

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 13, 2009

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. 2008AP1012

Cir. Ct. No. 1993FA228

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

CHRISTINE LOWREY,

JOINT-PETITIONER-APPELLANT,

v.

PAUL MAGNUSON,

JOINT-PETITIONER-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

Before Vergeront, Lundsten and Bridge, JJ.

¶1 PER CURIAM. Christine Lowrey appeals an order that denied her motion to increase the amount of child support arrearage payments being made by

her ex-husband, Paul Magnuson, due to an alleged substantial change in circumstances, and instead granted Magnuson's countermotion to enforce the payment schedule set forth in a 1996 court-approved stipulation. We affirm for the reasons discussed below.

BACKGROUND

¶2 Lowrey and Magnuson were divorced in 1993. Their marital settlement agreement included provisions for Magnuson to pay Lowrey child support for the pair's two minor children. In 1996, Magnuson moved to reduce his child support payments after he was arrested on criminal charges. The parties resolved the support modification motion by entering into a stipulation under which Magnuson would continue to accrue "suspended" child support obligations in the amount of \$500 per month while in prison, and would resume making current support payments six months after his release from prison. The stipulation further provided that any existing arrearages were purged, and Magnuson would make payments on the "Permitted Accrued Arrearage" from the suspended payments that accumulated while he was in prison at the interest-free rate of \$100 per month beginning eighteen months after his release from prison and increasing to \$200 per month beginning twenty-four months after his release from prison until that arrearage was paid in full.

¶3 Magnuson was released from prison in November of 2001, and he began making current child support payments and payments on the suspended arrearage according to the parties' stipulation. At some point, the payments for both the current support and the suspended arrearage were made by means of a combined monthly \$800 wage assignment through the Dane County Child Support Agency.

¶4 Magnuson's current child support obligation ended on June 5, 2007, when the parties' youngest child graduated from high school. Magnuson's employer then reduced his monthly wage assignment to \$200, in accordance with the stipulation. The Dane County Child Support Agency, however, took the position that the wage assignment should continue at the \$800 monthly rate pursuant to WIS. STAT. § 767.75(1m) (2007-08),¹ which provides that a wage assignment should continue in the amount of a terminated obligation until any arrearage is paid in full. Eventually, Lowrey moved to increase the amount of the arrearage payments set forth in the stipulation based upon a substantial change in circumstances, and Magnuson moved to enforce the stipulation under which he would need to pay only \$200 per month.

¶5 The circuit court began taking evidence at a hearing on the parties' cross-motions. Midway through Magnuson's testimony, however, the court interrupted the proceeding and noted that, if the stipulation was enforceable as a matter of law, the court would not need further evidence on whether there had been a change in circumstances. After hearing argument, the court ruled that, unlike a stipulation attempting to prohibit any modification of an ongoing current child support obligation, a stipulation dealing with the payment of child support arrearages was not against public policy and was therefore enforceable. The court concluded that the stipulation at issue here was an enforceable contract because it dealt with an arrearage situation after the children had already reached their majority. The court ordered monthly payments in the amount of \$200 to continue until the arrearage had been paid in full. The court noted that it did not have to

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

reach the question of a substantial change in circumstances, which it would simply assume existed for the purposes of its decision,² and also clarified that its decision was not based on estoppel. Lowrey appeals.

DISCUSSION

¶6 Lowrey raises a number of arguments on appeal, which we will address in turn. The parties do not address what standard of review should apply to the various issues, and we do not find it necessary to resolve that question because we would reach the same result under either a discretionary or *de novo* standard of review.

¶7 First, Lowrey claims that child support arrearages should be treated no differently than ongoing child support obligations which, for public policy reasons, cannot be immunized from future modification by stipulation. We agree with the circuit court, however, that *Motte v. Motte*, 2007 WI App 111, ¶¶23-26, 300 Wis. 2d 621, 731 N.W.2d 294, *review denied*, 2007 WI 114, 302 Wis. 2d 105, 737 N.W.2d 432 (No. 2005AP2776), plainly holds that a court-approved stipulation regarding arrearage forgiveness or compromise is not contrary to public policy, and may be enforced. Because the parties' children here are no longer minors, there can be no dispute that this is purely an arrearage situation, rather than a current support obligation. Accordingly, the stipulation at issue here precludes modification of the arrearage payment schedule based upon a change in circumstances under WIS. STAT. § 767.59.

² The order drafted by counsel, which states that the court actually found a substantial change in circumstances, misstates the court's oral ruling. The court plainly declined to reach the issue by stopping the testimony and making no factual findings regarding the parties' circumstances.

¶8 Second, Lowrey argues that enforcing the stipulation is unfair because Magnuson already benefited by the elimination of existing arrearages when the stipulation was entered, and he now has the means to pay more. We note, however, that at the time the stipulation was entered, Magnuson had a motion pending to reduce his child support based upon his anticipated incarceration. It is impossible to know what support obligation the court would have set if the stipulation had not been reached. Certainly, if the court had modified Magnuson's obligation to 25% of his prison wages, Magnuson would never have accumulated the tens of thousands of dollars in suspended arrearages that Lowrey is now collecting in place of what appears to have been less than \$5,000 in arrearages which were purged. Therefore, even assuming the court could now decide not to enforce the stipulation based on considerations of fairness, we are not persuaded that the stipulation is inherently unfair to Lowrey.

¶9 Third, Lowrey alleges that Magnuson perjured himself at the hearing regarding his income, and complains that she was not given an opportunity to present evidence of that perjury at the hearing. As we explained above, however, the circuit court did not find it necessary to take further evidence relating to the parties' current circumstances once it determined that the stipulation was enforceable. We agree that, since the stipulation regarding arrearages could not be modified by the court based upon any change in the parties' circumstances, any evidence regarding those circumstances was irrelevant.

¶10 Lowrey's fourth argument is that Magnuson's assignment of income from his employer should have continued at the rate of \$800 per month under WIS. STAT. § 767.75(1m). While that section does provide for the continuation of an assignment of income following the termination of a current support obligation to pay arrearages that accumulated under a payment order, we are not persuaded that

it applies here, where the arrearages had been suspended and had not yet actually come due for payment under a court-approved stipulation. It is the parties' stipulation which controls, rather than the statute.

¶11 In sum, we conclude that the circuit court properly determined that Magnuson should continue to pay \$200 per month toward the suspended child support arrearage.

By the Court.—Order affirmed.

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

