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DISTRICT III

May 25, 2021

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

2020AP177 Gary R. Hilsgen v. Cindy L. Hilsgen (L. C. No. 2015FA118)

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).

Cindy Ruprecht, f/k/a Cindy Hilsgen, appeals from an order denying her motion for relief from the property division component of a divorce judgment and to compel postdivorce

discovery.[1] Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

This case has a lengthy procedural history, much of which has no bearing on the issues currently before us. Relevant to this appeal, Ruprecht and Gary Hilsgen divorced in 2017. Ruprecht failed to appear at the final contested divorce hearing. The circuit court issued a final divorce judgment on November 30, 2017, which included a division of the parties' property. On December 15, 2017, Ruprecht filed a motion for relief from judgment pursuant to WIS. STAT. § 806.07, alleging that she had not received proper notice of the final hearing, that her attorney had withdrawn at the final hearing without prior notice, and that Hilsgen had perjured himself at the final hearing regarding property division issues. Apparently due to the pendency of a variety of other proceedings, including an appeal and custody-related mediation, the court did not address the motion to reopen for over a year.

On April 12, 2019, Ruprecht filed the motion that is the subject of the current appeal, again asking the circuit court to reopen the divorce judgment pursuant to WIS. STAT. § 806.07, and further seeking to compel discovery pursuant to WIS. STAT. § 804.12. At the June 11, 2019 hearing on Ruprecht's motion, she alleged that Hilsgen's financial disclosure statement (FDS) failed to include information about a second pension that Hilsgen mentioned at the final contested divorce

[1] Ruprecht's notice of appeal also purports to appeal from the original divorce judgment, dated November 30, 2017. However, the notice of appeal was not timely with respect to that judgment (which was also the subject of a prior appeal dismissed on procedural grounds). *See* WIS. STAT. § 808.04(1) (2019-20) (a notice of appeal must be filed within ninety days). We therefore have no authority to review issues related to the original divorce judgment, and we will not address any of the multiple arguments Ruprecht has made relating to that judgment. *See* WIS. STAT. RULE 809.10(1)(e) (2019-20) (timely notice of appeal is necessary for jurisdiction).

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

hearing. Ruprecht asked the court to compel Hilsgen to provide her with information about the second pension, as well as information related to a 2014 Pierce County injunction that Hilsgen had been convicted of violating. Ruprecht also asked the court to reopen the property division based upon Hilsgen's failure to include the second pension on his FDS, and his failure to disclose treatment that he had received while on probation in the Pierce County case.

Hilsgen responded that he had orally updated his FDS with information about the existence of the second pension at the final hearing, and that the circuit court had expressly taken the second pension, which was unvested and unvalued, into account in the property division. Hilsgen argued that the property division was final following Ruprecht's earlier dismissed appeal, and that there was no pending matter in the divorce action to which the requested discovery would apply.

The circuit court directed the parties to brief: (1) whether Ruprecht had forfeited the right to challenge the sufficiency of Hilsgen's disclosures prior to the entry of the divorce judgment based upon her failure to appear at the final hearing; (2) whether the facts alleged by Ruprecht warranted reopening the judgment; and (3) whether the appeal had any preclusive effect on a motion to reopen. Ruprecht failed to file a brief as directed by the court. On October 24, 2019, the court denied Ruprecht's motion to reopen the divorce judgment and compel discovery.

Ruprecht now appeals the order denying her motion to reopen the divorce judgment and compel discovery. She does not, however, meaningfully address any of the criteria for reopening a judgment under WIS. STAT. § 806.07 or for compelling discovery under WIS. STAT. § 804.12, beyond simply citing the statutes. Ruprecht also fails to provide any argument or citation to legal authority that would excuse her procedural defaults in failing to appear at the final divorce hearing and failing to file a brief in support of her motion, as directed by the circuit court. Instead, she argues that the court violated her due process and equal protection rights and deprived her of the

presumption of an equal property division by failing "to adhere to statutory requirements" in its fact finding and its discussion of various mandatory factors in the final divorce judgment, and by subsequently failing to remedy the omissions.

None of Ruprecht's arguments demonstrate an entitlement to the relief she seeks. First, a circuit court's alleged error of law or its erroneous exercise of discretion are not among the specified grounds to reopen a judgment under WIS. STAT. § 806.07(1)(a)-(g). Such alleged errors could be addressed by a timely appeal. Moreover, the catchall provision in § 806.07(1)(h) cannot be used merely to extend the time to appeal such alleged errors. Rather, that provision applies only when "extraordinary circumstances" are present. *See* ***Miller v. Hanover Ins. Co.***, 2010 WI 75, ¶41, 326 Wis. 2d 640, 785 N.W.2d 493 (discussing five-factor interest of justice test). Ruprecht has not shown any extraordinary circumstances that prevented her from appearing at the final divorce hearing or from prosecuting her initial timely appeal from the final divorce judgment. Therefore, we will not vacate the divorce judgment based on any alleged inadequacy of the circuit court's factual findings or its explanation for its original property division and custody decisions.

Next, information about the second pension that Hilsgen himself disclosed at the final divorce hearing does not constitute newly discovered evidence. The record shows the circuit court was aware of the existence of the second pension when it entered the final judgment. If Ruprecht had appeared at the final divorce hearing, she would have had the opportunity to cross-examine Hilsgen about the value of the second pension. Similarly, Ruprecht was aware of the Pierce County case at the time of the final hearing, and she could have questioned Hilsgen about his mental health treatment related to that case at the final divorce hearing, had she appeared. We conclude that Ruprecht failed to demonstrate grounds to reopen the divorce judgment, and the court properly denied her motion.

Finally, Ruprecht had no postdivorce proceeding pending in which the discovery she sought regarding either the pension or the Pierce County case would be relevant. A final property division had been entered, and no valid grounds for reopening it had been demonstrated. Prior custody disputes had been resolved by stipulation. Therefore, the circuit court also had no basis to compel discovery.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* 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