552.86.

⁵ This figure reflects \$22,916.12 in child support arrearage and \$16,858.27 in interest as calculated by the Department of Children and Families, Bureau of Child Support in a January 24, 2019 account history report provided to the circuit court. It is not clear to this court how this account history entered the record. As far as we can tell, it appears that Wojtasiak attached this account history report to a proposed order.

discussed Wojtasiak's submissions relating to Ciardo's obligation. The letter advised the court that interest calculations on child support obligations are controlled by the statewide database system for such obligations and simple interest is used. The CSA also observed that the February 4, 2005 order in the paternity case stated that simple interest would be applied. On March 19, 2019, Wojtasiak objected to the CSA's March 8 letter because the CSA had no standing in the case and, by its own admission, was no longer a real party in interest.

We resolve Wojtasiak's complaint about the CSA's involvement as follows. In a letter to the circuit court dated April 17, 2019, and in Exhibit A, Wojtasiak conceded that simple interest was the correct calculation under the 2005 order and that the actual amount due was \$78,945.13. Given her concession that simple interest applied, it is not clear to this court why Wojtasiak persists in arguing on appeal in support of her original calculation of over \$120,000. A party may not maintain a position on appeal which is inconsistent with the position taken by him or her in the circuit court. *Siegel v. Leer, Inc.*, 156 Wis. 2d 621, 628, 457 N.W.2d 533 (Ct. App. 1990). Additionally, Wojtasiak's concession regarding the applicability of simple interest renders no longer in controversy her challenge to the CSA's March 8 letter stating that simple interest was appropriate. Based on the foregoing, we do not address any argument premised on a claim that anything other than simple interest should have been applied to Ciardo's child support obligation.

The circuit court properly applied simple interest to Ciardo's child support obligation⁶ as required by the provisions of the 2005 order and WIS. STAT. § 767.511(6).⁷ Because Wojtasiak persists in arguing for an amount that well exceeds her concession in the circuit court, and because Wojtasiak does not show that the circuit court's calculations were erroneous under the 2005 order and § 767.511(6), there is nothing left for us to address. We decide cases "on the narrowest possible ground." *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (we do not reach issues we need not reach if other issues dispose of the appeal).

We see no misuse of circuit court discretion in entering the judgment establishing the amount due from Ciardo. See *Joyce P. v. Alonzo R.*, 230 Wis. 2d 17, 21 601 N.W.2d 328 (Ct. App. 1999) (child support arrearage is within the circuit court's discretion).

Upon the foregoing reasons,

⁶ Wojtasiak seems to argue that at the hearing on her request for a judgment, the circuit court awarded her in excess of \$120,000. We disagree with Wojtasiak's characterization of the record. The hearing transcript reflects the court's agreement to enter a judgment, but the court told Wojtasiak to provide the calculation. The court was not required to rubber-stamp Wojtasiak's proposed order and calculation if it was at odds with the applicable statute and the controlling prior order. See *Maynard Steel Casting Co. v. Sheedy*, 2008 WI App 27, ¶2, 307 Wis. 2d 653, 746 N.W.2d 816 (a circuit court may consider appropriate legal factors and is not required to merely rubber-stamp a party's request).

⁷ WISCONSIN STAT. § 767.511(6) provides in pertinent part:

[A] party ordered to pay child support under this section shall pay simple interest at the rate of 1 percent per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. Subject to sub. (6m), if the party no longer has a current obligation to pay child support, interest at the rate of 1 percent per month shall accrue on the total amount of child support in arrears, if any.

IT IS ORDERED that the judgment 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