COURT OF APPEALS
DECISION
DATED AND FILED

September 17, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1732 **Cir. Ct. No. 1993PA119014**

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

IN RE THE PATERNITY OF J. M. F.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

ANGELA F.,

PETITIONER-APPELLANT,

V.

SAMUEL R.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Angela F. appeals a circuit court order that: (1) denied her request to reinstate a child support arrearage incurred by Samuel R. that the family court commissioner expunged nearly six years earlier; and (2) modified Samuel R.'s monthly child support obligation without first enforcing her discovery demand. We affirm.

BACKGROUND

¶2 Angela F. and Samuel R. are the parents of two nonmarital children, one born in October 1990 and the other born in January 1994.[1] Angela F. was the custodial parent, and Samuel R. was required to pay child support in an amount that has fluctuated over the years pursuant to various orders imposing and modifying his obligation.

¶3 In 2005, Angela F. and Samuel R. filed a stipulation in which Angela F. forgave $10,052.84 in child support arrears. The family court commissioner approved the stipulation by order entered on November 21, 2005. Angela F., however, had second thoughts about the agreement, and, in April 2006, she moved to reinstate the arrearage. An assistant family court commissioner denied her request on May 19, 2006. Angela F. did not file or serve a motion for circuit court review of the commissioner's decision.

¶4 In December 2007, Angela F. moved to increase Samuel R.'s monthly child support obligation. In the three years that followed, the parties filed various motions and orders to show cause seeking modifications of Samuel R.'s

[1] Although both children at the center of the parties' dispute are now over the age of eighteen, the younger child was a minor throughout the circuit court proceedings underlying this appeal.

support obligation, and Angela F. on several occasions demanded disclosure of financial documents from Samuel R. We will not describe here each contentious step of the couple's labyrinthine path through the court system during this three-year period. Our recitation of the history of this case is limited to matters directly underlying the issues before us on appeal. Suffice it to say that the dominant theme of the litigation was—and is—Angela F.'s contention that Samuel R. earns a substantial amount of undisclosed income as a disc jockey and her corresponding contention that a share of this hidden income should be paid to her as child support.

¶5 In March 2009, the parties appeared before the circuit court for a hearing. Angela F. had subpoenaed Antoine Nixon, who she hoped would testify about Samuel R.'s purported hidden income, but Nixon failed to respond to the subpoena. The circuit court issued a body attachment for Nixon and adjourned the hearing pending his appearance.[2]

¶6 Notwithstanding the pendency of proceedings before the circuit court, the parties filed additional motions to modify Samuel R.'s child support obligation and appeared before an assistant family court commissioner for a hearing on December 21, 2010. In addressing the competing claims, the commissioner observed that the parties had a history of filing motions and requests for review while related or identical motions and requests for review were already pending. The commissioner explained that these overlapping submissions resulted in "layers of confusion" that clouded the question of how much income Samuel R.

[2] The Honorable Karen Christenson presided over the March 2009 hearing and issued a body attachment for Antoine Nixon.

earned. The commissioner lamented that the litigation had "swollen into [a] near incoherent dispute," and the commissioner observed that "in large measure this was due to [Angela F.'s] ineffectual approach." Our review of the record confirms the accuracy of the commissioner's observations.

¶7 Substantively, the assistant family court commissioner declined to modify the monthly child support order of $210 that was then in place. The commissioner explained:

> the issue of Samuel R.'s deejay income is pending before the circuit court.... [Angela F.] has claimed that [Samuel R.] has deejay income for the past several years but has yet to prove it to the circuit court's satisfaction. That very question is pending before the circuit court awaiting the testimony of [] Nixon.... To further exacerbate matters, [Samuel R.] then files a new motion as to support while one is already pending.... Unless or until the pending matters are resolved no further pleadings should be entertained.

¶8 Angela F., proceeding *pro se*, petitioned the circuit court for *de novo* review. She also filed a discovery demand seeking documents related to Samuel R.'s alleged business interests.

¶9 The circuit court held a hearing on March 10, 2011.[3] During that proceeding, Samuel R. responded to Angela F.'s discovery demand with testimony that the personal income tax returns he had previously produced accurately reflected the entirety of his income.[4] He explained, personally and through his attorney, that the business Angela F. believes he owns ceased operation in 2007

[3] The Honorable Elsa C. Lamelas presided over the 2011 circuit court proceedings in this matter.

[4] Samuel R.'s personal income tax returns for the years 2003-2009 are in the record.

because it did not produce any income. He further explained that articles of dissolution for the business are publicly available to Angela F. if she wants them. At the conclusion of the hearing, the circuit court declined to require Samuel R. to produce any additional documents.

