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DISTRICT II

May 19, 2021

To:

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

2020AP728

In re the marriage of: Laurie A. Rohde v. Eric C. Rohde
(L.C. #2012FA304)

Before Neubauer, C.J., Reilly, P.J., and Davis, J.

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).

Eric C. Rohde, pro se, appeals from an order of the circuit court denying his motion for modifications to his arrears and equalization payment schedules. Eric¹ argues that the court erred in determining that he was barred by the doctrine of laches from challenging the rate of interest that can be legally assessed on the amount he owes to his former wife, Laurie, for the unpaid equalization payment balance. Based upon our review of the briefs and record, we

¹ Because the parties have the same last name, we refer to them by their first names to avoid confusion. We observe that Laurie is also pro se in this matter.

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).² We affirm.

Although this case has a voluminous record dating back to 2012, the facts that are pertinent to this appeal are simple and undisputed. Laurie filed for divorce in February 2012. After a court trial, the circuit court granted the judgment of divorce and issued its written findings of fact and conclusions of law in September 2013.³ The court ordered Eric to make an equalization payment of roughly \$19,000 to Laurie and further ordered that “the unpaid cash balance ... shall accrue simple statutory judgment interest of 12% per year, until the unpaid balance is paid.” Eric submitted numerous postjudgment motions and filings challenging various aspects of the court’s judgment and orders, including an appeal to this court which he later voluntarily dismissed, but he did not challenge the court-ordered interest amount in any such filings until 2018, nearly five years after the court set the interest rate at issue in this appeal.

Eric first raised a challenge to the interest rate in 2018, in conjunction with Laurie’s motion for contempt arising out of Eric’s nonpayment of the equalization payment and interest. The court commissioner granted Laurie’s motion for contempt, finding that Eric’s nonpayment was willful and intentional, ordering payment of \$31,740.91, and denying modification of the 12% interest rate. Eric did not seek de novo review or otherwise challenge that ruling. Instead, he waited almost a year and then raised the same issue again in yet another postjudgment motion.

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

³ The Honorable Linda M. Van De Water presided over the court trial and entered the original judgment, findings of fact, and conclusions of law. The Honorable Michael J. Aprahamian presided over the de novo hearing that is at issue in this appeal.

After a court commissioner issued a decision in 2020 which was partially favorable to Eric on the 2019 postjudgment motion, Eric sought de novo review of the commissioner's decision by the circuit court. The court held a de novo hearing in February 2020. Citing to 2011 Wis. Act 69, Eric argued to the court that it was without authority in its original decision in 2013 to impose interest at a rate higher than the statutory interest rate of one percent over prime. As is pertinent to this appeal, the court denied Eric's motion to modify the interest rate for the amount owed on the equalization payment. It concluded that Eric had forfeited the issue by failing to raise it in his motions for reconsideration and on direct appeal. The court further concluded "that any challenge is now barred by the equitable doctrine of laches." Eric appeals.

The only issue properly before us on appeal involves Eric's challenge to the circuit court order dismissing his motion for modification of the twelve percent interest rate imposed on his equalization payment.⁴ We begin by noting that Eric has failed to adequately develop any factual or legal argument supporting his challenge on appeal. He provides a one paragraph conclusory argument that the court erred in concluding that his challenge to the interest rate is barred by laches, asserting that he is "not guilty of delaying any rights of claim in this case" and, as such, "the doctrine of laches" does not apply. We do not develop arguments for parties. *See Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("we will not abandon our neutrality to develop arguments" for the parties).

⁴ Although Eric also challenges the propriety of the 2013 decision, that decision is not properly before us on appeal. *See* WIS. STAT. § 808.04(1) (requiring appeal from a final order be initiated within forty-five days of entry of the order). However, Eric did timely file a challenge to the court's order denying his motion for modification, and it is that order which we review here.

That said, we will briefly address Eric’s challenge. We begin by noting, as did the circuit court on the motion for modification, that Eric has forfeited this challenge on appeal because he failed to raise this argument before the circuit court at the time of the 2013 order and then in his multiple motions for reconsideration and in his first direct appeal to this court.⁵ *See Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476. This is not a mere rule of convenience: it is essential to the orderly administration of justice, as it promotes efficiency and justice by giving the parties and the circuit court notice, allowing the court to correct or avoid the alleged error, encouraging the attorneys to prepare diligently, and it avoids sandbagging by a party failing to object and later claiming error, all to the end of eliminating the need for appeal. Clearly here, a developed challenge to the rate of interest on the equalization could have been promptly addressed by the parties and the court, as evidenced by the fact that the court considered Eric’s other arguments on reconsideration and made clarifications to its original decision after receiving several challenges.

We also reject Eric’s argument on its merits, as we conclude that the circuit court did not err in determining that Eric waited too long to raise this challenge and did not erroneously

⁵ Neither party adequately addresses the issues on appeal, including the circuit court’s determination that Eric had forfeited this challenge. For example, neither addresses Eric’s failure to file a de novo appeal of the court commissioner’s first denial of his challenge to the interest rate in 2018. *See* WIS. STAT. § 757.69(8). Pursuant to local rule, applicable when consistent with the state statute, Eric was required to file a de novo review within fifteen days of an oral or mailing of a written decision of the court commissioner. *See* Waukesha County Family Court Rule 2.4 (Apr. 16, 2020). “[A] failure to raise an issue generally constitutes a [forfeiture] of the right to raise the issue before the reviewing court.” *Loren Imhoff Homebuilder, Inc. v. Taylor*, 2020 WI App 80, ¶33, 395 Wis. 2d 178, 953 N.W.2d 353 (second alteration in original; citation omitted). Eric provides no new facts to justify this untimely challenge, much less this successive challenge, indicating only that he undertook legal research in 2019. Eric fails to provide any explanation as to why this research was not done prior to 2019, and in any event, a new legal understanding is not a sufficient reason to overcome forfeiture or to justify a successive motion challenging the same issue that was not appealed.

exercise its discretion in applying the doctrine of laches to bar Eric’s challenge to the interest rate which was ordered in 2013 and left unchallenged for nearly five years.

