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DISTRICT II

June 30, 2021

To:

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

2019AP1589

Angela Jean Strunsee v. Jeffrey Alan La Bri (L.C. #2011FA351)

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).

In this postdivorce proceeding, Jeffrey Alan La Bri appeals from orders denying his motion to modify a support order and sanctioning him for overtrial. 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 (2019-20).¹ We affirm.

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

La Bri and Angela Jean Strunsee were granted a judgment of divorce in December 2016. The most recent support order was entered in June 2018 and required La Bri to pay Strunsee both maintenance and child support.

Roughly five months later, in November 2018, La Bri moved to modify the support order based upon what he believed would be a reduction of his income in the future. Specifically, La Bri pointed to Ohio National Life's announced plan to terminate trail compensation for annuity products previously sold by La Bri's investment management firm.²

After a hearing on the matter, the circuit court denied La Bri's motion to modify the support order as premature and speculative. It then granted, in part, Strunsee's separate motion to sanction La Bri for overtrial, awarding her \$4410.75. This appeal follows.

On appeal, La Bri first contends that the circuit court erred in denying his motion to modify the support order. A party seeking modification of support must demonstrate that there has been a substantial change in circumstances warranting the proposed modification. *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶30, 269 Wis. 2d 598, 676 N.W.2d 452. The circuit court's findings of fact regarding the parties' circumstances and whether a change has occurred will not be disturbed unless clearly erroneous. *Dahlke v. Dahlke*, 2002 WI App 282, ¶8, 258 Wis. 2d 764, 654 N.W.2d 73.

Here, the circuit court was not persuaded that La Bri had shown a change in circumstances. There were multiple reasons for this. First, at the time that La Bri filed his

² According to La Bri, the trail compensation amounted to approximately \$280,000 per year.

motion to modify the support order, Ohio National Life’s plan to terminate trail compensation had yet to take effect. Second, it was unclear how such a termination would impact La Bri’s income in the future. Indeed, La Bri acknowledged at the hearing on the matter that he was trying to generate new business “to bridge this gap,” and it was too early to tell whether he would be successful. Given the foregoing, the circuit court reasonably denied La Bri’s motion to modify as premature and speculative.

La Bri next contends that the circuit court erred in sanctioning him for overtrial. “[O]vertrial is a common law doctrine [that] arises from the court’s inherent authority to manage the family law cases over which it has jurisdiction.” *Zhang v. Yu*, 2001 WI App 267, ¶22, 248 Wis. 2d 913, 637 N.W.2d 754. It “may be invoked when one party’s unreasonable approach to litigation causes the other party to incur extra and unnecessary fees.” *Id.*, ¶13.

Whether excessive litigation occurred resulting in overtrial presents a mixed question of fact and law. *Id.*, ¶11. Whether excessive litigation occurred is a question of fact, and the circuit court’s findings on the matter will not be reversed unless they are clearly erroneous. *Id.* Whether those findings constitute unreasonably excessive litigation resulting in overtrial is a question of law. *Id.*

In this case, the circuit court’s determination of overtrial was grounded in La Bri’s filing of a motion to modify a support order before he had experienced any reduction of income. The court noted that support orders are not “based upon what may or what might occur in the future.” It further noted that the motion had resulted in additional costs for Strunsee and was consistent with La Bri’s overall “slash-and-burn” approach to litigation. Based on the circuit court’s

reasoning, which is supported by the record, we discern no error in its decision to sanction La Bri for overtrial.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are 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