**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**June 1, 2005**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2004AP1827** **Cir. Ct. No. 1995FA420**

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

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**SYNTHIA O'GRADY,**

**PETITIONER-RESPONDENT,**

**v.**

**MICHAEL S. O'GRADY,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment and orders of the circuit court for Marathon County: PATRICK BRADY and JAMES R. HABECK, Judges. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Michael O'Grady, pro se, appeals a judgment of $427.72 granted in favor of Marathon County. His brief also appears to challenge additional orders entered under the same case number: (1) a May 17, 2004 order

discharging the guardian ad litem and requiring reimbursement for his fee; (2) a June 8, 2004 order modifying child support and lifting his driver's license suspension; (3) an August 24, 2004 order denying him a show cause hearing; and (4) an order denying his motion for reconsideration, also dated August 24, 2004. O'Grady's brief purports to raise more than nineteen issues and five arguments, many relating to alleged deprivation of discovery procedures and opportunity to be heard.

¶2 We address only the issues he develops as arguments.[1] Those arguments are whether the trial court erred when it did not (1) reduce his arrearages and interest charges; (2) afford him relief from discovery deprivations; (3) order child support be paid to him during his summer placement times, (4) allow him the right to challenge the child support agency's standing; and (5) afford him a fair and impartial hearing.

¶3 His former wife, Synthia, responds pro se, to the effect that the trial court properly exercised its discretion. Marathon County has elected not to file a brief because, it claims, "the Child Support Agency has not been made a party nor was the agency afforded an opportunity to review the record prior to certification." Because O'Grady's arguments fail to demonstrate error, we affirm the judgment and orders.

[1] *See* ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Issues raised but not argued are deemed abandoned. ***Reiman Assocs., Inc. v. R/A Adver., Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981). We do not address issues relating to his civil rights complaint, as that matter is not before us in this appeal.

## BACKGROUND[2]

¶4 Synthia and Michael O'Grady, who have four children together, were divorced in 1997. In 1998, Marathon County, as the real party in interest under WIS. STAT. § 767.075,[3] brought a motion to increase O'Grady's child support obligation. The court granted the County's motion and ordered child support to be set at 31% of O'Grady's gross income, with a $700 per month minimum.

¶5 O'Grady asserts that this appeal has its genesis in his disability and resulting unemployment in 2000, rendering him unable to comply with his child support obligation. In 2002, the County mailed a notice notifying O'Grady of a hearing on its motion to convert the percentage child support order to a fixed amount. The court granted the County's motion and set child support at $700 per month. Because O'Grady had not brought a motion to modify the child support order, the court rejected O'Grady's motion to reconsider its ruling. At that time, the court also denied his request to release an administrative lien and driver's license suspension.

¶6 In March 2003, O'Grady filed a motion to reduce his child support obligation. The hearing was held June 11. A guardian ad litem was appointed to protect the children's interests. O'Grady asserts that he was denied the opportunity to call witnesses at this hearing. A second judge was assigned after

[2] O'Grady recites an extensive procedural history. We recite only those portions of the history we deem necessary to give context to the arguments he discusses.

[3] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

the original judge recused himself. After the second judge recused herself, a third judge was assigned.

¶7 O'Grady claims that the trial court refused to hear his discovery motions. O'Grady further complains that during the child support modification hearing, the court overruled his every objection, refused to allow him the right to review or examine documents or challenge the legality of the County's involvement as a real party in interest. He also claims the court refused to grant relief from the child support interest charges and arrearages, and ordered him to reimburse guardian ad litem fees.

¶8 In October 2003, O'Grady moved to enforce a physical placement order. Subsequently, he filed a number of additional motions to: (1) impose sanctions on Synthia for fraud; (2) impose a restraining order against the child support agency; (3) dismiss the guardian ad litem; and (4) utilize WIS. ADMIN. CODE § DWD 40 standards relating to child support. In December 2003, the court commissioner dismissed O'Grady's motion to enforce the physical placement order. O'Grady filed a number of additional motions, culminating in a motion to modify his divorce judgment.

