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DISTRICT II

December 22, 2021

To:

Hon. Jon E. Fredrickson
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County
Electronic Notice

James K. Jaskolski
Electronic Notice

Christopher William Rose
Electronic Notice

Angela Denise Cunningham
ADC Law Office, LLC
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1513 In re the marriage of: Christopher William Rose v. Tammy Jo Rose (L.C. #2019FA529)

Before Gundrum, P.J., Neubauer and Reilly, J.J.

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).

Tammy Jo Rose appeals an order determining that the parties' minor children will attend school in the Kenosha Unified School District where their father, Christopher William Rose, resides. 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 (2019-20). For the reasons that follow, we affirm.

Tammy and Christopher married in 2005 and divorced in 2020. Four children were born during the marriage. The parties agreed that Christopher would receive the marital residence located in Pleasant Prairie and that Tammy would find a new home. They stipulated to a placement arrangement wherein during the school year, Christopher would have the children every other week, from after school on Wednesday through Monday morning, and two evenings per week during Tammy's placement periods. In the summer, placement would be equally split.

In advance of the default divorce hearing, the parties resolved all issues except for the decision of where the children would attend school. The marital settlement agreement provides:

> The parties acknowledge that there may be an issue as to where the children attend school in the upcoming fall 2020 school year depending upon where the [mother] moves following her departure from the marital residence which is being awarded to the [father] as to be set forth herein. The parties specifically agree that in the event the parties do not agree upon where the children will attend school in the beginning of the fall of 2020, then this issue shall be addressed by Judge Fredrickson and that a date shall be scheduled with the Court at the time of the final hearing for divorce. In the event the parties have an agreement on school, the hearing date shall be removed from the Courts calendar. The [father] acknowledges that the [mother] may move from the state of Wisconsin for residency purposes into the state of Illinois and that the location of the home she purchases could ultimately affect where the children attend school.

At the time of the April 2020 divorce hearing, Tammy had not decided where she would live. As such, the parties had not reached an agreement on where the children would attend school. Both parties acknowledged and offered testimony relevant to this issue.

Tammy moved to McHenry, Illinois, and in June 2020, Christopher filed a motion asking the circuit court to determine the children's school district for the 2020-2021 school year, asserting his desire that the children attend school in Kenosha. The asserted grounds included that the children had attended Kenosha schools prior to the divorce; the divorce judgment already ordered

the parties' agreed-upon placement arrangement; Christopher's work would interfere with his ability to transport the children to and from schools in McHenry and would impact his periods of placement; and Tammy's lifestyle provided more flexibility such that she could transport the children to and from Kenosha during her periods of placement.

As requested in Christopher's motion, the circuit court reappointed the guardian ad litem (GAL) and scheduled a hearing before the start of the 2020 school year. The GAL informed the court that she was unable to attend the hearing and submitted a letter setting forth her recommendations. For the 2020-2021 school year, she recommended that the two younger children remain in the Kenosha Unified School District while the two older children would transfer to the McHenry School District. For the following year, she recommended that all four children attend school in McHenry. After hearing the parties' arguments, the court ordered that the children would attend school in Kenosha. Tammy appeals.

We conclude that the circuit court properly made the school-choice decision. This potential issue was contemplated by the court and parties at the time of their divorce, and both testified about it at the default hearing. The issue was left open because at the time, Tammy did not know where she would reside. Given the uncertainty of Tammy's location, the marital settlement agreement specifically provided that, in the event the parties could not agree on a school district, the court would make the decision for them. The hearing was held in late July, just before the start of the school year.

Further, the circuit court's decision was a proper exercise of discretion. It considered facts of record, including the agreed-upon placement arrangements and testimony from the divorce hearing, and made additional findings supported by those facts, including that Tammy knew that

in order for their shared placement schedule to function, she would need "to live in reasonabl[y] close proximity" to Christopher. The court listened to the parties' positions and explicitly considered but rejected the GAL's recommendation. The court explained its rationale on the record and in a written order, and reached a demonstrably reasonable result. ***Loy v. Bunderson***, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

To the extent Tammy now argues that the court was without the authority to make the school-choice decision and should have instead awarded decision-making or impasse-breaking authority to either Christopher or Tammy, we agree with Christopher that Tammy forfeited this argument by failing to first make it in the circuit court. *See, e.g.*, ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997); ***Paape v. Northern Assurance Co.***, 142 Wis. 2d 45, 416 N.W.2d 665 (Ct. App. 1987). Additionally, Tammy has not filed a reply brief addressing Christopher's forfeiture argument. We deem this a concession. *See* ***United Coop. v. Frontier FS Coop.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578.

For these reasons, we reject Tammy's remaining arguments, including that the circuit court was required to hold an evidentiary hearing and that the GAL was required to personally appear. Christopher filed the motion and, in an abundance of caution, asked the court to reappoint the GAL. At no time did Tammy file a counter-motion or object to having the court make its decision without taking evidence or in the absence of the GAL. Tammy never sought reconsideration. We will not consider these arguments for the first time on appeal.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2019-20).

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

Sheila T. Reiff
Clerk of Court of Appeals