COURT OF APPEALS
DECISION
DATED AND FILED

April 22, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP496 **Cir. Ct. No. 2008FA224**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE MARRIAGE OF:

GUY W. STILLWELL,

PETITIONER-RESPONDENT-CROSS-APPELLANT,

V.

JULIE K. STILLWELL N/K/A JULIE K. RHOADES,

RESPONDENT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from an order of the circuit court for St. Croix County: HOWARD W. CAMERON, JR., Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Julie Rhoades, pro se, appeals a February 2013 postdivorce order modifying child support. Rhoades argues the court improperly deviated from the support percentage guidelines because (1) the court failed to set forth a proper rationale, (2) her ex-husband Guy Stillwell withdrew his competing motion to modify support, and (3) Stillwell failed to provide complete and accurate financial information. Stillwell, pro se, cross-appeals, arguing the court lacked jurisdiction to enter the order because the parties lived in Minnesota and he had filed a support motion in a Minnesota court. We conclude the court erred by failing to set forth a proper rationale for deviating from the support guidelines. Further, we reject Stillwell's cross-appeal. Accordingly, we reverse and remand for the circuit court to appropriately exercise its discretion concerning modification of child support, retroactive to the filing of Stillwell's initial October 2011 motion to reduce support. We affirm regarding the court's determination it had jurisdiction.

BACKGROUND

¶2 We set forth the facts as best we can discern them. Rhoades's statements of the case and the facts, sometimes supported by record citation, consist of a conglomeration of factual assertions that lack context and appear in no particular order. Stillwell's asserted facts largely lack record citation.[1]

¶3 Rhoades and Stillwell entered into a marital settlement agreement (MSA) in June 2009. At that time, the parties' combined annual income was $451,759, all of which was attributed to a business. The MSA required Stillwell

[1] Rhoades filed neither a reply brief in her appeal nor a response brief in Stillwell's cross-appeal. Stillwell filed only a combined response and cross-appeal brief.

to pay Rhoades $7000 monthly child support, $6000 monthly spousal maintenance, and $44,500 annually for ten years as a property division of the business.[2] In March 2012, the circuit court found Stillwell in contempt for failing to make the property division payments. Also at that time, the court granted Stillwell's October 2011 motion to revise child support and maintenance.

¶4 In its March 2012 modification order, the court observed Stillwell's 2011 tax returns were not yet available, Stillwell's accountant had testified Stillwell's monthly income was $5000, and Rhoades's accountant had testified Stillwell's annual income exceeded $400,000. The court then indicated:

> The Court determines that [Stillwell] has an approximate gross income of $60,000 a year according to [his accountant] (and the Court is not sure this is accurate) and [Rhoades] does have financial support from her new husband. In determining maintenance and child support in this case, for the Court to use the $400,000 plus (and again the Court is not sure this is accurate) would result in a windfall for [Rhoades] and thus the Court will deviate from guidelines. The Court will use an approximate annual income for [Stillwell] of $200,000.

The court further determined "there was a substantial change in financial circumstances concerning … maintenance and child support. As to maintenance[,] the primary factor that weighs heavily in this decision is the declining [business] income … and the secondary factor is that the respondent remarried." Regarding child support, the order stated:[3]

> [Stillwell] moved that child support be reduced to $2500 a month from the current $7000 a month effective October

[2] Stillwell received sole ownership of the business under the MSA.

[3] The order did not separately address the issue of substantial change in circumstances within the section captioned "CHILD SUPPORT."

> … 2011. [Rhoades] asked the child support remain as is. The Court agrees that child support shall be reduce[d] to $2500 effective the date of the filing. Depending on the annual income amount used, the child support could vary from $5800 … to $562 a month …. The Court is deviating from the guidelines because … the income is in flux and the Court determines that the income figures presented by both parties are too high or too low. Additionally if the Court used the high-income figure, it provides an amount that is far more than necessary.