¶9 In May 2004, the court heard what O'Grady characterizes as a continuation of the hearing on his motion to reduce child support. O'Grady asserts that the court refused to permit testimony from a number of his witnesses and rejected his request to review documentary evidence, as well as denying him the right to make legal argument, stating that it was out of order. The court ruled that the County was acting on Synthia's behalf.

¶10 The record reveals that at the May 2004 hearing, the court addressed the motion to quash a subpoena requiring Judge Vincent Howard to testify as a

fact witness. O'Grady stated that he subpoenaed Judge Howard "in his capacity as a private individual." O'Grady explained that his questions would go "to the issue of a fair and impartial hearing" in June 2003, during which Judge Howard, as the judge presiding over the hearing, rejected evidence of a medical diagnosis. O'Grady's questions were also directed to Judge Howard's response to a civil rights lawsuit O'Grady had filed against Judge Howard.

¶11 The court made the following ruling on O'Grady's offer of proof:

> What I am hearing is first of all an evidentiary ruling of medical records. That's not a private citizen [capacity]. That's inherently part of the judge's function as an arbiter of justice. And then discussion about whether a fair and impartial hearing could be held, that's really the type of thing that's more appropriate for an appeal to the court of appeals.

The court denied O'Grady the right to call Judge Howard.

¶12 The court next inquired why O'Grady subpoenaed Attorney Tammy Levit-Jones, formerly with the corporation counsel's office and former court commissioner. O'Grady indicated he subpoenaed her due to her knowledge of policies of the corporation counsel, "where issues related to whether evidence actually exists when corporation counsel involves itself under the statute that the state has to a real party impact, she has direct knowledge of how the Marathon County agencies have a financial interest in constructing an arrears, constructing a debt so as to obtain funds channeled from the federal government to the state government all the way through it[,]" among other reasons. O'Grady stated to the effect that the hearing at hand was a continuation of a June 11, 2003 hearing on his March 2003 motion for a reduction in child support.

¶13 The court ruled that if O'Grady wished to challenge the June 2003 proceedings, his remedy was an appeal, but "I can't go back and change what Judge Howard did last June." Nonetheless, the court ruled that "the first thing we need to decide today on the merits whether you've got grounds to lower your support level." O'Grady was sworn and testified that he was disabled from employment due to post-traumatic stress disorder and major depression. As a result of his eligibility for social security disability benefits, his four children also received benefits.[4]

¶14 The County did not contest O'Grady's request that $1,828 received by each child as a lump sum back payment be credited against O'Grady's outstanding arrearage. The County agreed that O'Grady's support obligations should be offset by the amount that the children were receiving as social security.

¶15 The court found that O'Grady requested a child support agency to review his obligations in 2001 but did not request a court review until March of 2003. Therefore, it did not discharge O'Grady's responsibility for arrearages accumulated before April 1, 2003. The trial court further found that a substantial change in circumstances was established, that O'Grady's obligation to support his four children should be lowered to $172 per month and he also should be credited with $7,312 payment against his arrearages. The court authorized the removal of the driver's license suspension and discharged the guardian ad litem. O'Grady's appeal follows.

[4] The record indicates that O'Grady receives $707 per month social security disability and the children each receive $43 per month.

¶16 Additional facts will be set out in our discussion of O'Grady's arguments.[5]

## DISCUSSION

1. Modification of child support obligations.

¶17 O'Grady contends that the trial court erroneously exercised its discretion when it failed to adjust his support obligations, arrearages, interest charges and fees accrued from the date his financial circumstances changed in September 2000. O'Grady acknowledges that the court found him disabled and reduced his obligation to $172 a month for his four children, retroactive to April 1, 2003, but complains the court failed to grant further relief as to arrearages and interest charges. He relies on ***Rust v. Rust***, 47 Wis. 2d 565, 570-73, 177 N.W.2d 888 (1970), for the proposition that the circuit court has discretion to revise a child support arrearage upon a showing of cause or justification.

