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DISTRICT IV

July 23, 2020

To:

Hon. Frank D. Remington
Circuit Court Judge
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Madison, WI 53703

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Dane County Courthouse
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Madison, WI 53703

Luanne M. Kalscheuer
5873 Holscher Road
Mc Farland, WI 53558

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

2019AP1553

In re the marriage of: Luanne M. Kalscheuer v. Michael L.
Kalscheuer (L.C. # 2013FA1865)

Before Fitzpatrick, P.J., Graham, and Nashold, 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).

Luanne Kalscheuer, pro se, appeals a circuit court order that denied her request for a hearing de novo in this divorce case. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We summarily affirm. Additionally, we grant a motion by Michael

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Kalscheuer to find this appeal frivolous, and we remand to the circuit court to determine Michael's costs and attorney's fees.²

Luanne and Michael were married in November 1977. They were divorced in January 2014. The parties litigated various issues in the years following the divorce. On August 2, 2019, Luanne moved the circuit court for a hearing de novo. The circuit court denied the motion on the ground that no decision had been issued by a court commissioner within the previous fifteen days, and thus there was no court commissioner decision from which Luanne could properly seek a hearing de novo per local court rules. *See* DANE CTY. CIR. CT. R. 402.5 (Feb. 1, 2013, with amendments through Aug. 1, 2019).

Luanne's arguments are difficult to follow. As best we can understand, Luanne's arguments can be summarized as claims that Michael acted illegally and contrary to the petition for divorce, marital settlement agreement, divorce judgment, and a post-divorce order in various ways between 2013 and 2019, which Luanne characterizes as "breach of contract." However, nothing in Luanne's brief challenges the circuit court's decision denying Luanne's motion for a hearing de novo as untimely, which is the subject of this appeal.³

² Because the parties share a surname, we refer to them by their first names for clarity.

³ Luanne also makes allegations of illegal actions and "breach of contract" against Michael's attorney and the circuit court judge. Again, nothing about those allegations relates to the circuit court decision denying Luanne's motion for a hearing de novo. We note that the most recent court commissioner decision prior to Luanne's motion for a hearing de novo that appears in the record was issued on July 16, 2019. As the circuit court recognized, that decision was issued more than fifteen days prior to Luanne's August 2, 2019 motion for a hearing de novo and, therefore, Luanne's motion was untimely under the Dane County Circuit Court Rule referred to above.

In sum, Luanne fails to develop any arguments as to why this court should reverse the decision of the circuit court that is the subject of this appeal. She sets forth no arguments applying the applicable legal authority to the facts in the record under the proper standards of review. This court need not consider arguments that either are unsupported by adequate factual and legal citations or are otherwise undeveloped. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). “We cannot serve as both advocate and judge,” *id.* at 647, and we will not develop fact-supported legal arguments for an appellant, see *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Here, Luanne has wholly failed to develop any argument that the circuit court erred by denying Luanne’s request for a hearing de novo. We affirm on that basis.

Finally, Michael has moved for costs and attorney’s fees for a frivolous appeal under WIS. STAT. RULE 809.25(3). We agree that this appeal is frivolous. As explained above, Luanne’s brief fails to present any developed argument based on the law and the facts in the record. See RULE 809.25(3)(c)2. (appeal is frivolous if the appellant “knew, or should have known, that the appeal ... was without any reasonable basis in law”). Because nothing in Luanne’s brief establishes any legal basis for the appeal, we agree with Michael that the appeal is frivolous.⁴

⁴ Michael also asks this court to impose restrictions against Luanne pursuing further litigation until the costs and fees for a frivolous appeal are paid. We are not persuaded that an order limiting Luanne from further litigation is warranted at this time. We caution Luanne, however, that we have authority to limit her access to the courts based on repeated frivolous litigation. See *State v. Casteel*, 2001 WI App 188, ¶¶23-26, 247 Wis. 2d 451, 634 N.W.2d 338. Further frivolous filings may result in sanctions, including, but not limited to, restricted future access to the courts, imposition of penalties or costs, or other actions as we deem appropriate. In addition, nothing we say here should be read to prevent the circuit court from appropriately exercising its discretion regarding any future filings by Luanne.

We remand to the circuit court for a determination as to the amount and reasonableness of Michael's attorney's fees on appeal and an additional judgment in Michael's favor.

Therefore,

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1), and the cause is remanded to the circuit court to determine the amount of costs and reasonable attorney's fees to be awarded to the respondent pursuant to WIS. STAT. RULE 809.25(3).

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

Sheila T. Reiff
Clerk of Court of Appeals