



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 14, 2021

To:

Hon. Jon E. Fredrickson
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Scott P. Craig
The Law Office of Scott P. Craig, LLC
209 8th St.
Racine, WI 53403

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Lori Ann Newman
1820 West Clarke St.
Milwaukee, WI 53206

Martina Brown
3902 Milwaukee St., #S672
P.O. Box 7188
Madison, WI 53707

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

2019AP1865

Lori Ann Newman v. Martina Brown (L.C. #2017FA524)

Before Neubauer, C.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).

Lori Ann Newman appeals pro se from a circuit court order dismissing her petition seeking WIS. STAT. § 767.43 (2015-16)¹ visitation rights with Martina Brown's biological child. Based upon our review of the briefs and record, we conclude at conference that this case is

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20). We affirm because the circuit court lacked statutory authority to act on Newman’s petition, and Newman waived her claim that the court had equitable power to grant visitation.

The child was born in 2013 while Newman and Brown were living together in a domestic relationship.² On or about December 23, 2015, Brown and the child moved out of the home they shared with Newman, and Brown ended contact between Newman and the child. In June 2017, claiming a parent-like relationship with the child, Newman sought visitation under WIS. STAT. § 767.43. Section 767.43(1) permits “a person who has maintained a relationship similar to a parent-child relationship with the child” to seek visitation with that child.

Although the court commissioner granted Newman visitation, at a de novo hearing on April 24, 2019, the circuit court expressed concern that the commissioner had erred³ because WIS. STAT. § 767.43(1) does not apply in the absence of the dissolution of marriage. *See Holtzman v. Knott*, 193 Wis. 2d 649, 680, 533 N.W.2d 419 (1995).⁴ Newman and Brown were not married. Based on this concern, the circuit court required Newman to file a brief in

² At various points during the case, Newman claimed that she and Brown were married. However, it is undisputed that during all of the relevant time periods, Brown was legally married to another.

³ In raising the issue of whether the court commissioner erred, the circuit court relied upon *Gittel v. Abram*, 2002 WI App 113, ¶27, 255 Wis. 2d 767, 649 N.W.2d 661, which permits a circuit court to act on its own motion under WIS. STAT. § 806.07 upon notice and opportunity for the parties to be heard, and upon *Dustardy H. v. Bethany H.*, 2011 WI App 2, ¶21, 331 Wis. 2d 158, 794 N.W.2d 230 (citation omitted), for the proposition that § 806.07 “permits the court ‘to correct erroneous conclusions of law and to address issues not properly dealt with’” earlier in the case. On appeal, Newman does not address the circuit court’s assessment of its authority to act under § 806.07.

⁴ In *Holtzman v. Knott*, 193 Wis. 2d 649, 680, 533 N.W.2d 419 (1995), the supreme court held that WIS. STAT. § 767.245(1) (1991-92), renumbered WIS. STAT. § 767.43(1) by 2005 Wis. Act 443, does not apply in cases where there is no marriage or dissolution of a marriage.

opposition to the circuit court's intention to dismiss her petition for failure to state a claim under § 767.43 and to address the court's authority to proceed under its equitable power to grant visitation under *Holtzman*, 193 Wis. 2d at 694. The court made clear that it would not consider matters involving the best interest of the child until after it determined the scope of its statutory authority and/or equitable power to act on Newman's visitation request.

At a June 20, 2019 hearing, the circuit court found that Newman did not file a brief addressing the court's concerns about the applicability of WIS. STAT. § 767.43 or assert a visitation right based in equity.⁵ The court concluded that it lacked statutory authority to act under § 767.43 and further concluded that Newman had waived her claim to visitation rights based on the court's equitable authority. Nevertheless, the court held an evidentiary hearing on the visitation claim and addressed the *Holtzman* factors for equitable relief.⁶

After the evidentiary hearing, the circuit court determined that even if Newman's petition stated an equitable claim, Newman did not seek visitation within a reasonable amount of time

⁵ In addition to not filing a brief, Newman did not offer any argument at the June 20, 2019 hearing addressing the court's concerns about its authority to proceed under WIS. STAT. § 767.43 or in equity.

