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DISTRICT IV

February 20, 2025

To:

Hon. Timothy J. Gaskell
Circuit Court Judge
Electronic Notice

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

2024AP831

In re the marriage of: Eleanor Rose Landis v. Douglas Landis
(L.C. # 2000FA69)

Before Kloppenburg, 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).

Douglas Landis, pro se, appeals a circuit court order denying his motion to modify his support obligations to Eleanor Landis. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).¹ We summarily reverse the order as a sanction based on Eleanor's

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

failure to file a brief and abandonment of the appeal. *See* WIS. STAT. RULE 809.83(2).² We remand for further proceedings consistent with this opinion.

Douglas and Eleanor divorced in 2001. As part of the divorce judgment, Douglas was to pay a monthly amount of child support. In addition, a marital balance sheet indicated that Douglas had accumulated arrears for temporary child support and temporary maintenance during the pendency of the divorce. In 2015, the circuit court issued an order finding that Douglas had, by that time, accumulated a total of \$39,787.28 in child support arrears. The order also stated that he owed interest of \$50,014.89 on the child support arrears and that he still had \$12,754.95 in maintenance arrears.

In 2023, Douglas filed a motion to modify his support obligations. He argued that the total amount of his obligations had been miscalculated because he was never credited for an offset to his support and other financial obligations based on the property division, as contemplated by the divorce judgment. He also argued that he filed his motion as soon as he became aware of the miscalculation, and that the circumstances entitled him to relief under WIS. STAT. § 806.07.

Based on the divorce judgment and related materials filed at the time of the parties' divorce, the circuit court found that Douglas should have received a \$10,364.50 credit. The court also found that if the credit had been apportioned equally between Douglas's then-existing child support and maintenance arrears, his child support arrears would have been reduced to

² WISCONSIN STAT. RULE 809.83(2) provides, in relevant part, that “[f]ailure of a person to comply with a court order or with a requirement of these rules ... is grounds for dismissal of the appeal, *summary reversal*, striking of a paper, imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.” (Emphasis added.)

\$10,537.75 and his maintenance arrears would have been reduced to \$9,817.75. Additionally, the court found that Douglas's motion established extraordinary circumstances sufficient to justify relief from a judgment or order pursuant to WIS. STAT. § 806.07(1)(h). However, the court also found that Douglas had not brought his motion within a reasonable time as required by § 806.07(2). Accordingly, the court denied his request to modify his support obligations.

Douglas appealed and he filed his appellant's brief on October 1, 2024. In the brief, Douglas argues that the circuit court erred in concluding that his motion to modify his support obligations is time-barred.

On November 6, 2024, this court issued a notice informing Eleanor that her respondent's brief was delinquent and that, unless the brief was filed or an extension sought within five days, the appeal would be disposed of summarily and may be summarily reversed pursuant to WIS. STAT. RULE 809.83(2). We did not receive any response to this order from Eleanor.

In an order dated November 25, 2024, we again cautioned Eleanor that unless her brief was filed or an extension sought within five days, the appeal would be disposed of summarily and may be summarily reversed pursuant to WIS. STAT. RULE 809.83(2). We also directed that the appeal be submitted for a decision based solely on Douglas's brief and the record.

In an order dated January 23, 2025, we provided Eleanor with a final opportunity to participate in this appeal. We ordered her to file a respondent's brief within five days, and we informed her that we would summarily reverse under WIS. STAT. RULE 809.83(2) if she failed to file a brief. In that order, we explained as follows:

The "[f]ailure to file a respondent's brief tacitly concedes that the trial court erred," *State ex rel. Blackdeer v. Township of*

Levis, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993), and allows this court to assume that the respondent concedes the issues raised by the appellant, *see Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). This court will not act as both advocate and judge, *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), by independently developing a litigant's argument, *see Gardner v. Gardner*, 190 Wis. 2d 216, 239-40 n.3, 527 N.W.2d 701 (Ct. App. 1994).

Additionally, our January 23, 2025 order specifically cautioned Eleanor that failure to file a respondent's brief as directed would constitute an abandonment of the appeal. *See Raz v. Brown*, 2003 WI 29, ¶36, 260 Wis. 2d 614, 660 N.W.2d 647.

To date, this court has received no respondent's brief or other filing from Eleanor in response to our orders. Accordingly, we now summarily reverse as a sanction based on Eleanor's failure to file a brief and abandonment of this appeal.

We remand to the circuit court for further proceedings in which the court shall modify Douglas's support obligations consistent with the court's factual finding that Douglas should have received a \$10,364.50 credit against his support obligations as they existed at the time of the divorce. As noted above, the court also found that if the credit had been apportioned equally between the then-existing arrears amounts, Douglas's child support arrears would have been reduced to \$10,537.75 and his maintenance arrears would have been reduced to \$9,817.75. However, we are uncertain whether this finding was merely an observation by the court regarding one possible method of apportioning the credit, or instead a finding that the credit should be apportioned that way. Nothing in this opinion should be construed as precluding the court from apportioning the credit differently on remand.

Therefore,

IT IS ORDERED that the circuit court's order is summarily reversed pursuant to WIS. STAT. RULE 809.21(1) and that the cause is remanded for further proceedings consistent with this opinion.

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

Samuel A. Christensen
Clerk of Court of Appeals