COURT OF APPEALS
DECISION
DATED AND FILED

November 21, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 01-0296

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL.
MARSHA M. MACHOTKA,

PETITIONER-APPELLANT,

V.

WILLIAM J. BARTLETT,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Richland County: EDWARD E. LEINEWEBER, Judge. *Affirmed*.

Before Vergeront, P.J., Dykman and Deininger, JJ.

¶1 DYKMAN, J. Marsha Machotka appeals from an order denying her motion to establish a past child support obligation against William Bartlett. Bartlett argues that Machotka's motion is barred by WIS. STAT. § 767.32 (1997-

98)[1] and claim preclusion. We agree that Machotka has not shown she has met the requirements of § 767.32 and therefore affirm.

Background

¶2 The relevant facts are not disputed. Amanda was born in 1981 to Marsha Machotka and William Bartlett. Machotka and Bartlett did not marry, and Amanda resided with Machotka. Although Bartlett provided some financial assistance for support of Amanda from May 1981 to December 1997, he was not under a court order to provide child support.

¶3 The State filed a petition on Machotka's behalf under WIS. STAT. § 767.62 on December 12, 1997, requesting that Bartlett be ordered to pay child support and health care expenses under WIS. STAT. § 767.51, and for any other appropriate relief. Machotka and Bartlett appeared pro se. During a hearing, Bartlett acknowledged his paternity of Amanda. In a document entitled "Final Order for Child Support," the court ordered Bartlett to pay seventeen percent of his gross income toward the support of Amanda, until she reached age eighteen, or until age nineteen if she was pursuing a high school education.

¶4 Machotka moved for a determination regarding past child support on April 27, 2000. In response, Bartlett filed a motion to dismiss on the grounds of

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

Under current law, liability for past support is limited to the period after the motion for support is filed unless the moving party can show he or she was induced to delay commencement of the action due to: (1) duress or threats; (2) actions, promises or representations by the other party; or (3) actions by the other party to evade proceedings. *See* 1999 Wis. Act 9, § 3065di; WIS. STAT. § 767.62(4m) (1999-2000). This provision took effect on May 1, 2000, three days after Machotka moved to establish past support.

claim and issue preclusion, and because Amanda had reached the age of nineteen. In an oral decision, the circuit court concluded that claim preclusion barred Machotka's motion. The court did not reach the issue whether a parent could seek back support for a child who has reached majority. The court dismissed Machotka's motion in an order on December 21, 2000. Machotka appeals.

Opinion

¶5 Machotka contends that the circuit court erred in dismissing her motion because WIS. STAT. ch. 767 does not require that "current and past support issues be handled contemporaneously." We agree that there is no express requirement in the statutes to address both current and past support issues at the same time. However, WIS. STAT. § 767.32(1) states: "A revision, under this section, of a judgment or order with respect to an amount of child or family support may be made only upon a finding of a substantial change in circumstances."

¶6 Machotka does not contend that there has been a substantial change in circumstances justifying a revision of the order. Rather, she argues that she was not required to show a change in circumstances unless her motion applied "to the issue of current support." But Machotka's contention is not supported by the language of WIS. STAT. § 767.32(1). The statute makes no distinction between current and past support but rather requires that all revisions to a child support order be supported by a substantial change in circumstances. There is no dispute that the circuit court's "final order" would have to be revised if Machotka's motion were to be granted, so the requirements of the statute apply. Machotka does not assert on appeal, nor did she in the circuit court, that the failure to raise the issue of past support is a substantial change in circumstances. Furthermore,

WIS. STAT. § 767.32(1m) provides that in an in action under § 767.32(1), a court "may not revise the amount of child support … that has accrued, prior to the date that notice of the action is given to the respondent, *except to correct previous errors in calculations*." (Emphasis added.) Together, subsections (1) and (1m) effectively preclude parents from moving to revise an order for child support to include back support when back support was not included in the original order. *See* ***Cameron v. Cameron***, 209 Wis. 2d 88, 100-01, 562 N.W.2d 126 ("As of June 11, 1994, a circuit court may modify only prospectively the amount of child support due under an order or judgment providing for child support pursuant to WIS. STAT. § 767.32(1m).") Accordingly, Machotka's motion cannot succeed.

¶7 Both the circuit court and the parties, while each acknowledging WIS. STAT. § 767.32, focused their discussion on whether Machotka's claim satisfies the elements for claim preclusion. In support actions, however, it is the statute and not the doctrine of claim preclusion that determines whether a claim for support is barred. *See* ***Beaupre v. Airriess***, 208 Wis. 2d 238, 244, 560 N.W.2d 285 (1997) ("Judgment provisions regarding child custody and support are not subject to traditional principles of claim preclusion and may be altered even after a final judgment. However, Wisconsin courts have long held that judgments of custody and support based on a certain state of facts should be given the effect of claim preclusion as long as the state of facts has not materially changed.") (Citations omitted.) Section 767.32 already takes the principles of claim preclusion into consideration by barring modifications of the support order unless there has been a substantial change in circumstances. Because WIS. STAT. § 767.32 is dispositive, we do not reach the issue whether the elements for claim preclusion have been met. *See* ***Vanstone v. Town of Delafield***, 191 Wis. 2d 586,

595, 530 N.W.2d 16 (Ct. App. 1995) (holding that the court of appeals may affirm a decision on grounds not relied upon by the circuit court).

By the Court.—Order affirmed.

Not recommended for publication in the official reports.