¶5 The March 2012 order also required Stillwell to provide Rhoades timely copies of financial and bank statements and tax returns. Finally, the order stated:

> The court reserves the right to adjust the child support and maintenance amounts back to the filing date of … October 2011 for the change of child support and maintenance by [Stillwell] once the 2011 … tax returns are filed. The numbers used were in flux, as it appeared the business was producing less income the second half of the year.

¶6 In April 2012, relying on his 2011 tax return, Stillwell moved to further reduce child support and maintenance and to suspend payments on the property division and the support and maintenance arrears. In September, Rhoades moved to increase child support, alleging the court's March modification was caused by Stillwell under-reporting income. Rhoades also moved to prohibit any request for support reduction based on 2012 earnings because Stillwell failed to comply with financial disclosure requests. In October, she moved to compel discovery. In November, following several hearings, the court ordered Stillwell to provide numerous financial documents and ordered Stillwell to serve jail time for failing to comply with purge conditions.[4] The following day, Stillwell withdrew

[4] The order noted Stillwell previously appeared with counsel, but was unrepresented at the most recent hearing. Rhoades was represented by counsel throughout the hearings.

his April 2012 motion. Several days later, via a new attorney, Stillwell filed a notice indicating he had filed for bankruptcy and was entitled to an automatic stay with regard to payment of the property division. In December, Rhoades moved for sanctions for Stillwell's failure to comply with the court's discovery order. The court held a hearing later that month to address Rhoades's motion to increase child support.[5]

¶7 At the hearing, Rhoades introduced evidence from a forensic accountant, whom the court found credible. The court found Stillwell's 2011 income to be $456,984. Consequently, the court issued a February 2013 order increasing child support to $3343 monthly, retroactive to the date of Stillwell's initial October 2011 motion to reduce support.

¶8 The February 2013 order noted the court's preceding order revising support had "granted permission to [Rhoades] to revisit child support when more accurate financial figures … were available." After determining Stillwell's income, the order indicated it was appropriate to apply the high-income payer support guidelines set forth in WIS. ADMIN. CODE § DCF 150.04(5).[6] It then explained:

> [I]f the Court would order child support under the standard shared placement formula, [Rhoades] would incur a windfall and further [Rhoades] has not shown that the [sic] need for that great of child support. The monthly income available for monthly child support is $38,083 ($456,984 annual income divided by 12).

[5] Stillwell appeared pro se at the hearing; Rhoades continued to be represented by counsel.

[6] All references to WIS. ADMIN. CODE ch. DCF 150 are to the November 2009 version.

> The Court determines child support as follows using the high income formula. [table omitted]
>
> This is [a] shared placement family and the Court divided the standard high payer's percentages in half. The resulting monthly child support is $3,343 determined by the high income formula. The Court declines to subtract from that figure imputed income of [Rhoades] as [Stillwell] already has the benefit of the high income formula.

Rhoades now appeals, and Stillwell cross-appeals.

DISCUSSION

The parties' briefs

¶9 Before reaching the merits of the parties' arguments, we digress to address their briefs. We have already mentioned deficiencies with the presentations of the facts. Unfortunately, the deficiencies do not stop there. Rhoades sets forth three issues in her statement of the issues. However, her argument section is not organized accordingly. Rather, the argument is not addressed to the individual issues, and quickly devolves into unorganized assertions of law and fact, many of which are irrelevant. WISCONSIN STAT. RULES 809.19(1)(a), (e) require that a brief contain a "table of contents with page references of the various portions of the brief, including headings of each section of the argument …," and an "argument, arranged in the order of the statement of issues presented."

¶10 The rules of appellate procedure are not mere suggestions. While Rhoades apologizes for "any discrepancies in the production" of her brief because she is a nonlawyer, the rules apply to pro se parties as well as attorneys. *See* ***Waushara Cnty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Proper

organization, at the very least, is necessary to present one's arguments effectively, and for this court to resolve appeals efficiently.

