



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

November 7, 2024

To:

Hon. Rhonda L. Lanford
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Lauri Roman
Electronic Notice

John P. Louderman III
Electronic Notice

Ryan Andrew Sey
Electronic Notice

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

2022AP2029

In re the marriage of: Linda Marie Sey v. Ryan Andrew Sey
(L.C. # 2011FA354)

Before Kloppenburg, P.J., Graham, and Taylor, 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).

Ryan Sey, pro se, appeals a circuit court order that denied Ryan's motion to modify legal custody, physical placement, and child support as to the minor child Ryan shares with his ex-wife, Linda Sey.¹ Ryan also appeals a subsequent order directing him to pay a portion of Linda's guardian ad litem (GAL) and attorney fees and requiring that any future motion by Ryan in this

¹ Because the parties share a surname, we refer to them by their first names for clarity.

case be reviewed and approved by the circuit court before a hearing will be set on the motion.² Based on 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. We summarily affirm.

Ryan and Linda were divorced in September 2011. The judgment of divorce established legal custody, physical placement, and child support as to the parties' minor son. In March 2015, the circuit court awarded sole legal custody for medical decisions and primary physical placement to Linda. In February 2020, the court commissioner denied Ryan's motion to modify legal custody and physical placement. In September 2021, the court commissioner denied another motion by Ryan to modify legal custody and physical placement. In November 2021, the court commissioner granted Linda's motion to modify child support. In March 2022, after a hearing de novo, the circuit court denied Ryan's motion to modify legal custody and physical placement and ordered a modification of child support.

In June 2022, Ryan again moved to modify legal custody, physical placement, and child support. By letter dated September 19, 2022, the GAL recommended temporarily awarding

² In addition, Ryan asserts errors related to prior final circuit court orders and decisions by the family court commissioner. However, the notice of appeal, filed January 25, 2023, brings before this court only the circuit court's November 30, 2022 order denying Ryan's motion to modify legal custody, physical placement, and child support, and the January 5, 2023 order as to fees and requiring the court's pre-approval for future motions by Ryan. *See* WIS. STAT. § 808.04(1) (notice of appeal must be filed within ninety days of final order); WIS. STAT. RULE 809.10(1)(e) (timely notice of appeal necessary to give this court jurisdiction over an appeal). Furthermore, a court commissioner decision is not directly appealable and may be reviewed only by seeking a de novo hearing in the circuit court. *See State v. Trongeau*, 135 Wis. 2d 188, 191-92, 400 N.W.2d 12 (Ct. App. 1986) (decisions of court commissioners are not appealable); WIS. STAT. § 757.69(8) (party may obtain review of court commissioner's decision by seeking a de novo hearing in the circuit court). Accordingly, we do not address Ryan's arguments as to prior final circuit court orders or decisions by the court commissioner, which are not before this court in this appeal.

All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Linda sole legal custody and primary physical placement and referring this matter for a custody study. On September 21, 2022, the commissioner denied Ryan's motion to modify legal custody, physical placement, and child support, and followed the GAL's recommendations. Ryan requested a hearing de novo, which the circuit court held on November 7, 2022. At the hearing, the GAL reaffirmed his September 19, 2022 recommendation. Following the hearing, the circuit court denied Ryan's motion to modify legal custody, physical placement, and child support, and ordered that the court commissioner's September 21, 2022 order would remain in effect.

Linda moved for an award of her GAL and attorney fees based on Ryan's excessive and unreasonable litigation and inappropriate contacts with Linda's attorney and the GAL. After a hearing, the circuit court found that Ryan had engaged in unreasonable and excessive litigation and inappropriate contacts with Linda's attorney and the GAL. The court ordered Ryan to pay a portion of Linda's GAL and attorney fees and also ordered that any future motion by Ryan in this matter must be reviewed and approved by the circuit court before a hearing would be set on the motion.

