COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-3040 **Cir. Ct. No. 99FA000065**

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

IN RE THE MARRIAGE OF:

GINA M. MCMANNES N/K/A GINA M. WELP,

PETITIONER-APPELLANT,

V.

SCOTT L. MCMANNES,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Iowa County: WILLIAM D. DYKE, Judge. *Affirmed*.

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Gina Welp appeals the circuit court's order setting child support. The issue is whether the circuit court erred in basing support on Welp's earning capacity rather than her actual income. We affirm.

¶2 Welp contends that the circuit court should not have used her earning capacity to set support because it made no finding that she is shirking or that there was a voluntary or self-inflicted change in her financial circumstances. As explained in the cases cited by Welp, the law requires that the circuit court make a finding of shirking to impute income in setting child support. *See* ***Smith v. Smith***, 177 Wis. 2d 128, 134-35, 501 N.W.2d 850 (Ct. App. 1993); ***Abitz v. Abitz***, 155 Wis. 2d 161, 166, 455 N.W.2d 609 (1990). Even so, we reject Welp's appellate challenge to the circuit court's award because we conclude that the circuit court met its obligation of finding that Welp was shirking.

¶3 "'Shirking' is an unfortunate term because it connotes improper behavior, but, under the case law, it encompasses behavior that is well motivated." ***Chen v. Warner***, 2004 WI App 112, ¶1, — Wis. 2d —, 683 N.W.2d 468. "Shirking is an employment decision to reduce or forgo income that is both voluntary and unreasonable under the circumstances." ***Id.***, ¶11. "The burden of showing reasonableness is on the party who reduces or forgoes income." ***Id.***, ¶14. "That party has the burden of justifying his or her decision." ***Id.*** We will defer to the circuit court's conclusion about the reasonableness of a decision to forgo income "if the circuit court reached a conclusion that a reasonable court could reach based on the record before the court." ***Id.***, ¶13.

¶4 There is no dispute that Welp's decision to leave her job was not voluntary, so we address only the reasonableness of her decision not to seek alternate employment. When Welp learned that her contract would not be renewed, she decided to enroll full-time in cosmetology school rather than attempt to find employment that would provide a comparable level of pay. Based on the record before the circuit court, the court could conclude that Welp's decision to go to school was not reasonable given the children's need for support, Welp's limited

economic resources, and the income of the children's father. Although the circuit court did not specifically use the term "shirking," the circuit court's comments were sufficient to constitute the requisite finding. Because Welp did not meet her burden of showing that her choice to go back to school was reasonable in light of the children's financial needs, the circuit court properly used her earning capacity in setting support.

By the Court.—Order affirmed.

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