¶18 ***Rust***, however, was superseded by statute. *See* ***John R. B. v. Dorian H.***, 2005 WI 6, ¶9, 277 Wis. 2d 378, 690 N.W.2d 849. After 1998, a circuit court is permitted to grant credit against child support due prior to the date the motion for modification is served only under the limited circumstances enumerated in WIS. STAT. § 767.32(1r)(b)-(f), regardless of when the underlying child support order was entered. ***Id.***, ¶15. O'Grady does not argue that the limited circumstances found in § 767.32(1r)(b)-(f) apply. Consequently, we reject his

[5] In his reply brief, O'Grady argues that Synthia mischaracterizes the record. He also moved to strike her brief. We deny his motion. To the extent that either party's brief may be said to mischaracterize the record, we caution the parties that their statements of fact are not to be a "tenacious recap" of their case, ***Albrechtson v. Board of Regents***, 309 F.3d 433, 435 (7th Cir. 2002), but a fair summary of the record. *See* WIS. STAT. RULE 809.19(1).

claim that the court erroneously denied relief for arrearages accumulating prior to the date his motion for modification was served.[6]

2. Right to call witnesses, inspect documents, conduct discovery, be heard, raise issues, obtain relief.

¶19 O'Grady argues that he was deprived of the following rights: (1) to call witnesses; (2) to inspect documents; (3) to conduct discovery; (4) to be heard; (5) to dispute fraudulent legal fees; and (6) to obtain relief from a lien. However, his argument addresses only the court's evidentiary rulings. He complains that at the June 2003 and May 2004, hearings:

> The court deprived [O'Grady] of all of the rights during the hearings … by refusing to use judicial authority to process subpoena served upon witnesses, then refusing to allow those witnesses who appeared (Tammy Levit-Jones) to testify, and quashing subpoena (Judge Vincent Howard), and refusing to allow [O'Grady] to question as a witness County Government attorney Paul Dirkse and obstructed [O'Grady's] questioning of County Government witness Cindy Heinritz before ending [O'Grady's] questioning of the witness and refused to allow [O'Grady to] conduct a review of the files that the government witness used to testify from.

[6] Imbedded in this argument O'Grady includes a number of other complaints. He relies on WIS. STAT. § 767.32(4), which provides: "In any case in which the state is a real party in interest under s. 767.075, the department shall review the support obligation periodically and whenever circumstances so warrant, petition the court for revision of the judgment or order with respect to the support obligation." He points out that under the order of October 6, 1998, the child support agency was required to review his obligations. He also contends that the agency indicated in an August 18, 2001, letter that it would conduct a review. Nonetheless, child support arrearages continued to accrue. He complains that the agency falsely stated that "no employment information" was available. We conclude that these arguments are not sufficiently developed to permit meaningful review. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

¶20 O'Grady fails to demonstrate error. Evidentiary issues are addressed to trial court discretion. ***State v. Pharr***, 115 Wis. 2d 334, 342, 340 N.W.2d 498 (1983). The question is not whether this court, ruling initially on the admissibility of evidence, would have let it in, but whether the trial court exercised its discretion in accordance with accepted legal standards and the facts of record. ***Id.*** Also, when a claim of error is based upon the erroneous exclusion of evidence, an offer of proof must be made in the trial court as a condition precedent to the review of any alleged error. ***State v. Hoffman***, 106 Wis. 2d 185, 217-18, 316 N.W.2d 143 (Ct. App. 1982). Absent an offer of proof, we cannot hold even an erroneous exclusion of evidence prejudicial. ***State v. Mendoza***, 80 Wis. 2d 122, 164-65, 258 N.W.2d 260 (1977).

