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DISTRICT IV

December 9, 2021

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

2020AP75

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

Before Blanchard, P.J., Kloppenburg, and Fitzpatrick, 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).

Greg Griswold, pro se, appeals a child support order of the circuit court. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Griswold and Laura Wierzbicki share three children. The parties litigated placement, custody, and child support for years prior to this appeal. As relevant to this appeal, the circuit court held a hearing on November 12, 2019, on Griswold's motion to modify child support. Specifically, Griswold sought to obtain child support from Wierzbicki. At the hearing, Griswold testified that he is the beneficiary of a trust, the "Greg Griswold Irrevocable Trust" ("the Trust"), which owns the property at which Griswold resides. Griswold testified that, while he receives no distributions from the Trust, he resides on the property rent-free. Griswold estimated that rental payments on the property would be approximately \$500 per month.

Based on the parties' financial disclosure statements and testimony at the hearing, the circuit court found Griswold's available income for child support to be \$1,190 per month. The circuit court found Wierzbicki's available income for child support to be \$4,784 per month. In making its determination, the circuit court considered the fact that Griswold lived rent-free on the Trust's property and included the \$500 rental value in its calculation of Griswold's monthly income. Griswold objected to the circuit court's consideration of his rent-free living. The circuit court stated that it would reconsider its decision if Griswold provided a lease agreement and other documents regarding the payment of rent. In a written order, the circuit court ordered Wierzbicki to pay Griswold \$531.50 per month in child support and ordered Griswold to provide documentation relevant to his argument about rent.

On December 10, 2019, Griswold submitted a lease agreement between himself and his daughter, Ahnnamaria Griswold, as trustee for the Trust. The lease stated that rent for the Trust's property was set at \$500 per month. Griswold also filed what he described as a bank statement for the Trust for the period of October 10, 2019, through November 13, 2019. The statement

showed the Trust's checking account balance as \$1.00. A separate page showed a single \$500 transaction dated December 9, 2019.

In a subsequent written order, the circuit court noted that the submission documenting the \$500 payment did not show the remitting account from which the deposit was made, nor did it show whether the Trust had had any income or made any distributions to Griswold. The circuit court found Griswold's submissions insufficient "to satisfy the court that Griswold is not receiving a benefit from the Trust which should be included in his gross income." The circuit court also invited Griswold to provide additional, more specific, documentation to support his argument "if he wishes to continue to pursue his request for relief." This appeal follows.

We review a circuit court's decision on child support for an erroneous exercise of discretion. See *Ladwig v. Ladwig*, 2010 WI App 78, ¶15, 325 Wis. 2d 497, 785 N.W.2d 664. "We will uphold the circuit court's discretionary decision if the court 'examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'" See *id.* (citation omitted).

On appeal, Griswold contends that the circuit court erroneously exercised its discretion by "miscalculating the child support obligations owed by each parent, because of having imputed Griswold's \$500[] per month residence rental expense" to his monthly income. (Emphasis omitted.)

We are not persuaded that, as Griswold asserts, the circuit court was required to disregard the benefit Griswold received from the Trust in determining child support. The court had a reasonable basis to deem the value of Griswold's rent-free housing as the beneficiary of a trust

qualified to be part of his gross income under WIS. ADMIN. CODE § DCF 150.02(13)(a)10. (Oct. 2021). *See* § DCF 150.02(13)(a)10. (“Gross income” includes “[a]ll other income, whether taxable or not,” subject to certain exceptions not applicable here). Our supreme court’s decision in *Hirth v. Hirth*, 48 Wis. 2d 491, 180 N.W.2d 601 (1970), supports this conclusion. In *Hirth*, the court considered whether a husband’s “right to use without cost to him (under an arrangement with his own company) an apartment in Marina Towers, Chicago, Illinois; and the Cadillac automobile and food and travel expenses furnished to him by his own company” should be treated as “income” for purposes of determining the husband’s ability to pay maintenance. *Hirth*, 48 Wis. 2d at 495. The court concluded that those benefits should be treated as income, stating: “Income ... is to be defined as including all income, including cash equivalences and benefits accruing to him from any source. It is not limited to the salary check” *Id.* (emphasis added).

Although in some respects factually distinguishable from this case, *Hirth* reflects the underlying principle that a circuit court’s determination of income for child support purposes is not limited to only monthly monies received; rather, a court may also consider benefits received. Here, the circuit court considered Griswold’s financial disclosure statement and his testimony regarding benefits received from the Trust in making its initial child support determination. In opposing the circuit court’s decision, Griswold provided vague documents showing only one \$500 payment to the Trust. The documentation did not show where the payment came from and showed the Trust’s checking account balance at only \$1.00, thereby supporting the finding that Griswold was living rent-free. Given the reasoning in *Hirth*, Griswold fails to persuade us that the circuit court’s decision to include the value of Griswold’s rent-free housing in his gross

income was an erroneous exercise of discretion. Accordingly, we affirm the circuit court's ruling.²

For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the order is summarily affirmed. *See* 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

² Wierzbicki did not file a respondent's brief as required by the rules of appellate procedure. *See* WIS. STAT. RULE 809.19(3). The failure of a respondent to file a brief is grounds for summary reversal. *See* WIS. STAT. RULE 809.83(2); *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 259-60, 500 N.W.2d 339 (Ct. App. 1993) (stating summary reversal is an appropriate sanction for a respondent's violation of briefing requirements). However, whether to grant summary reversal as a sanction against a party who fails to file a brief is a decision left to this court's discretion. *See Raz v. Brown*, 2003 WI 29, ¶14, 260 Wis. 2d 614, 660 N.W.2d 647. This court has determined that this appeal does not warrant summary reversal and we decide the appeal based solely upon our review of Griswold's brief, the record, and applicable authorities.