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March 21, 2018

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You are hereby notified that the Court has entered the following opinion and order:

2016AP2350

Shantel Quick v. Scott R. Deichsel (L.C. #1998PA41PJ)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Scott R. Deichsel appeals from an order denying his motion seeking relief from his child support obligation based on the child support agency's administrative closure of Deichsel's file.

Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. § 809.21 (2015-16).¹ We affirm.

Deichsel has been incarcerated since 2001. Prior to his incarceration and pursuant to a stipulation and order entered in 2000, Deichsel's support obligation for the subject child, who was born in 1998, was set at sixty-five dollars per week.² In 2015, Deichsel filed a motion to "correct" his child support obligation to make it "consistent with" another provision in the 2000 order which stated that once Deichsel's obligation to support his older child terminated, "child support for [the subject] child shall automatically change to a dollar amount equal to 17% of his gross income of a 40-hour work week." Asserting that his support obligation for his oldest child terminated in August 2002, Deichsel argued that the 2000 order required his child support to be lowered to seventeen percent of his actual prison wages. He alleged that his gross prison income ranged from "\$8.00 to \$56.00 monthly." Deichsel further requested that his arrearage be retroactively adjusted back to August 2002, to reflect an amount equal to seventeen percent of his gross prison income. The circuit court denied relief, concluding that it lacked the authority to retroactively modify Deichsel's arrearage and further, that the 2000 support order was properly construed as requiring a minimum weekly amount of sixty-five dollars.

Deichsel appealed. The child support agency submitted a letter to this court asking to be removed from the appeal's distribution list because it "did not participate in any court

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The 2000 order recognized that Deichsel was obligated to pay support for an older child, and acknowledged that sixty-five dollars represented 14.11% of his gross weekly income, the percentage formula for a serial payor. The stipulation and order further provided that Deichsel's support would be recalculated each year and that his weekly obligation would be set at either 14.11% of his gross income, or sixty-five dollars, whichever amount was greater.

proceedings which led to the Circuit Court order under review,” and because it “closed the child support case involving Mr. Deichsel on November 14, 2005, due to the fact” that he received a lengthy sentence which included forty years’ initial confinement. On August 10, 2016, while the agency’s letter was pending, we dismissed Deichsel’s appeal upon his failure to pay the filing fee or submit the necessary fee-waiver paperwork.

Deichsel then filed in the circuit court a “motion to enforce the petitioner’s 11/14/2005 closure” of his child support file. His motion was premised on the agency’s letter to this court seeking to be removed from the appeal. The circuit court denied the motion, stating: “The Court does not know why Child Support closing its case has any effect on the decision the Court has already made.” Deichsel commenced the present appeal.

We conclude that the circuit court properly exercised its discretion in determining that Deichsel’s motion to enforce the agency’s 2005 closure of his child support file did not require a modification of his support obligation. *See State v. Alonzo R.*, 230 Wis. 2d 17, 21, 601 N.W.2d 328 (1999) (“In reviewing an order denying a motion for reconsideration, we apply the same erroneous exercise of discretion rubric as we do in reviewing an order denying the underlying motion.”). We find no fault with the circuit court’s discretionary determination that the administrative closure did not support reconsideration of its prior final orders.

Deichsel argues that the agency’s letter is somehow an “admission/concession” that as of November 2005, the agency lacked authority to allow Deichsel’s support obligation to continue to accrue and, further, that any income withholding order issued after that date “was not a legal or legitimate instrument.” Neither Deichsel’s circuit court motion nor his appellate brief explains why the administrative closure would require or even warrant a reduction in his support

obligation, or nullify income withholding orders. “A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). To decide Deichsel’s issues “we would first have to develop them.” *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). This court cannot serve as both advocate and judge; we will not further consider Deichsel’s unsupported and undeveloped arguments. *See id.*

Nor will we address Deichsel’s arguments that the circuit court erred in denying his 2015 and 2016 motions seeking to “correct” his child support obligation retroactive to August 2002, and to adjust his accrued arrearage. The circuit court entered its final orders concerning those motions on September 25, 2015, and March 1, 2016, and denied reconsideration on March 22, 2016. The appeal from those orders was dismissed. The most recent notice of appeal was filed on November 29, 2016, after the WIS. STAT. § 808.04(1) ninety-day time to appeal those orders expired. This deadline “may not be enlarged.” WIS. STAT. RULE 809.82(2)(b). “The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.” WIS. STAT. RULE 809.10(1)(e). The appeal is timely only from the circuit court’s final order denying Deichsel’s motion to enforce closure and does not bring before us the circuit court’s prior final orders. *See* RULE 809.10(1)(e), (4).

Finally, Deichsel apparently contends that the circuit court erroneously exercised its discretion in declining to modify his child support obligation based on his incarceration. *See Rottscheit v. Dumler*, 2003 WI 62, ¶¶11-12, 14, 19-22, 30, 36, 262 Wis. 2d 292, 664 N.W.2d 525 (a circuit court may, in its discretion, determine that a child support payor’s incarceration is a substantial change in circumstances warranting modification of the support obligation). We

disagree. First, Deichsel never actually filed a motion to modify child support asserting that his incarceration constituted a substantial change in circumstances. Second, though Deichsel complains that the circuit court “didn’t examine the needs of the child factor,” Deichsel was the movant and thus carried the burden to present evidence and argument related to this factor. Third, to the extent Deichsel did suggest that his incarceration constituted a substantial change in circumstances warranting modification, the circuit court did, in fact, properly exercise its discretion in denying the request. In its order denying Deichsel’s motion to enforce closure, the circuit court set forth the reasons it declined to modify Deichsel’s support, including the length of his incarceration and that it resulted from an intentional act against the custodial parent.³

Upon the foregoing reasons,

³ We question the purpose of any motion to modify Deichsel’s support obligation. First, it appears that given the subject child’s date of birth, Deichsel’s existing support obligation (as opposed to his arrearage) has likely terminated. See WIS. STAT. § 767.511(4) (a child is eligible for support until age eighteen or, in certain circumstances, up to age nineteen). Second, a person’s inability to fully comply with an order to pay existing support or arrearages cannot be enforced through punitive means such as contempt. See *Parker v. Parker*, 152 Wis. 2d 1, 5, 447 N.W.2d 64 (Ct. App. 1989) (“The issue is not whether Parker can be punished for failing to pay support. The issue is whether he is entitled to eliminate the accumulation of support obligation while he is incarcerated.”). See also *Rottscheit v. Dumler*, 2003 WI 62, ¶33, 262 Wis. 2d 292, 664 N.W.2d 525 (rejecting argument that allowing arrearage to accumulate constitutes punishment; “Leaving a child support obligation in place that was set before incarceration does not constitute additional punishment, but rather, leaves intact a responsibility taken on by the defendant in having children.”).

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals