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DISTRICT I

March 1, 2022

To:

Hon. Clare L. Fiorenza
Circuit Court Judge
Electronic Notice

Laura A. Stack
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Alejandra Velazquez
2911 S. 51st.
Milwaukee, WI 53219

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

2021AP423

Alejandra Velazquez v. Bernabe Velazquez (L.C. # 2012FA6982)

Before Brash, C.J., Dugan and White, JJ.

Bernabe Velazquez appeals an order of the circuit court modifying child support. The respondent, Alejandra Velazquez, failed to file a brief in response to Bernabe's appeal,¹ despite multiple orders from this court. Therefore, we conclude that Alejandra has abandoned this appeal and we summarily reverse the circuit court's order pursuant to WIS. STAT. RULE 809.83(2) (2019-20).² This matter is remanded for a *de novo* hearing on Bernabe's claims.

Bernabe and Alejandra divorced in March 2013 and share one child. Pursuant to a Marital Settlement Agreement, the parties agreed to a custody, placement, and child support

¹ Because the parties share the same last name, we refer to them by their first names to avoid confusion.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

arrangement. Bernabe later moved to modify the arrangement, and Alejandra filed a counter motion seeking to revise placement and child support. The matter proceeded to a hearing before a family court commissioner. The commissioner denied Bernabe's motion, granted Alejandra's motion, and awarded Alejandra sole custody and primary physical placement of the child. Bernabe moved for a *de novo* hearing before the circuit court.

A series of hearings followed, ultimately resulting in an order in which the circuit court: found that Bernabe received a full *de novo* hearing; issued a custody and placement order; and ordered Bernabe to provide tax returns so that the child support issue could be addressed at a future hearing date. Bernabe filed a notice of appeal; however, this court dismissed the appeal for lack of jurisdiction because the circuit court's order was non-final. Following a series of hearings addressing the outstanding issue of child support, the circuit court ultimately modified the child support agreement and ordered that all previous orders not modified remain in effect.

Bernabe appealed, arguing that he did not receive a proper *de novo* circuit court hearing following the court commissioner's order. Alejandra, representing herself on appeal, did not file a respondent's brief by the statutory deadline. By an order dated August 3, 2021, we directed Alejandra to file her brief within five days or request an extension for good cause. She did not respond. By order dated August 19, 2021, we granted her an extension on our own motion through September 8, 2021. She again did not respond. By order dated September 29, 2021, we cautioned Alejandra that the failure to file a respondent's brief may result in the summary reversal of the circuit court's order. We also directed that the appeal be submitted without a respondent's brief. Alejandra did not respond. By order dated November 12, 2021, we directed Alejandra to file a respondent's brief and notified her that a failure to do so would result in the

summary reversal of the circuit court's order. Alejandra has failed to provide any communication to this court in the form of a response brief or otherwise.

The timely filing of a respondent's brief is required under the rules of appellate procedure. WIS. STAT. RULE 809.19(3). Failure to comply with the rules of appellate procedure or a court order "is grounds for dismissal of the appeal, summary reversal ... or other action as the court considers appropriate." WIS. STAT. RULE 809.83(2). As relevant here, this court may grant summary reversal of a circuit court's order as a sanction upon concluding that a litigant has abandoned the appeal, and failure to file a response brief may be considered abandonment of an appeal. See *Raz v. Brown*, 2003 WI 29, ¶¶18, 32, 260 Wis. 2d 614, 660 N.W.2d 647. Indeed, "[w]e usually do" because "[f]ailure to file a respondent's brief tacitly concedes that the [circuit] court erred." *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993) (citation omitted). In such a case, this court does not reach the merits of the appeal. See *id.* at 259.

Based on the facts presented, this court concludes that Alejandra has abandoned this appeal and that summary reversal is appropriate. Accordingly, we remand this matter to the circuit court for a *de novo* hearing pursuant to WIS. STAT. § 757.69(8).

For the foregoing reasons, we summarily reverse the order of the circuit court and remand the matter for further proceedings.

IT IS ORDERED that the order is summarily reversed and the cause is remanded for further proceedings. *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