

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 23, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP1250

Cir. Ct. No. 2003FA95

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

JANINE F. GRUNWALD,

PETITIONER-RESPONDENT,

v.

WILLIAM M. GRUNWALD,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Sauk County: JAMES EVENSON, Judge. *Affirmed.*

Before Higginbotham, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. William Grunwald, *pro se*, appeals a circuit court order denying his motion to modify his child support obligation. He also appeals

an order denying his motion for reconsideration. He argues that the circuit court made various errors when it denied his motions. We affirm.

¶2 Grunwald contends that the circuit court erroneously exercised its discretion because it did not reduce his child support obligation based on two arguments he first raised before the court commissioner: (1) that one of his children had reached the age of nineteen; and (2) that one of his children had moved to Las Vegas with his ex-wife without his permission. On appeal from the court commissioner's decision, Grunwald did not raise these issues in his motion to the circuit court. Because he did not raise the issues before the circuit court, he may not raise them in this appeal. *See Jackson v. Benson*, 218 Wis. 2d 835, 901, 578 N.W.2d 602 (1998) (we will not review issues raised for the first time on appeal).

¶3 Even if he had preserved the issues for appeal, however, we would reject his arguments.¹ Although his support obligation stopped accruing as to his oldest child when that child reached the age of majority as provided in WIS. STAT. § 767.511(4) (2005-06),² his obligation to pay the already accrued child support remains. The fact that his younger child moved to Las Vegas has no bearing on the support order because Grunwald did not have physical placement of that child due to his incarceration.

¹ Grunwald filed a motion for the production of documents with the circuit court that, very broadly construed, may have been an attempt to bring these issues to the circuit court's attention.

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶4 Grunwald next contends that the circuit court erroneously exercised its discretion in denying the motion to modify child support because: (1) it did not consider the total economic circumstances of the parties; (2) it based the support obligation on his capacity to earn instead of his actual earnings; (3) it did not set support according to the needs of the children and the ability of the non-custodial parent to pay; and (4) it did not adequately explain why it deviated from the percentage standards under WIS. STAT. § 767.25(1n) (2003-04). The crux of Grunwald's arguments is that his child support obligation should have been reduced because he is incarcerated and earns only nominal prison wages. The circuit court decided, based on all of the circumstances presented in this case, that Grunwald's incarceration was not a reason to reduce his child support. Because the court considered the facts of this case in light of the appropriate legal considerations and reached a decision that was reasoned and reasonable, the circuit court properly exercised its discretion.

¶5 Grunwald also argues that the court commissioner erred as a matter of law when he failed to record a June 28, 2005, child support modification hearing that was held on the telephone. Grunwald, however, had a *de novo* appeal to the circuit court of the court commissioner's decision. We do not review the actions of the court commissioner.

¶6 Finally, Grunwald argues that the circuit court erroneously exercised its discretion when it denied his WIS. STAT. § 806.07(1)(h) motion for relief from the order denying his motion for modification of his child support. The circuit court treated Grunwald's motion as a motion for reconsideration and denied it. The circuit court did so because the motion did not properly argue the law under § 806.07; despite its label, the document was a motion for reconsideration. And,

for the reasons we have explained in this opinion, the circuit court properly decided the merits of that reconsideration order.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