¶21 WISCONSIN STAT. § 901.03 provides in pertinent part:

> (1) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and
>
> ….
>
> (b) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked. Error may not be predicated upon a ruling which ... excludes evidence unless ... the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

¶22 Based upon O'Grady's offer of proof, the court was entitled to reject the evidence. O'Grady had the burden of showing that he brought his theories of admissibility to the trial court's attention. "[T]he appellant [must] articulate each of its theories to the trial court to preserve its right to appeal." ***State v. Rogers***, 196 Wis. 2d 817, 829, 539 N.W.2d 897 (Ct. App. 1995). "Placing the responsibility on the proponent of evidence for identifying the purpose for which

the evidence is sought to be introduced, and the grounds for its admissibility, is consistent with our system of advocacy and with prior statements of this court on related evidence questions." ***State v. Friedrich***, 135 Wis. 2d 1, 13, 398 N.W.2d 763 (1987). O'Grady fails to indicate he directed the court's attention to the legal ground supporting admissibility. Therefore, his claim that the court erroneously exercised its discretion when it rejected the evidence is not preserved for review.

3. Child support adjustment for periods of summer physical placement.

¶23 O'Grady argues that he is entitled to be relieved of child support obligations during the summer periods of physical placement by virtue of the party's marital settlement agreement and WIS. ADMIN. CODE § DWD 40.04(2). He claims the trial court erred when it failed to hold a hearing on his motion, pursuant to WIS. STAT. § 801.15(4).

¶24 The record discloses, however, that the court held a hearing on his motion. In July 2004, the court held a hearing on O'Grady's motion requesting that Synthia pay him child support during the summer. At the hearing, both parties appeared pro se. Synthia was sworn and testified that the parties were divorced in 1997 and O'Grady "has never asked for the children at all, and then in '99 he, he file [sic] a motion that I do not let him see the children." She explained that following his motion, an order was entered stating that "he pick them up on Friday evening by 5:00 p.m. on the curb" of her driveway and then "I go and pick the children up from his house on Sunday evening." She stated: "And for, for the first two months, after that order was in place, my children waited on the curb every other Friday evening, and he never show [sic] up to pick them up. And so he have [sic] not even asked for them, until last summer …."

¶25 Synthia testified that there was never any extensive visitation, but that during the summer of 2002, O'Grady had the four boys for four days, and then had the youngest child for about one month. She stated to the effect that the children had planned activities such as Boy Scout camp, summer school, band, wrestling camp and vacations and, because of the children's busy schedules, O'Grady decided not to pick the children up. She testified that there was never a summer since the divorce that he asked for or took all the children for the entire summer.

¶26 O'Grady requested Synthia to explain how tax intercepts for child support function. The court denied this line of questioning and interjected:

> I think you have plenty of ways of knowing. You know what was intercepted. The taxing agencies send you all that information. If you ask for a report of your support layouts over the years, it would show that. It would show when those came in and how they were applied and how much money.

¶27 The court ruled that it would limit the testimony to the issue at hand, which was whether there was summer visitation and whether there was summer child support monies owed to him. When he returned to that line of questioning, Synthia stated:

> Mr. O'Grady, I have my sisters, my mom, for the first two months after the 1999 order there to witness that you have come or do not come to pick up the children. For the first two months you have not come to pick up my children, and I see the hurt in them. So don't tell me that you have come and we are not there, because as [G]od is my witness, you have not come to get them.

¶28 Synthia testified that she has "never denied him or his family any visitation." Synthia testified further that the children had camping and vacation plans for 2004, explaining: "Children gets old, children's [sic] get sad. Children

get disappointed. Children go on with their lives." She stated that O'Grady is welcome to pick up the children, as long as he brings them back for scheduled activities.

¶29 The court asked O'Grady whether he planned to pick up the children and spend time with them during the current summer. O'Grady argued that by scheduling summer activities, Synthia deprived him of his visitation rights. He argues that there was a pattern of deprivation, which was continuing. Based on his argument, the court concluded that O'Grady indicated he did not intend to spend time with the children during the summer months.

¶30 The court found that the scheduling of activities did not intentionally interfere with O'Grady's visitation, that activities benefit the children, and that families must make scheduling adjustments to work around the activities of four children. The court asked O'Grady several times whether he really intended to spend time with the children during the summer months. "And finally you sort of got around to [answering], and said they would resent you because it was only in the middle of the summer. So I understand that to mean you don't have that intent." The court denied O'Grady's request that Synthia pay him child support during the summer months.