“A party who delays in making a claim may lose his or her right to assert that claim based on the equitable doctrine of laches.” *Dickau v. Dickau*, 2012 WI App 111, ¶9, 344 Wis. 2d 308, 824 N.W.2d 142. The doctrine of laches “operates as a bar upon the right to maintain an action by those who unduly slumber upon their rights.” *Flejter v. Estate of Carl Flejter*, 2000 WI App 26, ¶41, 240 Wis. 2d 401, 623 N.W.2d 552 (citation omitted).

Our review of a laches determination presents a mixed standard of review. The reasonableness of the delay and prejudice inquiries are treated as questions of law based upon factual findings. *State ex rel. Coleman v. McCaughtry*, 2006 WI 49, ¶17, 290 Wis. 2d 352, 714 N.W.2d 900. However, once the elements of laches have been established, a court still has discretion whether to apply the doctrine. *Id.* The elements of laches are: (1) an unreasonable delay by the party now seeking relief, (2) lack of knowledge or acquiescence by the party asserting laches that a claim for relief was forthcoming, and (3) prejudice to the party asserting laches caused by the delay. *Id.*, ¶¶27-29; *see also Batchelor v. Batchelor*, 213 Wis. 2d 251, 257, 570 N.W.2d 568 (Ct. App. 1997) (“In applying the doctrine of laches, our supreme court has held that for laches to arise there must be unreasonable delay, knowledge of the course of events and acquiescence therein, and prejudice to the party asserting the defense.”).

The first element concerns Eric’s delay in bringing the challenge. “To determine whether [Eric]’s delay was unreasonable, we look to the facts.” *See Batchelor*, 213 Wis. 2d at 257. As the circuit court explained, the facts here are that Eric brought several postjudgment challenges to various aspects of the court’s findings of fact and conclusions of law in the years following the

entry of judgment, including an appeal to this court, and in none of those challenges did he so much as hint that he took issue with the twelve percent interest rate imposed on the equalization payment. In fact, Eric first raised the issue through his attorney in 2018, some five years after it was ordered, yet the law on which Eric based his challenge was enacted two years prior to the 2013 judgment. Eric fails to provide any sufficient explanation as to why he failed to raise this challenge previously, much less when he raised the challenge for the first time in 2018. We are satisfied that the facts establish that the delay was unreasonable and that Eric “unduly slumber[ed]” in asserting his position. *See Fletjer*, 240 Wis. 2d 401, ¶41 (citation omitted).

Turning to the second element—knowledge of the events and acquiescence therein—we are satisfied that this element is met as well. We explained in *Batchelor* that “[a] ‘slight delay, accompanied by circumstances of negligence, apparent acquiescence, or change of defendant’s position, has been held sufficient’ to sustain” the application of the doctrine of laches. *Batchelor*, 213 Wis. 2d at 258 (citation omitted). As we concluded in *Batchelor*, we are similarly satisfied here that Eric had knowledge of the circuit court’s ordered interest rate beginning in 2013 and his “failure to raise the issue at the outset of the [postjudgment] proceedings leads to the inference that [Eric] had acquiesced to the” rate. *See id.* And the delay here was more than “slight.” Moreover, there is nothing in the record to indicate that Laurie was aware that Eric objected to the rate or that she was anticipating that he would challenge it some five years after it was ordered. Thus we conclude that the second element is met.

Finally, we conclude that the prejudice element to the other party is met by the facts presented here. As the circuit court noted, the judgment of divorce reflects Eric’s repeated “contemptuous and non-compliant conduct” as reflected by his “failure to comply with court orders, refusal to accurately disclose financial information, and nonpayment of child support.”

Laurie was forced to pay an attorney on more than one occasion to represent her rights and to attempt to achieve Eric's compliance with court orders. In fact, as the court found, "[t]he [12 %] interest rate could reflect the [c]ourt's way of leveraging [Eric]'s prompt compliance with the [2013 j]udgment." Interest has been accruing on the amounts of Eric's unpaid equalization balance at the rate of twelve percent for years and had already been doing so for many years by the time Eric finally got around to challenging the rate. One would assume that Laurie is counting on being compensated for Eric's substantial delays in payment⁶ by at least being entitled to interest at this rate, and to pull the rug out from under her now without fair notice would be unfair. We are satisfied that the facts establish that Laurie is prejudiced in terms of her time and money by having to now defend against a challenge to the rate imposed in 2013, only to have it retroactively rescinded five years later.

In sum, we conclude that Eric's challenge to the rate of interest to be applied to any unpaid equalization payment balance is barred by the application of the doctrine of laches, and that the circuit court did not erroneously exercise its discretion in applying laches under the facts presented here.⁷

⁶ The circuit court found that Laurie has endured "long delays in receiving any payments from [Eric] to cover child support and monies owed to her." As of the date of this writing, there is nothing that would indicate to us that Eric has yet paid off the balance he owes to Laurie for the equalization payment.

⁷ We note that Laurie asks us for relief beyond simply affirming the circuit court's order here, such as reviewing the amount Eric owes her under the judgment, enforcing the order to share his W-2s with Laurie annually, and ordering him to pay for a guardian ad litem so that the parties' placement schedule can be reviewed. These issues must be raised with the circuit court before we can weigh in on them. As such, we are not in a position to grant the other relief she seeks and do not address these issues further.

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