

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 24, 2012

A. John Voelker
Acting 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. 2011AP140

Cir. Ct. No. 2007FA4

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

TAMMY LYNN VERHEIN,

PETITIONER-APPELLANT,

V.

BOYD THOMAS VERHEIN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Shawano County:
JAMES R. HABECK, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Tammy Verhein appeals a postdivorce order modifying child support. Tammy argues the circuit court erred as a matter of law by finding a substantial change in circumstances. We affirm.

¶2 Tammy and Boyd Verhein were divorced on October 22, 2008, after thirteen years of marriage. At the time of the divorce, Tammy was employed in health care management earning a monthly base salary of \$5,531. Boyd was employed as a skilled laborer earning a gross monthly income of \$2,773. The couple had two minor children. The divorce judgment provided that Tammy pay \$299 monthly child support.

¶3 On December 23, 2008, the circuit court modified child support because Tammy had been demoted and her new monthly income was \$4,507. The court set child support at \$147 monthly.¹ An adjustment to physical placement led to another child support modification on February 11, 2010. At that motion hearing, it was determined that Tammy's income had increased to \$5,161 monthly and Boyd's income had increased to \$3,357 monthly. The court increased monthly child support from \$147 to \$200.

¶4 Boyd lost his job shortly thereafter, and his unemployment compensation income was \$1,573 monthly. At a modification hearing on May 12, 2010, the court set monthly child support at \$338.25.

¶5 Boyd regained employment and Tammy sought another modification of child support. The court held a hearing on November 10, 2010, and it was determined that Tammy's monthly income had increased to \$5,503. Boyd was earning \$3,466 monthly working in maintenance. The circuit court found a substantial change of circumstances and set monthly child support at \$350. Tammy now appeals.

¹ Maintenance was also modified but is not an issue in this appeal.

¶6 Modification of child support is committed to the sound discretion of the circuit court. *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We generally look for reasons to sustain the circuit court’s discretionary decision. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968). We may search the record to determine if it supports the court’s discretionary determination. *Randall*, 235 Wis. 2d 1, ¶7. We will sustain a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). Findings of fact will be upheld unless clearly erroneous. WIS. STAT. § 805.17(2).²

¶7 Tammy insists “the present appeal is predicated upon the order of February 11, 2010” Tammy argues “the real issue in this case involves a comparison of the situation in November 2010 with the situation in February 2010.” According to Tammy, the parties’ incomes in November 2010 were virtually the same as in February and “the only change from comparing the circumstances in November against those in February was a net 3.4% increase in income on Tammy’s side of the ledger.” Tammy contends that a 3.4% net change is not a substantial change of circumstances as a matter of law.

¶8 Tammy’s premise is invalid. The most recent child support order was from the May 12, 2010 modification hearing.³ Quite simply, the February

² All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise stated.

³ The order based on the court’s oral decision at the May 12, 2010 hearing was filed on July 15, 2010.

order was not the operative order. Tammy insists the modification in May was “temporary” and the court “saw this as likely being only a temporary situation.” However, she provides no citation to legal authority that would allow us to ignore the most recent operative order, even assuming for the sake of argument that the May order was a “temporary situation.” The argument will therefore not be further considered. *See Kruczek v. DWD*, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 256.

¶9 Nor are we persuaded by Tammy’s argument that the circuit court retried the whole issue of child support. *See Beaudoin v. Beaudoin*, 2001 WI App 42, ¶6, 241 Wis. 2d 350, 625 N.W.2d 619. The court modified its most recent order to reflect a distinct and definite change in the parties’ financial circumstances. A substantial change of circumstances includes a change in the needs of the child, a change in the payer’s income or earning capacity, or any other factor the court determines is relevant. *See WIS. STAT. § 767.59(1f)(c)1.-4.*

¶10 Here, an adequate basis exists in the record to support the court’s modification and its findings are not clearly erroneous. *See WIS. STAT. § 805.17(2).* The court noted Boyd’s change of income since the May hearing, which the court found “would have been enough” to constitute a substantial change of circumstances. The court also stated:

[B]ut then we found out that Mrs. Verhein also changed, so her income changed some too. So that’s what I was looking at. I believe there is a substantial change of circumstances and that they both had changed. Now, also Mr. – as I mentioned, Mr. Verhein has higher income, but he’s got that higher necessary expense for commuting too, so I have to recognize that.

¶11 The child support agency had informed the court that based on both parents’ financial resources, and shared placement, the percentage standard would

obligate Tammy to pay \$382 monthly child support. The court deviated from the \$382 percentage standard to set monthly child support at \$350. In doing so, the court credited Tammy for additional expenses, but also noted Boyd's expenses in commuting. The court employed a process of reasoning based upon relevant facts, and reached a reasonable conclusion. The court properly exercised its discretion.

By the Court.—Order affirmed.

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

