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DISTRICT IV

January 8, 2018

To:

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

2017AP233

Greg Griswold v. Laura Wierzbicki (L.C. # 2008FA2597)

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

Greg Griswold, pro se, appeals a circuit court order modifying child support and a subsequent order denying his motion for reconsideration.¹ Respondent Laura Wierzbicki has not filed a responsive brief. Based upon our review of Griswold's brief and the record, we conclude

¹ Griswold also appeals a circuit court order denying his motion to strike Wierzbicki's response to his motion for reconsideration. However, because Griswold's motion to strike was filed after the circuit court had already ruled on Griswold's motion for reconsideration, the issues raised in his motion to strike were moot, and we will not review them on appeal. See *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 (generally, moot issues will not be considered by an appellate court).

at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).² We summarily affirm.

At an October 13, 2016 hearing regarding placement and child support, the circuit court approved a stipulation for a change in placement of Griswold and Wierzbicki's three children. The stipulation gave primary placement of two of the children to Griswold out of state during the 2016-17 academic year, and gave Wierzbicki primary placement of one child. The circuit court took testimony from Griswold and Wierzbicki at the hearing regarding their respective financial situations. The parties also filed financial disclosure statements following the hearing. On November 29, 2016, the circuit court entered an order modifying child support. Wierzbicki was ordered to pay child support of \$681.31 per month to Griswold. Griswold now appeals, arguing that he is entitled to additional monthly support due to errors in the circuit court's calculation of child support.

A circuit court may modify a child support order if the court determines that there has been a substantial change in circumstances. *See* WIS. STAT. § 767.59(1f)(a). Once a substantial change in circumstances has been shown, the circuit court must exercise its discretion as to modification of child support. *Jalovec v. Jalovec*, 2007 WI App 206, ¶21, 305 Wis. 2d 467, 739 N.W.2d 834. Here, it is undisputed that the placement stipulation constituted a substantial change in circumstances. However, Griswold argues that the circuit court erred in calculating Wierzbicki's child support obligation.

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

After reviewing Griswold's brief and the record, we conclude that Griswold has failed to establish that the circuit court erred. The findings on which the circuit court based its child support obligations are supported by the record. The court found that Griswold had a gross monthly income from social security of \$618 and that Wierzbicki had a gross monthly income of \$4,506. The financial disclosure statements submitted by the parties support these findings. The circuit court also found that Griswold had an additional earning capacity of \$828.75 per month. The court added this imputed income (\$828.75) to Griswold's monthly social security income (\$618) and, rounding up by \$0.25, found that Griswold had a monthly income of \$1447 for child support purposes.

Griswold challenges the circuit court's imputation of income to him at the minimum wage of \$7.65, working 25 hours per week, for a total of \$828.75 per month. In making its determination of imputed income, the court considered testimony from Griswold that his schedule required him to drop the children off at school by 7:30 each morning and pick them up at 2:30 in the afternoon. Griswold asserted at the October 13, 2016 hearing that, because his monthly income was from social security and because he was below the full retirement age, the Social Security Administration (SSA) would deduct two dollars from his benefit payment for every one dollar he earned in income. The circuit court directed Griswold to provide the court with evidence from the SSA to support his assertion. The SSA documentation that Griswold submitted showed that he could earn up to \$15,720 in 2016 without having deductions taken from his social security benefits. The court imputed income to Griswold of \$828.75 per month which, when multiplied by twelve months, is within the allowable SSA income limitation, according to the documentation submitted by Griswold. Nothing in Griswold's brief or the record establishes that the circuit court erred in its imputation of income to Griswold.

Griswold also challenges the court's finding that Wierzbicki contributes \$25 per child for health insurance on a monthly basis. However, Griswold stated at the hearing on placement and child support that the insurance "isn't an issue in contention" and that he was "willing to recognize she's contributing \$25 per month per kid for insurance." Given these concessions, we are not persuaded that the circuit court erred when it found that Wierzbicki was contributing \$25 per month toward health insurance, and when it took that contribution into account in its calculation of child support obligations.

The order modifying child support reflects that the circuit court applied the proper legal standard, using the percentage for split placements specified in WIS. ADMIN. CODE § DCF 150.04(3) (through Jan. 2018) to arrive at a guideline percentage of 29% for three children, or 9.67% per child. The court then applied the percentage to each parent's income and concluded that Griswold was responsible for \$139.85 in child support per month for the child placed with Wierzbicki, and that Wierzbicki was responsible for \$871.31 per month for the two children placed with Griswold. The court then calculated the difference between those amounts, resulting in a net child support obligation by Wierzbicki to Griswold of \$731.31 per month. The court then reduced Wierzbicki's monthly obligation by \$50 to take into account the health insurance contributions being provided for the two children placed with Griswold. Based on all of the above, we are satisfied that the order modifying child support reflects a proper exercise of the circuit court's discretion.

We turn next to the circuit court order denying Griswold's motion for reconsideration. We review a circuit court decision on a motion for reconsideration under the erroneous exercise of discretion standard. *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853. Griswold fails to

identify any newly discovered evidence or establish a manifest error of law or fact warranting reconsideration. *See id.*, ¶44. Accordingly, he has failed to persuade us that the circuit court erroneously exercised its discretion in denying his motion.

IT IS ORDERED that the orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Diane M. Fremgen
Acting Clerk of Court of Appeals