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DISTRICT I

June 8, 2021

To:

Hon. Michael J. Dwyer
Circuit Court Judge
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2019AP755

Shiann Quvetta Garner v. DeMarco James Henry
(L.C. # 2017FA5297)

Before Brash, P.J., Dugan and White, 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).

Shiann Quvetta Garner, *pro se*, appeals a judgment of divorce that awarded legal custody and primary physical placement of the parties' two children to DeMarco James Henry, who is also proceeding *pro se*. Garner argues: (1) that the circuit court failed to properly apply the factors set forth in WIS. STAT. § 767.41(5) (2019-20);¹ (2) that the circuit court was biased

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

against her; and (3) that the circuit court did not adequately consider the recommendations of the guardian *ad litem*. After reviewing Garner's brief, the guardian *ad litem*'s letter to this court and the record, we conclude that summary disposition is appropriate.² See WIS. STAT. RULE 809.21. Upon review, we affirm.³

Garner first argues that the circuit court's findings of fact did not include an analysis of the factors listed in WIS. STAT. § 767.41(5). That statute provides that "in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child." *Id.* It further provides that the circuit court shall consider sixteen enumerated factors, which include, but are not limited to, the wishes of the child's parents; the wishes of the child; the interaction and relationship of the child with his or her parents and siblings; the amount and quality of time that each parent has spent with the child in the past; the child's adjustment to his or her home, school, religion and community; the age of the child and the child's developmental and educational needs; whether the mental or physical health of a party or the child will negatively affect the child's intellectual, physical or mental well-being; the cooperation and communication between the parties; whether either party unreasonably refuses

² One of the two trial court guardians *ad litem*, Amber Raffect August, submitted a letter to this court in which she stated that the circuit court provided significant detail and reasoning for its decision and clearly acted within its discretion. She further stated that she, therefore, did not intend to participate in this appeal unless directed to do so by this court.

³ Henry did not file a respondent's brief. By order dated August 7, 2020, we warned Henry that if he did not file his brief by the stated deadline, this appeal would be submitted to the court for summary disposition without his brief, which could result in summary reversal. See WIS. STAT. RULE 809.83(2). After reviewing the appellant's arguments and the appellate record, however, we conclude the circuit court's order should be affirmed on the merits. We opt not to reverse the circuit court's order as a sanction against Henry for failing to file the respondent's brief. See *State ex rel. Blackdeer v. Levis Twp.*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993) (stating that we *may* summarily reverse a circuit court's order, and thus rule in favor of the appellant, as a sanction to the respondent if the respondent does not file a brief).

to cooperate or communicate with the other party; and other factors that the court may in each individual case determine to be relevant. *Id.*

The circuit court's written decision shows that it addressed the factors set forth in WIS. STAT. § 767.41(5) in extensive detail. The circuit court was not required to list each statutory subsection with a corresponding factual finding, as Garner appears to believe. We reject Garner's argument that the circuit court did not consider the statutory criteria listed in § 767.41(5).

Garner next argues that the circuit court was biased against her. She contends that the trial court lacked impartiality and its factual findings are "a litany of attacks" on her. We disagree. The record before us establishes that the circuit court showed no bias in this case. The circuit court applied the factors listed in WIS. STAT. § 767.41(5) to the circumstances of this family in order to make its ruling, naming each parent as necessary in making its findings.

Finally, Garner argues that the circuit court did not adequately consider the recommendations of the guardian *ad litem* for the children. Garner's assertion is not borne out by the record. There were two guardians *ad litem* actively involved in this case during trial court proceedings. Both guardians *ad litem* informed the trial court that they were concerned about Garner's mental health, her tendency to act out with aggression, and her need for mental health treatment. We reject Garner's argument that the circuit court did not adequately consider the recommendations of the guardians *ad litem*.

Upon the foregoing,

IT IS ORDERED that the judgment of the circuit court 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