¶10 In June 2011, Nixon appeared before the circuit court, and it conducted the hearing adjourned in March 2009. In response to questioning by Angela F., Nixon testified that his work includes hiring entertainers to perform at various events, but he denied hiring Samuel R. to perform at any time. Further, Nixon testified that he did not know whether Samuel R. had ever received payments from any source for performing as a disc jockey.

¶11 Samuel R. also testified. He explained that he was earning $10 an hour working second shift in the shipping department of a foundry. He acknowledged that he performs as a disc jockey "on Saturdays every now and then," but he maintained that he does so as a hobby, receiving only nominal payments of $50.

¶12 Angela F. sought to impeach Samuel R. with evidence of a 2008 contract in which he agreed to perform as a disc jockey at a birthday party in exchange for $350. Samuel R. testified, however, that the contract was the product of a transaction arranged by Angela F. He explained: "that's the contract that [Angela F.] made up.... [She] had that person come in there and set all of that up and—and I've never got paid."

¶13 Angela F. did not testify. Rather, she offered argument that Samuel R.'s $210 monthly child support obligation was too low because it did not reflect Samuel R.'s undisclosed income. She also asked the circuit court to

reinstate the child support arrearage expunged in 2005, suggesting that she had not knowingly and intelligently entered the stipulation forgiving that arrearage.

¶14 The circuit court deemed any effort to disturb the stipulation "a stretch," and declined to tamper with an agreement that the family court commissioner had approved nearly six years earlier. The circuit court further found reasonable Samuel R.'s offer to increase his monthly child support payments from $210 to $410 and to pay a portion of the cost of some orthodontic treatment for the younger child. The circuit court otherwise denied relief, and Angela F. appeals.

DISCUSSION

¶15 We construe the briefs that Angela F. submitted in this matter as presenting three claims: (1) the circuit court should have reinstated Samuel R.'s expunged child support arrearage; (2) the circuit court should have ordered Samuel R. to comply with her discovery demands; and (3) the circuit court erred in establishing Samuel R.'s monthly child support obligation. The claims lack merit.

¶16 Angela F. contends that the circuit court erred when it declined to set aside the 2005 stipulation and order expunging Samuel R.'s child support arrearage. We disagree. In May 2006, an assistant family court commissioner denied her request to set aside the stipulation and order, and Angela F. does not

show that she followed the applicable procedures for obtaining circuit court review of that decision.[5]

¶17 "The administration of the courts in Milwaukee [C]ounty is governed by the statutes, supreme court rules, and local rules." ***Dumer v. State***, 64 Wis. 2d 590, 597, 219 N.W.2d 592 (1974). WISCONSIN STAT. § 757.69(8) is the statute governing circuit court review of a family court commissioner's decision.[6] Pursuant to that statute, "[a]ny decision of a circuit court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party." ***Id.*** A motion is "an 'application for an order.'" ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2003 WI App 175, ¶10, 266 Wis. 2d 659, 668 N.W.2d 798, *aff'd in part and remanded*, 2004 WI 112, 275 Wis. 2d 1, 683 N.W.2d 58 (citing ***State ex rel. Webster Mfg. Co. v. Reid***, 177 Wis. 612, 616, 188 N.W. 67 (1922)). The application is made "when it has been served and is filed." ***Reid***, 177 Wis. at 616. Angela F. does not show compliance with § 757.69(8) because she fails to demonstrate that she ever served and filed an application to the circuit court for an order reversing the family court commissioner's decision of May 19, 2006.

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[5] The arguments in Angela F.'s briefs at times suggest that Angela F. seeks to challenge in this court the 2005 order of the family court commissioner adopting the stipulation and to challenge the 2006 decision by an assistant family court commissioner refusing to set aside the stipulation. The family court commissioners' decisions and orders entered in 2005 and 2006 are not before us. An appeal can be taken only from a judgment or order of a circuit court. *See* WIS. STAT. RULE 809.01(1) (2011-12). A court commissioner's determination is not the equivalent of an order of the circuit court and cannot be appealed directly to the court of appeals. ***Dane Cnty. v. C.M.B.***, 165 Wis. 2d 703, 709, 478 N.W.2d 385 (1992). Accordingly, we consider only whether the circuit court erred when it declined to set aside the stipulation and order. All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[6] The text of WIS. STAT. § 757.69(8) is the same today as in May 2006.