⁶ *Holtzman*, 193 Wis. 2d at 694, provides:

[A] circuit court has equitable power to hear a petition for visitation when it determines that the petitioner has a parent-like relationship with the child and that a significant triggering event justifies state intervention in the child's relationship with a biological or adoptive parent. To meet these two requirements, a petitioner must prove the component elements of each one. Only after the petitioner satisfies this burden may a circuit court consider whether visitation is in the best interest of the child.

after Brown substantially interfered with her ability to see the child. *Holtzman*, 193 Wis. 2d at 695.⁷ Newman appeals.

On appeal,⁸ Newman argues that the circuit court erred when it denied her prehearing request to adjourn the June 20, 2019 hearing. Newman was represented by counsel from the beginning of the case through the June 20 hearing. Newman's motion to adjourn represented that a supporting brief would be filed, but the motion itself did not state grounds to adjourn. No supporting brief was ever filed. At the June 20 hearing, Newman elaborated that she wanted additional time to review a recent supreme court case, *Michels v. Lyons*, 2019 WI 57, ¶37, 387 Wis. 2d 1, 927 N.W.2d 486. The circuit court concluded that for the issues set to be determined at the June 20 hearing (the court's statutory authority and/or equitable power to grant visitation), *Michels* was not relevant.⁹ The circuit court did not erroneously exercise its discretion when it denied Newman's motion to adjourn because the motion was unsupported by grounds or a showing of good cause under the circumstances. See *Rupert v. Home Mut. Ins. Co.*, 138 Wis. 2d 1, 7, 405 N.W.2d 661 (Ct. App. 1987) (a circuit court has discretion to control its docket).

⁷ Because we do not reach the merits of Newman's visitation claim, we do not discuss the circuit court's detailed findings from the evidentiary hearing and its consideration of the *Holtzman* factors relating to whether visitation should be ordered in the exercise of the court's equitable power. Nevertheless, we appreciate the circuit court's efforts to create a thorough record on the visitation question.

⁸ The court assumed without deciding that Newman had a parent-like relationship with the child. For purposes of this appeal, we make the same assumption.

⁹ *Michels v. Lyons*, 2019 WI 57, 387 Wis. 2d 1, 927 N.W.2d 486, did not change the applicability of WIS. STAT. § 767.43, which was the first issue before the court at the June 20 hearing. *Michels* imposed the requirement that a grandparent seeking visitation must overcome the presumption that a fit parent may make visitation decisions. *Michels*, 387 Wis. 2d 1, ¶37.

The issue before us on review is whether the circuit court erred in dismissing Newman’s visitation petition for failure to state a claim. Whether a petition states a claim upon which relief can be granted presents a question of law we decide independently. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693. Not only does Newman not discuss this standard of review, her appellate arguments ignore the grounds cited by the circuit court for dismissing her petition: *Holtzman* and waiver of her equitable claim to visitation.¹⁰ Newman bears the burden of convincing us that the circuit court erred. *Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. While we recognize that Newman is pro se, it is nonetheless inappropriate for us to “abandon our neutrality to develop arguments” for her. *Industrial Risk Insurers v. American Eng’g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82; *see also State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (“[w]e cannot serve as both advocate and judge”). Newman has not shown that the circuit court erred when it dismissed her visitation petition for failure to state a claim.

Newman challenges the procedure employed during the June 20 hearing. The June 20 hearing first addressed the court’s statutory authority and equitable power, as the circuit court informed the parties on April 24 would be the case. After determining on June 20 that it did not have statutory authority to order visitation and that Newman had waived her equitable visitation claim, the circuit court nevertheless took evidence on **and** considered the *Holtzman* factors. Although Newman complains about the manner in which the circuit court conducted the

¹⁰ We note that the appellant’s brief lacks the required record citations in the statement of facts and that other record citations do not cite to the page number of the record item as required by the Rules of Appellate Procedure. WIS. STAT. RULE 809.19(1) (2019-20).

evidentiary portion of the hearing, we conclude that reviewing the balance of the June 20 hearing would be a superfluous exercise because we have upheld the circuit court’s decision to dismiss Newman’s petition for failure to state a claim. We decide cases “on the narrowest possible ground” and do not reach issues we need not reach. *Village of Slinger v. Polk Properties, LLC*, 2021 WI 29, ¶26 n.12, 396 Wis. 2d 342, 957 N.W.2d 229.

We affirm the circuit court’s order dismissing Newman’s petition for visitation.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21 (2019-20).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals