

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 5, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2748

Cir. Ct. No. 1999FA250

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

ANTWUAN D. LOFTON,

PETITIONER-APPELLANT,

V.

KARMEN L. LOFTON,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Dodge County:
STEVEN G. BAUER, Judge. *Affirmed.*

Before Higginbotham, Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Antwuan Lofton appeals orders¹ reducing the amount of child support Karmen Lofton must pay and denying motions to find her in contempt based on her earlier missed payments.² He argues: (1) the court improperly allowed the state public defender to represent Karmen at the October 30, 2013 de novo hearing; (2) the court's rulings were not supported by admissible evidence, but relied on hearsay regarding Karmen's medical condition; and (3) the court violated Antwuan's due process and equal protection rights. We reject these arguments and affirm the orders.

BACKGROUND

¶2 This matter commenced with Karmen's motion to reduce her child support payments and arrearage because she was no longer able to work full time due to her mental health disability. Antwuan filed a response accusing Karmen of shirking her obligation to pay child support. Antwuan requested a finding that Karmen was in contempt of court based on her failure to pay child support. On October 2, 2013, the court commissioner held a hearing on Karmen's motion and found that her medical condition prevented her from working full time. The commissioner reduced Karmen's child support payments to \$33.92 per week plus ten dollars per week payment toward the arrearage. Antwuan requested de novo review by the circuit court, which was scheduled for October 30, 2013.

¹ The notice of appeal purports to appeal orders entered October 2, 2013, October 15, 2013 and October 30, 2013. The October 2 order of a court commissioner is not directly reviewable by this court. See *Dane County v. C.M.B.*, 165 Wis. 2d 703, 709, 478 N.W.2d 385 (1992).

² We refer to the parties by their first names for ease of reading.

¶3 In the interim, on October 11, 2013, the court held a hearing on the child support agency's motion to find Karmen in contempt. At that hearing, Karmen was represented by the state public defender. Antwuan participated by telephone and requested that the de novo hearing be held at the same time as the contempt hearing because he believed the result of the de novo hearing would impact the contempt issue. The court postponed consideration of Antwuan's contempt motion to be heard at the same time as the de novo hearing, and proceeded with the child support agency's contempt motion. Antwuan was invited to ask questions of Karmen at the hearing, but he only stated he believed his due process and equal protection rights had been violated. Antwuan made a closing statement agreeing with the corporation counsel that contempt sanctions should be imposed. He accused Karmen of only making payments right before court appearances. The court found that Karmen had not intentionally failed to abide by the court order and denied the child support agency's motion for contempt.

¶4 At the October 30, 2013 de novo hearing on Karmen's motion to reduce her child support obligation and Antwuan's motion for contempt, the state public defender represented Karmen. While the court was asking Karmen introductory questions, Antwuan interrupted and asked if he could question Karmen. The court told Antwuan he could ask questions after the court completed laying the foundation for what it needed to know. The court later allowed Antwuan to question Karmen, and Antwuan asked her approximately forty questions. Karmen's attorney's objections to several questions were overruled or, in effect, overruled by the court restating the questions. When Antwuan asked Karmen to name the medications she takes, Karmen interjected her own objection which the court sustained. Nonetheless, Karmen did identify the medications. After Antwuan asked two more questions about medication, the court interrupted

and told Karmen she did not have to answer additional questions about medication. Antwuan asked an additional question about medical records and Karmen answered that the hospital had the records. Karmen's attorney then informed Karmen, "[T]he judge is trying to tell you that you don't have to answer any other questions about your medication." When Antwuan asked Karmen whether she had taken her medication that day, Karmen's attorney asked the court to stop that line of questioning because the court had already sustained Karmen's objection. The court responded that it had heard enough.

¶5 Antwuan asked whether he could make a closing statement. The court allowed Antwuan to make a closing statement, but Antwuan used that opportunity to restate an objection to a doctor's letter attached to Karmen's motion supporting her claim that she had to reduce her work hours for medical reasons. Antwuan further complained about the timing of the earlier contempt hearing and accused the court of acting as Karmen's attorney. When the court began making its findings, Antwuan indicated he was not finished with his closing statement. The court indicated it was making its decision at that time and, "based on the testimony alone" the court found that Karmen was working twenty hours per week based on severe mental health issues. The court set Karmen's child support payment at \$25.48 per week plus \$15 per week for arrearages.

¶6 Antwuan then asked the court to require Karmen to help pay the health insurance premiums for their daughter and indicated he had questions about Karmen's income tax returns for the previous year. The court told Antwuan he would have to bring another motion to raise those issues and the court would not consider them at this time.

DISCUSSION

Representation by the Public Defender

¶7 Antwuan requests a new trial based on the state public defender's unauthorized representation of Karmen at the October 30 de novo hearing. That argument fails for three reasons. First, the issue was not preserved by a contemporaneous objection. See *Christensen v. Equity Coop. Livestock Sale Ass'n*, 134 Wis. 2d 300, 306-07, 396 N.W.2d 762 (Ct. App. 1986). Second, Antwuan has cited no authority for the proposition that granting a new trial is the appropriate remedy, and this court will not consider arguments that are not developed or supported by citation to authority. See *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Third, Antwuan has not established that he was prejudiced by the state public defender's representation of Karmen at the de novo hearing. Counsel asked no questions, had no objections sustained and made no closing argument. Counsel merely reminded Karmen that the court sustained Karmen's objection and asked the court to enforce its earlier rulings sustaining Karmen's objection. Antwuan has not established any prejudice from counsel's limited participation in the hearing.

Sufficiency of the Evidence for Contempt/Hearsay

¶8 Antwuan argues that Karmen presented no credible evidence to support her allegation of mental disability, and that the letter from a doctor attached to her motion to reduce child support was hearsay. However, the court's ruling was not based on the letter. The court specifically based its findings "on the testimony alone." Because Karen was a competent witness to testify to her own medical condition, *Heiting v. Heiting*, 64 Wis. 2d 110, 118, 218 N.W.2d 334 (1974), no expert medical evidence was necessary. Antwuan raises many issues

regarding Karmen's testimony, suggesting that her testimony was not credible. The circuit court, not this court, decides the credibility of witnesses. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 249-50, 274 N.W.2d 647 (1979).

Due Process and Equal Protection

¶9 Antwuan alleges due process and equal protection violations at each of the three hearings. He does not develop the equal protection argument, identify any particular class, or cite any equal protection law, and therefore the equal protection argument is not sufficiently developed to merit a response. *See M.C.I., Inc.*, 146 Wis. 2d at 244-45. To the extent Antwuan alleges a due process violation arising out of the October 2, 2013 hearing before the court commissioner, that ruling is not properly before this court. Any challenge to the procedures employed at the October 11, 2013 hearing on the child support agency's contempt motion fail because the remedy for any violation would have been a new contempt hearing. Antwuan's de novo hearing held October 30, 2013, served that purpose.

¶10 Antwuan alleges a number of due process violations with respect to the October 30, 2013 de novo hearing. Antwuan contends that the circuit court exhibited bias against him, and repeats his argument that the state public defender should not have been allowed to represent Karmen at the de novo hearing. Because he failed to make a contemporaneous objection, the issue was not called to the circuit court's attention and the court's failure to recognize any impropriety does not exhibit bias. Antwuan contends that the court's insistence on laying a foundation by asking its own questions before allowing Antwuan to question Karmen exhibited bias. The court has authority to control the presentation of evidence. *State v. McClaren*, 2009 WI 69, ¶3, 318 Wis. 2d 739, 767 N.W.2d 550.

Antwuan also reiterates his argument that the de novo hearing should have been held before the hearing on the child support agency's motion for contempt. He fails to develop his argument that the order of presentation would have had any impact on the court's decisions.

¶11 Antwuan argues that the court improperly stopped the hearing and refused to allow additional questioning of Karmen after the court prohibited further questioning regarding Karmen's prescription medicines. Antwuan made no offer of proof regarding additional evidence he wished to present. Therefore, the issue is not properly preserved for appeal. *See* WIS. STAT. § 901.03(1)(d). Antwuan also complains that the court did not allow him to complete his closing argument. Antwuan used his closing argument to allege hearsay and violation of his rights rather than to comment on the merits of the motions. The court is not required to permit closing arguments that merely reiterate a party's legal arguments rather than addressing the merits of the underlying case.

¶12 Antwuan asserts that he was denied his right to present evidence and call witnesses. At the October 30 de novo hearing, he was specifically allowed to call witnesses and declined to do so.

¶13 Finally, Antwuan contends that his due process rights were violated at the October 11 contempt hearing because he had no advance knowledge of Karmen's medical condition, and the court failed to prepare a record of the evidence presented and failed to prepare written findings of fact and reasons for its decision. Those arguments are not adequately developed and the alleged errors were cured by the October 30 de novo hearing on Antwuan's motion for contempt.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5. (2011-12).