¶18 A Milwaukee County local rule also governed Angela F.'s efforts to obtain review of the assistant family court commissioner's May 2006 decision. *See* Milwaukee County Local Rule XIII (2003), De Novo Review of Court Commissioner Decisions and Orders.[7] Pursuant to the local rule, a party seeking review of a 2006 court commissioner's order was required, within fifteen days after receiving an adverse decision, to "file a notice of motion and motion before the judge assigned to the case requesting the judge to conduct a *de novo* review of any decision, order, or ruling of any court commissioner." *See* Local Rule XIII (A)(1). The local rule further required a party desiring *de novo* review to serve the other parties to the action with a copy of the motion for review and to file a conformed copy of the motion with the family court commissioner. *See* Local Rule XIII (3), (5). Angela F. fails to show that she took these actions, let alone that she took them within the time frame required. Accordingly, the circuit court properly declined to disturb the commissioner's decision.

¶19 We recognize that the circuit court did not rely on Angela F.'s procedural missteps as the basis for refusing to set aside the stipulation and order expunging Samuel R.'s child support arrearage. We may, however, affirm a correct circuit court ruling for reasons other than those relied upon by the circuit court. *See* ***State v. Cain***, 2012 WI 68, ¶37 n.10, 342 Wis. 2d 1, 816 N.W.2d 177.

¶20 Moreover, the circuit court's decision to uphold the stipulation is proper on the merits. When parties enter into a stipulation governing child support obligations, "courts will attempt to give effect to the parties' intentions where the

[7] Current Milwaukee County local rules are publicly available through, *inter alia*, the website of the Wisconsin State Bar. The local rules in effect in 2006 are available using the Internet Archive Wayback Machine. *See* http://archive.org.

stipulation was entered into freely and knowingly, was fair and equitable when entered into, and is not illegal or violative of public policy." ***May v. May***, 2012 WI 35, ¶36, 339 Wis. 2d 626, 813 N.W.2d 179.

¶21 Whether to preclude a parent's challenge to a child support stipulation rests in the circuit court's discretion. *See* ***id.***, ¶48. We will uphold a discretionary decision if the circuit "court examined the relevant facts, applied proper legal standards, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach." ***Id.*** Furthermore, when the circuit court does not fully set forth its reasoning, "we may search the record to determine if it supports the court's discretionary decision." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We do so because the exercise of discretion is critical to the functioning of the circuit court. *See* ***Olivarez v. Unitrin Prop. & Cas. Ins. Co.***, 2006 WI App 189, ¶17, 296 Wis. 2d 337, 723 N.W.2d 131.

¶22 Here, Angela F. argued that she did not knowingly enter the stipulation because she did not know the precise amount of the arrearage she agreed to forgive when she signed the document, and she asserted that Samuel R. filled in the amount later. Samuel R., however, testified that he and Angela F. discussed the amount of the arrearage and that Angela F. agreed to forgive his debt so that he could buy a house. Angela F. did not testify, and thus offered no

evidence contradicting Samuel R.'s testimony.[8] *See* WIS JI—CIVIL 100 (evidence is testimony, exhibits, and stipulated facts). We also observe that, even assuming that Samuel R. later added the exact amount of his arrearage to the signed stipulation, the text of the document reflects that Angela F. agreed to forgive "all" of his debt.

¶23 Angela F. also fails to show that the stipulation is inherently inequitable or that it is unlawful. *See* ***May***, 339 Wis. 2d 626, ¶36. To the contrary, the law is clear that a court-approved stipulation regarding arrearage forgiveness or compromise is neither illegal nor contrary to public policy and may be enforced. *See* ***Motte v. Motte***, 2007 WI App 111, ¶¶23-26, 300 Wis. 2d 621, 731 N.W.2d 294. Here, Samuel R. remained obligated to pay on-going child support, the parties remained free to seek modification of that order, and the family court retained the authority to modify Samuel R.'s ongoing obligation as required for the best interest of the children. Accordingly, the record supports the circuit court's discretionary decision to enforce the stipulation.

¶24 Angela F. next complains that the circuit court improperly denied her request for discovery. Again, we disagree.

[8] Angela F. complains that the circuit court "erred by not allowing [her] to testify to [her] version of events under oath." Angela F. points to nothing in the record substantiating her suggestion that the circuit court somehow prevented her from testifying. She appeared *pro se*, and, as a self-represented person, she could have called herself to the stand, but she did not do so. "[N]either a trial court nor a reviewing court has a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law." ***Waushara Cnty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). In short, the circuit court bears no responsibility for Angela F.'s failure to call herself as a witness in support of her position.

¶25 "The standard of review of a discovery order is whether the [circuit] court erroneously exercised its discretion." ***Rademann v. State DOT***, 2002 WI App 59, ¶34, 252 Wis. 2d 191, 642 N.W.2d 600. Angela F. has the burden to establish an erroneous exercise of discretion. *See* ***id.*** She has not carried that burden.