¶31 Determination of child support is committed to trial court discretion. ***Luciani v. Montemurro-Luciani***, 199 Wis. 2d 280, 294, 544 N.W.2d 561 (1996). We will not reverse a discretionary determination by the trial court if the record shows that discretion was exercised and we can perceive a reasonable basis for the court's decision. ***Prahl v. Brosamle***, 142 Wis. 2d 658, 667, 420 N.W.2d 372 (Ct. App. 1987). Thus, "where the record shows that the court looked to and considered the facts of the case and reasoned its way to a conclusion that is (a) one

a reasonable judge could reach and (b) consistent with applicable law, we will affirm the decision." ***Burkes v. Hales***, 165 Wis. 2d 585, 590, 478 N.W.2d 37 (Ct. App. 1991) (footnote omitted).

¶32 Contrary to O'Grady's assertion, the court held a hearing on his motion to adjust child support. O'Grady identifies no error of law. The testimony at the hearing supports the court's finding to the effect that O'Grady chose not to exercise his summer placement rights and therefore was not entitled to an adjustment of his child support obligation. The record demonstrates that the court exercised its discretion and provided a reasonable basis for its decision to deny O'Grady child support from Synthia during the summer. Therefore, the decision is sustained on appeal.

4. Denied right to challenge standing and impeach the Child Support Agency.

¶33 O'Grady contends that the trial court erroneously exercised its discretion when it refused to permit him to challenge the child support agency's standing, period. The trial court ruled that the only way he could establish the state's lack of legal standing was if Synthia did not want them to represent her.

¶34 WISCONSIN STAT. § 767.075, entitled, "State is real party in interest," provides authority for State to appear as the real party in interest in certain actions regarding child support. It reads:

> (1) The state is a real party in interest within the meaning of s. 803.01 for purposes of establishing … future support … in an action affecting the family in any of the following circumstances:
>
> ….
>
> (b) An action to establish or enforce a child support or maintenance obligation whenever there is a completed application for legal services filed with the child support program under s. 49.22.

> (c) Whenever aid under s. 46.261, 48.57 (3m) or (3n), 49.19 or 49.45 is provided on behalf of a dependent child or benefits are provided to the child's custodial parent under ss. 49.141 to 49.161.
>
> (cm) Whenever aid under s. 46.261, 48.57 (3m) or (3n), 49.19 or 49.45 has, in the past, been provided on behalf of a dependent child, or benefits have, in the past, been provided to the child's custodial parent under ss. 49.141 to 49.161, and the child's family is eligible for continuing child support services under 45 C.F.R. § 302.33.

To prevail, O'Grady must demonstrate that WIS. STAT. § 767.075 does not apply. "[I]t is the burden of the appellant to demonstrate that the trial court erred." *See* ***Seltrecht v. Bremer***, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997). Because O'Grady does not provide an analysis that indicates that WIS. STAT. § 767.075 does not apply, O'Grady does not meet his burden.

5. Fair and Impartial Hearing.

¶35 Finally, O'Grady argues that he has the right to a fair and impartial court. He contends that he may not be able to obtain fairness in Marathon County or the entire Ninth Judicial District. He argues that Synthia receives payments from the Social Security Administration and the trial court refused to deal with this issue. We disagree. The record discloses that the court lowered his child support obligation and gave O'Grady credit for the social security payments. O'Grady identifies no error of law. The record provides a rational basis for the court's decision. Because there is no showing that the circuit court failed to afford him a fair and impartial hearing, we do not overturn the circuit court's decisions.[7]

[7] In his conclusion, O'Grady seeks a number of forms of relief. To the extent his claims for relief vary from the issues we address, we deem them insufficiently developed to permit meaningful review. *See* ***Jackson***, 229 Wis. 2d at 337.

*By the Court.*—Judgment and orders affirmed.

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