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DISTRICT IV

February 16, 2023

To:

Hon. Jacob B. Frost
Circuit Court Judge
Electronic Notice

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Sadah Jeannine Fox
Electronic Notice

Timothy Michael Fox
Electronic Notice

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

2021AP1282

Sadah Jeannine Fox v. Timothy Michael Fox
(L.C. # 2015FA1919)

Before Kloppenburg, Fitzpatrick, and Graham, 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).

Timothy Fox, pro se, appeals a post-divorce order relating to the custody and placement of his minor children. The order left in place Fox's existing obligation to pay more than \$20,000 in guardian ad litem fees. It also modified custody and placement of the parties' children. More specifically, the order awarded Fox's ex-wife, Sadah Crouch, primary placement and imposed multiple conditions on Fox's exercise of supervised placement periods. Crouch has not filed a respondent's brief and has instead filed a one-page letter stating that she opposes Fox's appeal.

We previously ordered this appeal submitted for a determination of whether the case may be decided based solely upon Fox's brief and the record. We now determine that it may. Further, based on our review of the brief and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).¹ We affirm.

Fox first argues that the circuit court erred by requiring him to pay guardian ad litem fees after the court had previously found him indigent for purposes of waiving a filing fee. As Fox points out, an indigent party cannot be ordered to pay guardian ad litem fees. *See Olmsted v. Circuit Ct. for Dane Cnty.*, 2000 WI App 261, ¶5, 240 Wis. 2d 197, 622 N.W.2d 29. However, after waiving the filing fee, the circuit court determined that additional fees should not be waived because Fox failed to provide any supporting documentation to prove his claimed indigency. The court found, in effect, that Fox was not indigent and that Fox was not credible in claiming the contrary. Fox does not establish that the court's non-indigency finding is clearly erroneous. Further, Fox's credibility was a matter for the circuit court, not this court, to decide. *See Hughes v. Hughes*, 223 Wis. 2d 111, 128, 588 N.W.2d 346 (Ct. App. 1998) (explaining that we accept the circuit court's factual findings unless they are clearly erroneous and that the circuit court "decides the credibility of the witnesses"). Accordingly, we reject Fox's argument that the circuit court erred in requiring him to pay guardian ad litem fees.

We also note that the circuit court's order provided Fox with a further opportunity to prove his indigency and that Fox has not shown that he availed himself of that opportunity. The order indicated that the court would revisit Fox's obligation to pay guardian ad litem fees if Fox

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

submitted proof that he had been paying as much as he could toward the fees. However, Fox has not established that he submitted such proof by the deadline set forth in the court's order.

Fox next argues that the circuit court erred by denying him a final hearing on Crouch's request to modify custody and placement. He argues that the court instead ordered a default judgment on custody and placement, which the court could do only if his conduct in this litigation was egregious. For the reasons we now explain, we conclude that the court did not err in denying a further hearing.

“Whether to modify a placement or custody order is directed to the trial court's discretion.” *Id.* at 119. The court likewise has discretion to order sanctions against a party pursuant to WIS. STAT. § 805.03 if the party has interfered with the orderly administration of justice, up to and including dismissal or default judgment when the party has engaged in “egregious conduct.” *East Winds Properties, LLC v. Jahnke*, 2009 WI App 125, ¶13, 320 Wis. 2d 797, 772 N.W.2d 738.² “We affirm a court's discretionary determination when the court applies the correct legal standard to the facts of record and reaches a reasonable result.” *Hughes*, 223 Wis. 2d at 120.

Here, the circuit court made a number of factual findings relating to Fox's egregious conduct in litigating this case, including findings relating to Fox's repeated failure to comply with court orders and repeated failure to attend hearings. The findings included all of the following: Fox had “inundate[d]” the court, counsel, and the guardian ad litem with a “barrage of inquiries,

² WISCONSIN STAT. § 805.03 provides: “For failure of any claimant to prosecute or for failure of any party to comply with the statutes governing procedure in civil actions or to obey any order of court, the court in which the action is pending may make such orders in regard to the failure as are just, including but not limited to orders authorized under s. 804.12(2)(a).” The orders authorized under WIS. STAT. § 804.12(2)(a) include an order for dismissal or default judgment against the disobedient party. *See* § 804.12(2)(a)3.

filings, complaints, etc.”; Fox’s actions had caused a waste of time and expense for Crouch, the guardian ad litem, and Family Court Services (FCS); Fox had failed to provide records needed for FCS review and failed to comply with court orders requiring him to release records for FCS; Fox had failed to comply with court orders to pay the guardian ad litem fees; Fox was found in contempt of court; Fox had “yelled at and argued with” the court when the court attempted to schedule further proceedings to evaluate the possibility of supervised placement with Fox’s supervisor of choice; and Fox had repeatedly missed hearings or left during hearings, including two previous hearings that were held at Fox’s request.

Fox does not establish that any of these factual findings is clearly erroneous. Based on these findings, the circuit court’s discretion to decide matters of custody and placement, and the court’s discretionary authority to order sanctions under WIS. STAT. § 805.03, we conclude that the court reasonably exercised its discretion when it denied a further hearing on custody and placement.

Fox next argues that the circuit court erred by refusing to consider his allegations of domestic abuse against Crouch. We are not persuaded by this argument. The court reasoned that Fox’s domestic abuse allegations against Crouch pre-dated the parties’ divorce, were not raised at the time of the divorce several years prior, and had minimal relevance in the post-divorce context given that Fox had agreed to joint custody at the time of the divorce. The court noted that it was not aware of any abuse allegations against Crouch occurring after the parties’ separation and divorce. The court cited *Glidewell v. Glidewell*, 2015 WI App 64, 364 Wis. 2d 588, 869 N.W.2d 796. In *Glidewell*, this court concluded that a litigant in the post-divorce context waived the statutory presumption against awarding custody to a parent who had engaged in domestic abuse because the abuse had occurred prior to the time of divorce and the parties had stipulated to joint

custody at that time. *Id.*, ¶4. The circuit court’s reasoning here is consistent with *Glidewell*, and Fox has not provided any contrary authority showing that the court’s reasoning was an erroneous exercise of discretion. For these reasons, we reject Fox’s argument that the circuit court erred by refusing to consider his allegations of domestic abuse against Crouch.³

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals

³ To the extent that Fox raises other arguments that we have not addressed, we conclude that those arguments are not sufficiently coherent or developed to merit discussion.