¶26 Samuel R. explained to the circuit court that he had provided Angela F. with his existing tax returns and with financial disclosure statements. He testified that these documents fully and accurately reflect his income.[9]

¶27 The circuit court concluded that it could rely on Samuel R.'s testimony and the documents that he produced to determine the income available for child support. "On questions of credibility, this court is bound by the trier of fact's determinations." ***Associates Fin. Servs. Co. of Wis. v. Hornik***, 114 Wis. 2d 163, 169, 336 N.W.2d 395 (Ct. App. 1983). We therefore will not disturb the circuit court's conclusions that additional discovery was unwarranted and that the testimony of Samuel R. and the personal tax returns that he produced are the most reliable available evidence of his income.

¶28 Angela F. last complains that the circuit court erred by increasing Samuel R.'s monthly child support payments from $210 to $410 and that the

[9] Angela F. complains that Samuel R. provided an "altered [personal] tax return for 2009." Angela F. appears to refer to the portion of Samuel R.'s 2009 federal return where someone has inked over the bank account number and bank routing number included on the return to permit the direct deposit of an $11 tax refund. The masking of these numbers appears to conform with the parties' practice. The copies of Samuel R.'s tax returns for other years in which the government owed him a refund also shield the bank account and bank routing numbers but do so by replacing those numbers with a series of typed "x's." Regardless, Angela F. does not suggest any way in which masking the bank account number and bank routing number affects the validity of the financial information provided in the 2009 tax return.

circuit court should have established a higher obligation "that was to [her] satisfaction." The determination of appropriate child support is committed to the discretion of the circuit court. ***Randall***, 235 Wis. 2d 1, ¶7. Thus, our standard of review is deferential. *See* ***Olivarez***, 296 Wis. 2d 337, ¶16. "Discretionary determinations are not tested on appeal by our sense of what might be a 'right' or 'wrong' decision in the case. Rather, the determination will stand 'unless it can be said that no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion.'" ***Id.*** (citations omitted). Our standard of review also requires that we sustain the factual findings of the family court unless they are clearly erroneous. *See* ***Sellers v. Sellers***, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996). Further, when findings of fact are based on the circuit court's assessment of witness credibility, we defer to the circuit court's opportunity to make that assessment. *See* ***Jacquart v. Jacquart***, 183 Wis. 2d 372, 386, 515 N.W.2d 539 (Ct. App. 1994).

¶29 Here, Angela F. sought to prove that Samuel R. had hidden income by presenting testimony from Nixon, but Nixon testified that "he didn't know anything about what amount of money [Samuel R.] earned, if any." Angela F. also pointed to a 2008 contract for Samuel R.'s services as a disc jockey, but the testimony revealed that the contract memorialized only a sham agreement that she had arranged. The circuit court did not erroneously exercise its discretion by rejecting Angela F.'s evidence as inadequate to prove that Samuel R. had a significant stream of hidden income.

¶30 The circuit court relied on Samuel R.'s testimony, wage information, and tax returns to determine his earnings. The testimony established that he earns $10 an hour as a laborer. In light of Samuel R.'s acknowledgment that he received an occasional payment of $50 for performing as a disc jockey, the circuit court

concluded that his offer to pay an additional $200 each month would result in an appropriate child support award. The circuit court recognized Angela F.'s dissatisfaction with the amount ordered, but the circuit court explained that "despite [Angela F.'s] various efforts, and the many opportunities to present the necessary evidence in court, [Angela F.] simply has failed to present evidence that establishes greater or hidden income by [Samuel R.] sufficient to warrant relief."

¶31 We will not disturb the circuit court's findings and conclusions in light of the record here. Although Angela F. demonstrated that Samuel R. on occasion performs as a disc jockey, she failed to prove that his hobby is a meaningful source of income. The circuit court did not err in refusing to base an order on Angela F.'s unsubstantiated suspicions.[10] For all of the foregoing reasons, we affirm.

By the Court.—Order affirmed.

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

[10] We note with concern that Angela F. relies on unsupported innuendo about the circuit court itself as a basis for relief on appeal. Pointing to the circuit court's reference to Samuel R.'s stage name when dismissing Samuel R. from the courtroom, Angela F. asserts that she "do[es] not understand [the circuit court's] purpose" in mentioning his stage name "unless [the circuit court] plan[ned] to hire him to DJ ... or [to] do[] business outside of the courts." An accusation that the circuit court reached its decision in light of undisclosed plans to do business with a litigant in the future is disrespectful to the circuit court and improper unless unimpeachably substantiated. We advise Angela F. that "disrespectful criticisms made in this court upon the judges of the court below, are offensive, not only to those courts but to [ours]." ***Hanson v. The Milwaukee Mechs.' Mut. Ins. Co.***, 45 Wis. 321, 324 (1878).