COURT OF APPEALS
DECISION
DATED AND FILED

May 8, 2014

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. 2013AP1625 **Cir. Ct. No. 2011FA1581**

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

IN RE THE MARRIAGE OF:

LENA D. ARCHER,

JOINT-PETITIONER-APPELLANT,

V.

COREY SAFFOLD,

JOINT-PETITIONER-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

¶1 PER CURIAM. Lena Archer appeals an order that denied her motion to hold her ex-husband, Corey Saffold, in contempt for failing to pay his

designated share of child care expenses. The circuit court denied the contempt motion on the grounds that Archer was misinterpreting Saffold's obligations under the divorce judgment. We conclude that the circuit court properly interpreted its own judgment, and affirm.

BACKGROUND

¶2 To place into context the contempt order at issue on this appeal, we begin by summarizing the history of Saffold's child support obligations throughout the divorce proceedings. On October 11, 2011, the court commissioner entered a temporary order setting Saffold's child support obligation at $239 biweekly. Although a box checked on the temporary order indicated that the child support amount was based upon 17% of Saffold's income, the court commissioner later clarified that the amount was actually based upon a shared placement formula.

¶3 The parties subsequently reached a marital settlement agreement through mediation. The settlement agreement provided in relevant part that Saffold would maintain health insurance for the child and pay an "agreed upon" amount of $239 biweekly in child support, plus $55 biweekly towards child care and 50% of all other variable costs for the child. Archer stated in a letter to the court that she had agreed to use the shared placement calculation for child support instead of 17% of Saffold's income—despite the fact that Saffold's placement schedule at that time was 3% below the guideline threshold for shared placement—as a concession.

¶4 At the final divorce hearing, Archer informed the court that—notwithstanding the signed settlement agreement—the amount of child support was once again at issue because Saffold had not been complying with the

mediation order. Archer also pursued a contempt motion seeking arrears on the child care contributions required by the mediation order. Saffold argued that that a downward deviation from the 17% child support standard was warranted because he was also making voluntary biweekly support payments of $175 for a nonmarital child; that his arrears on contributions should be offset by other payments he had made; and that he should not be required to make any additional payments toward the marital child's variable expenses, due to a monthly increase of $111 in the amount of premiums Saffold was required to pay for family health insurance after the settlement agreement was signed.

¶5 After taking the matters of child support and contempt under advisement, the circuit court determined that 17% of Saffold's income would be $356 biweekly, and that the $239 biweekly child support payment Saffold had been making was "much less than [he] should have even with the voluntary payment to [his] daughter." The court then set child support in the amount of $290 biweekly, without mentioning any child care contributions or other variable costs going forward. The court further decided that the arrears on Saffold's child care contribution obligations under any prior orders or agreements were offset by the additional personal property being awarded to Archer, and so did not hold him in contempt.

¶6 The circuit court then entered a judgment of divorce approving the settlement agreement, "except as changed" by the court in an attachment. The attachment was labeled as the court's decision on child care arrears, personal property, and child support. It stated in relevant part:

> Due to the wife receiving more of the personal property than the husband and the increased health care cost for the husband, the arrears for the $55.00 per week (sic) child care contribution is extinguished.

> Child support is set at $290.00 per pay period that is every two weeks.

¶7 About eight months after the divorce judgment was entered, Archer filed another contempt motion, again complaining that Saffold was failing to make contributions toward child care. The court commissioner forwarded the matter to the circuit court, noting that she could not determine whether or not the divorce judgment had adopted the portion of the settlement agreement relating to variable costs. The circuit court issued an order "clarifying … variable expenses" and dismissing the contempt motion without a hearing. The clarifying order explained:

> [T]he child support amount of $290 every two weeks was an upward deviation from the guidelines amount. The upward deviation is to account for Ms. Archer being 100% responsible for all variable expenses, including child care.

¶8 Archer now appeals, challenging both the dismissal of her contempt motion and the court's "clarification" that she is responsible for all of the child's variable costs going forward, which she views as a modification of the divorce judgment.

STANDARD OF REVIEW

¶9 We review the circuit court's use of its contempt powers under the erroneous exercise of discretion standard. ***Topolski v. Topolski***, 2011 WI 59, ¶27, 335 Wis. 2d 327, 802 N.W.2d 482. In the course of that review, we will uphold any factual findings made by the circuit court unless they are clearly erroneous, but may independently determine any underlying questions of law—including the proper interpretation of a divorce judgment. ***Id.***, ¶¶27-28.

DISCUSSION

¶10 Archer's claim that Saffold contemptuously failed to comply with the terms of the divorce judgment rests on the proposition that the divorce judgment required Saffold to pay $55 biweekly toward child care, as originally set forth in the settlement agreement. Archer argues that the circuit court's decision relieved Saffold of only the arrears on child care contributions that had accumulated by the time of the final hearing, not his continuing obligation to contribute to variable costs. We disagree.

¶11 Because the parties informed the circuit court at the final hearing that there was no longer an agreement regarding the terms of child support and child care contributions set forth in the settlement agreement, the court issued its own decision on those topics. In other words, instead of ordering Saffold to make one biweekly payment of $239 for child support and another one $55 for child care, and to pay 50% of other variable costs, the circuit court simply set child support at $290 biweekly without requiring any separate payments for child care or other variable costs.

¶12 It does appear possible that the circuit court misstated in its clarification order that the $290 biweekly child support figure represented "an upward deviation from the guidelines amount."[1] However, the court's potentially

[1] It is not clear which child support guideline the circuit court was referring to. Archer is correct that the $290 figure was a downward deviation from the $356 figure that the court had previously calculated as 17% of Saffold's income. However, the $290 figure was an upward deviation from the $239 shared placement figure that had been calculated by the court commissioner. Alternatively, if the circuit court was taking Saffold's voluntary payments to his nonmarital child into account, adding $290 to $175 would total more than the 25% guideline amount for two children.

erroneous explanation of the *reason* it did not order Saffold to make additional contributions toward child care or other variable costs does not alter the fact that the divorce judgment did not impose any such obligation. Since the matter before us is the contempt order, not the divorce judgment, we need not decide whether the circuit court properly exercised its discretion in setting the amount of child support.

¶13 In sum, given the circuit court's proper interpretation of its order as setting its own child support terms rather than adopting any of those from the settlement agreement, there were no grounds to support the contempt motion.

By the Court.—Order affirmed.

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