¶11 Rhoades is not alone in her disregard of the rules. Both she and Stillwell inappropriately cite and discuss unpublished decisions issued prior to July 1, 2009. *See* WIS. STAT. RULE 809.23(3).[7] We disregard all argument based on those cases. Additionally, Stillwell all but ignores the rules requiring citation to the record for all asserted facts. *See* WIS. STAT. RULES 809.19(1)(d), (e). Further, most of the parties' case citations are in improper form. *See* WIS. STAT. RULE 809.19(1)(e). We reverse in spite of the parties' briefs.[8]

Rhoades's appeal

¶12 The setting of child support is committed to the sound discretion of the circuit court. ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. Likewise, if a modification of child support is warranted, the circuit court has discretion to determine the amount of the modification. ***Benn v. Benn***, 230 Wis. 2d 301, 307, 602 N.W.2d 65 (Ct. App. 1999). We affirm the circuit court's discretionary decision if it examined the relevant facts, applied the correct standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. ***Randall***, 235 Wis. 2d 1, ¶7.

[7] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[8] The parties are cautioned that we will reject any future filings that fail to comply with the rules of appellate procedure. *See* WIS. STAT. RULE 809.83(2) (Failure to comply with the rules is "grounds for dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.").

¶13 Courts generally must determine child support by using the percentage standard. WIS. STAT. § 767.511(1j). However, a court may deviate from the percentage standard if, after considering numerous factors, the court finds that use of the percentage standard is unfair to the child or to either party. *See* WIS. STAT. § 767.511(1m).

> If the court finds under sub. (1m) that use of the percentage standard is unfair to the child or the requesting party, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.

WIS. STAT. § 767.511(1n).

¶14 The basis of the circuit court's February 2013 order revising child support to $3343 monthly is not clear. Rhoades argues the court improperly deviated from the percentage guidelines.

¶15 As set forth above, after determining Stillwell's available income, the court indicated it was appropriate to apply the WIS. ADMIN. CODE § DCF 150.04(5) guidelines applicable to high-income payers because Stillwell's income exceeded $84,000 annually. Rhoades does not object to the court's decision to apply the high-income payer guidelines. However, the court next reasoned that applying the standard shared placement formula would result in a windfall to Rhoades and an amount of support greater than necessary. Rhoades argues the court erred when it divided the standard high-income payer percentages in half, and then applied them, with no further explanation other than "[t]his is [a] shared placement family."

¶16 Stillwell responds that the court halved the applicable percentages to reflect the fifty-fifty shared placement of the parties' children. Stillwell concedes the court "did not make an explicit finding on shared placement," but directs us to the December 2012 hearing, where Rhoades's counsel responded affirmatively when the court inquired, "Well, is it shared placement 50/50?" "Although the proper exercise of discretion contemplates that the circuit court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court's discretionary decision." ***Randall***, 235 Wis. 2d 1, ¶7.

¶17 While not perfectly following the shared-placement procedure set forth in WIS. ADMIN. CODE § DCF 150.04(2), halving the percentages may have had the same effect as applying a fifty percent placement multiple under § DCF 150.04(2)(b)4. Regardless, even an implicit determination that the parties shared placement equally does not save the court's support determination. As Stillwell acknowledges, the numbers still do not add up for a different reason.

¶18 If the court intended to comply with the shared placement formula, it was also required to multiply the available income (or, here, support) figure by 150%.[9] *See* WIS. ADMIN. CODE § DCF 150.04(2)(b)3. Had it done so, the court would have arrived at $5014.50 in monthly support, rather than the $3343 it ordered.[10] Further, we are troubled by the court's statement that Rhoades would incur a windfall. In the MSA, which the court accepted as fair and reasonable, the parties agreed Stillwell would pay $7000 monthly child support. From that time

[9] Because the court assigned zero income to Rhoades, the same result is obtained whether the 150% multiplier is applied to Stillwell's income figure or the final support figure.

