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DISTRICT IV

December 9, 2021

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

2020AP327 In re the marriage of: Dana Marie Vick v. Roger Scott Vick (L.C. # 2012FA68)

Before Kloppenburg, Fitzpatrick, and Nashold, 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).

Roger Scott Vick appeals a post-divorce order denying his motions to modify placement and to find his ex-wife, Dana Marie Vick, in contempt. 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.

Roger and Dana divorced in 2013. They had three children, only one of whom, K.V., is still a minor. Both parties have engaged in contentious litigation since their divorce. In January 2019, they entered into a stipulation under which K.V. would continue her primary placement with Dana.[2] The stipulation further provided that:

> Before the end of January 2019, the parties shall participate in mediation with Attorney Curtis Johnson on the peripheral issues related to placement, such as (but not limited to) specific schedule of visits for each child between parental homes, transportation/ exchange points, and communication.

The parties participated in mediation but were unable to reach agreement on the "peripheral issues." The circuit court appointed a guardian ad litem to address the unresolved peripheral issues, including a placement schedule for the parent without primary placement.

In April 2019, despite the January stipulation, Roger filed a motion to modify K.V.'s primary placement from Dana to Roger, and various motions asking that Dana be found in contempt. Dana responded with a motion for contempt against Roger. The GAL filed a detailed position statement outlining the case's procedural history, the unresolved peripheral issues, and the GAL's position on those issues.

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

[2] At the time, A.V. was also a minor and the stipulation provided that Roger would have primary placement of A.V.

After a bench trial, the circuit court denied Roger's motion to change placement, determining that he failed to show a substantial change in circumstances. The court adopted the GAL's recommendations concerning how each parent would maintain visitation and contact with the child not primarily placed with him or her. In pertinent part, the court explained:

> As to [K.V.], the Guardian ad Litem's statement to the Court is that she is focused on allowing her to be as normal a child as possible, being able to participate in school activities, sports, jobs and attending dances, etcetera. This is something that every child should be able to have as they mature into an adult. It makes them a healthy, normal member of society. The Court will endorse the Guardian ad Litem's position as being the appropriate one for the best interest of [K.V.].

The circuit court denied all contempt motions,[3] stating:

> As to the contempt motions filed by both of the parties, the Court will find that neither of the parties has met their burden of proof and will dismiss all motions of contempt against each other. The Court will further find that it is [counterproductive] in the future for the parties to be bringing such motions against each other.

The circuit court may substantially modify a physical placement schedule if the court finds both that the modification is in the best interest of the child and that there has been a substantial change of circumstances since the entry of the last placement order. WIS. STAT. § 767.451(1)(b). Roger does not dispute the court's determination that he failed to establish a substantial change of circumstances sufficient to modify the January 2019 order placing K.V. primarily with Dana. Instead, he argues that based on its determination, the court lacked the

[3] After trial, Dana filed a motion for sanctions based on overtrial. The circuit court did not address the motion. Because Dana does not appeal, we mention this insofar as it provides context.

authority to alter Roger's non-primary placement schedule with K.V., as it did by adopting the GAL's recommendations.

We are not persuaded. The circuit court's determination that Roger failed to prove a substantial change in circumstances did not preclude it from considering the "peripheral issues" left open in the January 2019 stipulation. The stipulation plainly demonstrates that both parties understood that the secondary placement provisions, including visitation between the children and the non-primary parent, were left unresolved and would need to be established. Once mediation failed, there was no secondary placement for either parent with the child not in his or her primary care. The court took the next logical step and appointed a GAL to represent the children's best interests. Still, the parties could not agree on the peripheral issues and the matter proceeded to trial. By their own actions, the parties agreed to have the court resolve these issues.

We easily reject Roger's argument that once mediation failed, placement with the non-primary parent should have reverted to the terms set forth in a prior 2016 order. He provides no authority for this argument and the unpublished case he cites does not support his position.

Next, Roger argues that the circuit court erred in denying his motions for contempt against Dana "relating to withholding of placement, prohibitions on communication between Mr. Vick and his daughters, obstruction of Mr. Vick's right of first refusal with [K.V.], and misrepresentation of medical billings paid by Mr. Vick for his daughters' care."

Contempt of court refers to the intentional "[d]isobedience, resistance or obstruction of the … order of a court[.]" WIS. STAT. § 785.01(1)(b). A person aggrieved by a contempt may file a motion seeking remedial sanctions, and "[t]he Court, after notice and hearing, may impose a remedial sanction …." WIS. STAT. § 785.03(1)(a). We review the circuit court's use of its

contempt powers for an erroneous exercise of discretion. ***City of Wis. Dells v. Dells Fireworks, Inc.***, 197 Wis. 2d 1, 23, 539 N.W.2d 916 (Ct. App. 1995).

The record contains ample support for the circuit court's discretionary decision. As to Dana's alleged misrepresentation of medical billings, the trial testimony showed that upon discovering that Roger paid too much, Dana tried to remedy the situation and sent him a check which he refused to cash. As to Roger's complaints concerning his right of first refusal, the record demonstrates that both parties failed to honor the other's first-refusal right, ultimately leading the court to order: "There shall be no legally enforceable right of first refusal." Likewise, the court dealt with both parties' communication and placement grievances by ordering detailed provisions concerning what is expected of each parent moving forward.

Additionally, we agree with the GAL's argument that the circuit court properly declined to hold either party in contempt in order to de-escalate their ongoing conflict. The parties' contentious relationship is demonstrated in the record and acknowledged in their appellate briefs. The court reasonably concluded in its written order a provision "put[ting] both parties on notice that bringing further motions in this matter would be counterproductive." The court denied both parties' contempt motions and did not even address Dana's overtrial motion. It was eminently reasonable for the court to refrain from further fueling the parties' fire.

Upon the foregoing reasons,

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