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DISTRICT II

January 4, 2023

To:

Hon. Ralph M. Ramirez
Circuit Court Judge
Electronic Notice

Daniel J. Sielaff
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
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Matthew Ryan Hughes
2232 W. Morgan Ave.
Milwaukee, WI 53221

Nicole Alice Brandemuehl
Electronic Notice

Rebecca Jo Mertens
W246 N6715 Chempeny Court
Sussex, WI 53089

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

2022AP412

In re the marriage of: Rebecca Jo Mertens v. Matthew Ryan
Hughes (L.C. #2004FA1534)

Before Gundrum, P.J., Grogan and Lazar, 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).

Matthew Ryan Hughes appeals from an order denying his motion to have past due child support arrears (which he was ultimately ordered to pay at a rate of twenty-five dollars per month) terminated and expunged. 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 None of Hughes's arguments have merit, therefore, we affirm.

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

Hughes was married to Rebecca Jo Mertens from 2002-05. They had one child together, born in 2003. Hughes was incarcerated when the couple divorced, and upon his release in early 2006, he was ordered to pay \$150 per month in child support. Hughes did not challenge the order, but failed to make child support payments. In early 2016, both his parental rights to his child and child support obligations were terminated. Hughes was ordered, however, to pay the previously-accrued arrears (totaling approximately \$30,000), at a rate of twenty-five dollars per month.

Hughes has filed multiple motions attempting to avoid these payments in the years after the termination of his parental rights. Many of these motions have included an argument based on his disabled status, which he apparently attained from the federal government sometime after November, 2017. And, in November, 2017, Hughes was held in contempt for his failure to pay his child support arrears.

In Hughes's most recent motion to terminate the payments, filed on November 30, 2021, he asserted that he had "over 20 years of records" proving his "disability was present during the entire child support Arrears order in question." The court commissioner denied the motion, making the following findings: first, that Hughes had not filed any motions seeking to modify support during the ten years from when the payments were ordered in 2006 until the payments were terminated along with Hughes's parental rights in 2016; second, that this motion was substantially similar to motions filed in 2020 and 2021, which were denied and dismissed;² and finally, that the court commissioner did not have the jurisdiction or ability to retroactively

² The prior orders denying his motions were not appealed.

modify support under these circumstances. Hughes requested de novo review. After a hearing on February 7, 2022, the circuit court denied his motion, finding (as the court commissioner did) that Hughes was seeking the same relief that had been denied in previous motions and that the retroactive modification of support sought by Hughes is prohibited by statute. The order for payment of the child support arrears remained in place. Hughes appeals.

Hughes’s brief to this court fails to develop any legal arguments and does not reflect any legal reasoning; instead, it offers conclusory allegations and, in some instances, “arguments” comprised of a single sentence or sentence fragment unsupported by the record or legal authority. This alone justifies rejection of his positions. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (“We may decline to review issues inadequately briefed.”). Nevertheless, to the extent they can be understood, we address the merits.

First, any claim that Hughes’s disability warrants termination of payments for his arrears is barred by claim preclusion. Under this doctrine, “a final judgment on the merits in one action bars parties from relitigating any claim that arises out of the same relevant facts, transactions, or occurrences.” *Kruckenberg v. Harvey*, 2005 WI 43, ¶19, 279 Wis. 2d 520, 694 N.W.2d 879. Hughes moved the circuit court to terminate the order on previously accrued child support arrears on at least November 26, 2019 (based in part on “fixed income of S.S.I. disability”) and May 26, 2021 (based in part on having “disability income [that] is protected from child support”). These motions were denied, respectively, on January 9, 2020, and July 9, 2021, in orders requiring Hughes to pay arrears at the rate of twenty-five dollars per month despite his disability. The latter decision noted that Hughes was not declared disabled “until sometime after November, 2017” (after his child support obligations—which are distinct from arrears—were terminated and therefore after he had accrued the arrears at issue). Neither order was timely

appealed. Therefore, there were final judgments on the merits on the same claim, between the same parties, that Hughes is attempting to relitigate with the motion at issue here; the doctrine of claim preclusion applies to bar his claim.

Second, the circuit court was correct in determining that it is prohibited by statute from modifying child support orders, including “an amount of arrearages in child support ... prior to the date that notice of the action is given to the respondent, except to correct previous errors in calculations.” WIS. STAT. § 767.59(1m). Hughes never filed a motion to modify child support until November, 2019, three years after his child support order had been terminated and at which point the arrears he now seeks to avoid had already accrued. Therefore, November, 2019, is the date on which the respondent (Hughes’s ex-wife, Mertens) received notice of his request for modification. Hughes does not allege that there was a miscalculation that should be corrected; what he requests is a retroactive modification (actually a termination) of arrears in child support of the sort explicitly prohibited by law.

We note that there are some circumstances set forth in WIS. STAT. § 767.59(1r) in which a court “may grant credit to the payer against support due prior to the date on which the petition, motion, or order to show cause is served.” But Hughes has not alleged, let alone shown, that any of these circumstances—including the only one potentially related to his disabled status, that being the child’s receipt of benefits based on Hughes’s entitlement to federal disability benefits—were present in his case. *See* § 767.59(1r)(d). Hughes also mentions WIS. STAT. § 767.59(1c)[2]³ in his brief, under which a court can “[m]ake any judgment or order on any

³ Hughes does not cite to the correct, full statutory provision in his brief.

matter that the court might have made in the original action,” but this section, too, is applied prospectively, not retroactively. See *Zimmer v. Zimmer*, 2021 WI App 40, ¶¶9-10, 398 Wis. 2d 586, 961 N.W.2d 898 (holding that a court’s authority to modify a child support order under § 767.59(1c)(a) is only triggered by motion of a party and that payments made for a child who had reached the age of majority could not be applied retroactively to offset arrears already accrued).

Third, Hughes alleges that he has been denied his constitutional right to counsel. The Sixth Amendment of the United States Constitution guarantees the right to counsel in criminal cases, but not in a civil case like Hughes’s. See *State v. Krause*, 2006 WI App 43, ¶11, 289 Wis. 2d 573, 712 N.W.2d 67.

Fourth, Hughes argues that the order he is under to pay arrears violates WIS. STAT. § 767.75(1f) because it would leave him “at an income below the poverty line established under [42 U.S.C. § 9902(2)].” Section 767.75(1f) provides that a court ordering support payments, including arrears, must determine a periodic rate that does not exceed fifty percent of the amount due and does not leave the payer at an income below the poverty line. It does not, on its face, provide justification for modification of child support orders, including those for arrears. Moreover, Hughes has not pointed to a financial disclosure that he filed with the circuit court that would give the circuit court the information necessary to determine whether the twenty-five-dollar-per-month ordered payment would cause Hughes to fall below the poverty line. His unsupported allegation is insufficient, and, therefore must be rejected.

Finally, Hughes’s allegation that the circuit court and several of its commissioners or employees violated ethical rules or criminal laws is particularly egregious in its error. Hughes

seems to believe that child support interest paid by him would go to these officials personally, making them conflicted and unable to act impartially. This assertion is as outrageous as it is false. The arrears owed for support of Hughes's child are owed to the child's mother, and are all paid to the child's mother.

Because none of Hughes's arguments have any merit, in addition to not being fully developed, we affirm the circuit court's denial of Hughes's motion to terminate child support arrears.

IT IS ORDERED that the order of the circuit court is 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