[10] Stillwell asserts the court would have arrived at $4264.50 monthly if applying the 150% multiplier. He fails to explain how he could have arrived at that figure.

until the effective date of the child support revision, Stillwell's business income had *increased* slightly, from $451,759 to $456,984.[11] All else being equal, even an adjustment to $5014.50 monthly appears more like a windfall to Stillwell, particularly in light of his apparent obfuscation of his true income, and the expense Rhoades must have incurred to reveal it.

¶19 The court did not expressly indicate it was deviating from the percentage guidelines, but, ultimately, we can come to no other conclusion. Accordingly, the court erred by failing, among other things, to address the numerous factors listed in WIS. STAT. § 767.511(1m) and explain how the percentage standard resulted in unfairness to the children or a party.[12] *See* WIS. STAT. § 767.511(1n).

¶20 Rhoades next appears to argue the court erred by deviating from the percentage standard because Stillwell withdrew his competing motion to modify support. Because we reverse on other grounds, we need not address this argument. *See* ***State v. Castillo***, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) (appellate courts not required to address every issue raised when one issue is dispositive). Nonetheless, we observe that because Rhoades's motion was still pending, child support was still properly before the court. Further, Rhoades's argument is undeveloped, lacks citation to legal authority, and is so poorly organized as to be

[11] We are left to wonder whether, in the first place, there was a substantial change in circumstances warranting a downward departure in support from the level set in the MSA. However, because Rhoades has not raised the issue, we do not address it further.

[12] Although the court did not expressly indicate it was deviating from the guidelines, we observe the "windfall" reference may have been intended as a finding regarding fairness. If so, it was inadequate to demonstrate a full consideration of the statutory factors or why it was appropriate to set the level of support below that agreed to in the MSA.

essentially incomprehensible. We could reject it on that basis alone. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) ("We will not decide issues that are not, or inadequately, briefed.").

¶21 In her final argument, Rhoades argues Stillwell failed to provide complete and accurate financial information. Because we reverse on other grounds, we need not address this argument. *See* ***Castillo***, 213 Wis. 2d at 492. We observe, however, it is difficult to ascertain the relevance on appeal of the assertions underlying this argument, or for that matter, discern an actual argument. The argument is unorganized, undeveloped, and lacks citation to legal authority. We could reject it on that basis alone. *See* ***Flynn***, 190 Wis. 2d at 39 n.2. To the extent Rhoades is attempting to address the various motions to compel and contempt proceedings in the circuit court, those matters were not addressed in the order from which she appeals. Therefore, those matters are not properly before us. Additionally, as Stillwell emphasizes, the court ultimately accepted the financial evidence presented by Rhoades's expert forensic accountant.

Stillwell's cross-appeal

¶22 Stillwell argues the circuit court lacked jurisdiction to enter the February 2013 order because the parties lived in Minnesota and he had filed a child support motion in a Minnesota court. This argument improperly relies, in part, on an unpublished opinion. Regardless, we conclude Stillwell waived his argument because, by filing the first child support motion in Wisconsin, and appearing and litigating in Wisconsin, Stillwell consented to jurisdiction. *See* WIS. STAT. § 769.201(2). Further, jurisdiction would be appropriate either because Stillwell previously resided with the children in Wisconsin or because he previously resided here and provided child support. *See* WIS. STAT.

§ 769.201(3), (4). Furthermore, Stillwell relies on WIS. STAT. § 769.205(1), which only addresses continuing, *exclusive* jurisdiction, and the Minnesota court had not taken jurisdiction as of the December 2012 hearing. Accordingly, the court properly determined it had jurisdiction, and its order is affirmed in part.

Conclusion

¶23 The circuit court was presented with an unnecessarily complicated situation, primarily because of Stillwell's apparent obfuscation and disregard of court-ordered obligations. Nonetheless, we remand for an appropriate exercise of discretion concerning modification of child support, retroactive to Stillwell's initial motion.

¶24 Only Rhoades may recover WIS. STAT. RULE 809.25(1) costs, except that she shall not recover the RULE 809.25(1)(b)1. costs associated with printing and assembling her brief.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.