A party seeking to modify legal custody, physical placement, or child support must show that there has been a substantial change of circumstances since the entry of the last order. WIS. STAT. §§ 767.59(1f)(a) (child support), 767.451(1)(b)1. (custody and placement); *see also Shulka v. Sikraji*, 2014 WI App 113, ¶24, 358 Wis. 2d 639, 856 N.W.2d 617 (burden is on the moving party to show a substantial change of circumstances). "A substantial change of circumstances 'requires that the facts on which the prior order was based differ from the present facts, and the difference is enough to justify the court's considering whether to modify the order.'" *Shulka*, 358 Wis. 2d 639, ¶24 (quoted source omitted). We independently review

whether a party has shown a substantial change of circumstances, but we uphold the circuit court's factual findings unless they are clearly erroneous. *Id.*, ¶¶14, 25.

The circuit court's decision to award attorney and GAL fees based on overtrial is a matter within the court's discretion. See *Zhang v. Yu*, 2001 WI App 267, ¶12, 248 Wis. 2d 913, 637 N.W.2d 754. "Whether excessive litigation occurred is a question of historic fact to be determined by the circuit court. We will not reverse that determination unless it is clearly erroneous." *Id.*, ¶11. We review an order limiting a litigant's ability to pursue future litigation in a matter for an erroneous exercise of discretion. See *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 747-48, 468 N.W.2d 760 (Ct. App. 1991).

Ryan argues that the circuit court erred by denying his motion to modify legal custody, physical placement, and child support. Ryan argues that the history of the dispute between the parties, dating back to 2015, supports awarding Ryan sole legal custody and primary physical placement and modifying the child support award. Ryan asserts that, over the course of that history, Linda and the GAL have repeatedly lied about the facts and that the court commissioner and the circuit court were biased against him in their rulings. However, Ryan fails to develop an argument, based on the relevant legal standards and with citations to the record, that there has been a substantial change of circumstances following the court's March 2022 order that would support a modification to legal custody, physical placement, or child support. See *Shulka*, 358 Wis. 2d 639, ¶24 (circuit court may modify placement, custody, and support only upon a showing of a substantial change in circumstances). That is, Ryan argues that the facts have always supported legal custody, physical placement, and child support in his favor, rather than demonstrating a change of circumstances by comparing the facts from March 2022 to the facts at the time of the hearing in November 2022 and explaining why specific changes in those facts

support a modification of legal custody, physical placement, or child support. Accordingly, Ryan has failed to show that the court erred by denying his motion.

Ryan also fails to develop a persuasive argument, based on the relevant legal standards and facts in the record, that the circuit court erroneously exercised its discretion by awarding GAL and attorney fees and requiring that any future filing by Ryan be approved by the circuit court before a hearing would be scheduled. *See Minniecheske*, 161 Wis. 2d at 748 (“A court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant’s access to the court.” (quoted source omitted)). Rather, Ryan contends that his filings were “necessary” based on the history of the case and the actions of others and again asserts that the court is biased against him. However, Ryan does not meaningfully address the basis of the court’s decision, which was that Ryan was repeatedly litigating the same issues that had already been decided based on his personal belief that the court commissioner and the court had reached the wrong results, and that Ryan’s inappropriate communications to Linda’s counsel and the GAL had unnecessarily increased their fees. Accordingly, Ryan has failed to establish that the court erroneously exercised its discretion by ordering that he pay some of Linda’s GAL and attorney fees and by limiting Ryan’s ability to file motions.

Finally, Linda has moved for costs and attorney fees and an order limiting Ryan’s ability to file future appeals in this matter as sanctions for pursuing a frivolous appeal. *See* WIS. STAT. RULE 809.25(3). However, while Ryan has failed to sufficiently develop his arguments in a meaningful manner that would establish that he is entitled to relief, we decline to find that Ryan’s appeal was pursued in bad faith or without any reasonable basis in law. *See* RULE 809.25(3)(c). Accordingly, we do not impose sanctions for a frivolous appeal.

Therefore,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the motion for sanctions is denied.

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

Samuel A. Christensen
Clerk of Court of Appeals