COURT OF APPEALS
DECISION
DATED AND FILED

June 21, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1428 **Cir. Ct. No. 2011FA006553**

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

IN RE THE FINDING OF CONTEMPT IN STATE V. KATHRYN A. EHLINGER AND HECTOR J. GALINDEZ:

KATHRYN A. EHLINGER,

APPELLANT,

V.

HECTOR J. GALINDEZ,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed.*

¶1 BRENNAN, J.[1] Kathryn Ehlinger appeals from an order denying her motion for contempt and reimbursement due to Hector Galindez's failure to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

pay variable child support related costs. Ehlinger argues that the circuit court erred when it concluded that the evidence did not support a finding that Galindez was in contempt.[2] Because the circuit court properly exercised its discretion, we affirm.

BACKGROUND

¶2 On June 19, 2014, the circuit court entered a final order on placement and support for the parties' two children in a paternity action. The provision in the final order that is relevant to this action concerns variable costs[3] and out-of-pocket medical expenses, and it states that they "shall be split 50/50 and payment made [within] 30 days of notice and receipts for obligations included in the statutory definitions[.]"

¶3 On November 25, 2014 Ehlinger moved *pro se* for a finding of contempt based on Galindez's alleged failure to pay his share of the variable costs, including out-of-pocket medical expenses and child care expenses as ordered. The first hearing was adjourned because Ehlinger had failed to provide Galindez notice

[2] Ehlinger titled her motion below as one for contempt but cited the statute on child support, WIS. STAT. § 767.511, and failed to cite the contempt statute, WIS. STAT. § 785.02. Nonetheless, we conclude it is clear that she sought a contempt finding under WIS. STAT. § 785.02 and here appeals the denial of contempt by the circuit court on June 19, 2014. "'Contempt of court' means intentional … [d]isobedience, resistance or obstruction of the authority, process or order of a court[.]" WIS. STAT. § 785.01 (1)(b).

[3] "Variable costs" are "the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child's special needs, and other activities that involve substantial cost." WIS. ADMIN. CODE § DCF 150.02(29).

of the pleadings and papers related to her motion.[4] Following a rescheduled hearing on April 23, 2015, at which each party, *pro se*, presented evidence of variable expenses, Galindez was given the opportunity to respond to documents Ehlinger submitted at the hearing.

¶4 The June 26, 2015 final order of the circuit court denied Ehlinger's motion for contempt, finding that it was not supported by the evidence. The court found that there was no credible evidence in the record that Ehlinger had communicated with Galindez about her plan to incur a debt within a reasonable time, nor any record of a "timely request for payment." Additionally the court found that there was no credible record of many of her expenses and that the records that she provided the court were "not reasonable, credible or timely." Thus, the court entered an order denying Ehlinger's motion to hold Galindez in contempt and her request for reimbursement of the claimed expenses. Ehlinger now appeals.[5]

[4] Generally, *pro se* litigants are bound to the same procedural law as attorneys. "*Pro se* appellants must satisfy all procedural requirements, unless those requirements are waived by the court. They are bound by the same rules that apply to attorneys on appeal. The right to self-representation is '[not] a license not to comply with relevant rules of procedural and substantive law.'" ***Waushara Cty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

[5] This court issued an order on March 28, 2016, requiring Galindez to file a brief or risk summary reversal. *See* ***Raz v. Brown***, 2003 WI 29, ¶36, 260 Wis. 2d 614, 660 N.W.2d 647. Galindez failed to do so. That failure, however, does not bind us to reverse. The sanctions for a party's failure to file a brief are within the discretion of the court of appeals, and the Supreme Court ordinarily refrains from reviewing such decisions. *See* ***In re Smythe***, 225 Wis. 2d 456, 462-63, 592 N.W.2d 628 (1999). In this case, where the circuit court's findings of fact are not clearly erroneous and where it has made credibility determinations that we do not review, we exercise our discretion not to impose the sanction of summary reversal.

