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DISTRICT IV

November 21, 2024

To:

Hon. Lynn M. Rider
Circuit Court Judge
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Kenneth Z. Hollister
Electronic Notice

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

2023AP1579

In re the marriage of: Jennifer N.E. Jones v. Kenneth Z. Hollister
(L.C. # 2021FA86)

Before Blanchard, 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).

Kenneth Hollister, pro se, appeals a circuit court order that modified custody and placement of the parties' two minor children. In that order, the court provided that the children shall have visitation with their mother, Jennifer Jones, according to a graduated schedule. After reviewing the briefs and record, we conclude at conference that this case is appropriate for

summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We summarily affirm the circuit court’s order.

The appellant’s brief contains numerous complaints about the circuit court proceedings in this matter. However, his brief does not contain citations to the record, as required by WIS. STAT. RULE 809.19(1)(d). Nor does his brief develop arguments that apply relevant legal authority to the facts of record, and instead relies largely on conclusory assertions. “A party must do more than simply toss a bunch of concepts into the air with the hope that either the ... court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Consequently, this court need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463 (lack of record citations), *abrogated on other grounds by Wiley v. M.M.N. Laufer Family Ltd. P’ship*, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236; *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). Although we make some allowances for the failings of parties who, as here, are not represented by counsel, “[w]e cannot serve as both advocate and judge,” *Pettit*, 171 Wis. 2d at 647, and will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf, *Jackson*, 229 Wis. 2d at 337.

Although we affirm the circuit court’s order for the reason stated above, we choose to briefly explain why some of Hollister’s arguments, as best we understand them, lack merit.

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

Hollister asserts that the court and the children's guardian ad litem did not take the children's best interests into consideration. However, in the order that Hollister is appealing, the court expressly found "that it would be in the best interests of the children to spend time with their mother." Child custody and placement determinations are committed to the sound discretion of the circuit court, *Gould v. Gould*, 116 Wis. 2d 493, 497, 342 N.W.2d 426 (1984), and Hollister does not present any developed argument that the court erroneously exercised its discretion.

Hollister also expresses concern about the children being around Jones's partner during visitation because, Hollister asserts, according to an internet search that Hollister conducted, Jones's partner has a criminal history. Additionally, Hollister asserts that Jones has a pattern of being delinquent with child support payments, and that she does not maintain living conditions that are safe and sanitary for the children. However, Hollister does not support these allegations with references to the record on appeal, regarding either the allegations themselves or regarding the circuit court's consideration of the allegations, to the extent they were presented to the court. Further, this court cannot independently determine from the record whether Hollister's allegations were presented to or considered by the circuit court at any of the hearings held in this case because Hollister did not make the transcripts a part of the record on appeal. It is an appellant's duty to ensure that the record is sufficient to address the issues raised on appeal. *See State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). In the absence of a transcript, we must assume "that every fact essential to sustain the [circuit court's] exercise of discretion is supported by the record." *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979).

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

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

Samuel A. Christensen
Clerk of Court of Appeals