DISCUSSION

¶5 We review a trial court's use of its contempt power to determine whether the court properly exercised its discretion. ***Benn v. Benn***, 230 Wis. 2d 301, 308, 602 N.W.2d 65 (Ct. App. 1999). "A circuit court acts within its discretion when it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach." ***Bank Mut. v. S.J. Boyer Constr., Inc.***, 2010 WI 74, ¶20, 326 Wis. 2d 521, 785 N.W.2d 462. We uphold the factual findings of the trial court unless they are clearly erroneous. ***Phelps v. Physicians Ins. Co. of Wis., Inc.***, 2009 WI 74, ¶34, 319 Wis. 2d 1, 768 N.W.2d 615. "When the circuit court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness's testimony." ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (citations omitted). "The reason for this rule is that the trier of fact had the opportunity to observe the witnesses and their demeanor." ***Id.*** "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." ***Id.***

¶6 We begin by sorting out what issues exactly Ehlinger has properly brought before us. Ehlinger's Notice of Appeal states she seeks review of the circuit court's order of June 26, 2015. On that date, the trial court denied Ehlinger's motion for contempt of the trial court's final placement and child support order of June 19, 2014, which contained the following provision relevant to this appeal: the variable costs and out-of-pocket medical expenses "shall be split 50/50 and payment made [within] 30 days of notice and receipts for obligations included in the statutory definitions[.]" This quoted provision is the full extent of the language in the final order regarding variable expenses.

¶7 First we note that Ehlinger failed to develop two of the issues she listed in her Statement of Issues on appeal: (1) a request for future child care expenses to be included in the variable costs; and (2) an argument that the trial court failed to follow various laws. As to the argument regarding future child care costs, Ehlinger makes no mention of the statute, case law or standards for modification of a final order. As to the second argument that the court failed to follow various laws, she lists those laws, but fails to develop any argument or support as to trial court error with regard to the laws she lists (due process, equal protection, a discovery statute, WIS. STAT. § 801.14, an ex parte communication prohibition in WIS. STAT. § 227.50(1)(a) and SCR 60.04(g)(1), and a failure to enforce a child support order). We will not consider undeveloped arguments of a party.[6] *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 83 ("[W]e will not abandon our neutrality to develop arguments" for the parties.)

¶8 The stated issue we do address here is Ehlinger's argument that the trial court's factual and legal findings at the contempt hearing were incorrect. In rejecting contempt, the trial court made specific fact findings about the deficiency of Ehlinger's evidence. The court's June 2014 final order required the parties to provide each other "notice and receipts." In light of that requirement in the order, at the contempt hearing, the trial court found that "the receipts attached to [Ehlinger's] summary exhibit do not credibly establish the debt or payment claimed." The court found that "there is no credible record of many of

[6] And to the extent Ehlinger has stated other issues that we cannot discern, we conclude that she has failed to properly develop them. It is a litigant's job to clearly state her issues and develop them. We do not do it for her. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 83.

[Ehlinger's] expenses claimed from purportedly relative vendors, no record of communicating her plans to make a debt within a reasonable period of time and no record that a 'timely' request for payment was made." The trial court further found that "the parties have not and did not establish a process to communicate the method for incurring expenses, giving notice and showing proof [of] an expense or for providing opportunity for communicating before incurring certain debts." Consequently, the trial court found that the record failed to support a contempt finding. We agree.

¶9 Ehlinger's argument that the trial court erroneously exercised its discretion is premised on a challenge to the court's findings and credibility determinations. The language of the final order speaks for itself. The final order mentions no definition of variable costs and no explanation of the process for notice and reimbursement. Thus, the trial court properly considered a reasonable process and found Ehlinger's actions and proof unreasonable and therefore did not hold Galindez in contempt. Ehlinger fails to show that the trial court's fact findings are clearly erroneous. And to the extent that Ehlinger is really faulting the court for not believing some of her factual claims at the hearing, she cannot prevail because the trial court is "the ultimate arbiter" of all credibility determinations, and a reviewing court "must accept the inference" drawn by the trial court where inferences are drawn from credible facts. *See* ***Peppertree Resort Villas, Inc.***, 257 Wis. 2d 421, ¶19.

¶10 Therefore, we must affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.