COURT OF APPEALS
DECISION
DATED AND RELEASED

JANUARY 14, 1997

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

NOTICE

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

No. 96-2063-FT

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

In re the Marriage of:

SHANNON G. POIRIER,

Petitioner-Appellant,

v.

PAULA M. POIRIER,

Respondent-Respondent.

APPEAL from an order of the circuit court for Chippewa County: THOMAS J. SAZAMA, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Shannon Poirier appeals an order modifying the amount of child support Paula Poirier must pay but denying Shannon's request that the court use Paula's earning capacity rather than her actual earnings to

determine the support obligation.[1] Because the trial court properly exercised its discretion, we affirm the order.

In the divorce judgment, Shannon was awarded custody of the four children and Paula was ordered to pay him twenty-five percent of her gross income as child support. Each of the parties was granted the tax deduction for two children. After the divorce, Paula enrolled in the Chippewa Valley Technical College and has completed nine credits toward her goal of receiving a degree as a paralegal. Following medical problems and a traffic accident injury, and concerned that her job was in jeopardy because of downsizing, Paula left her fulltime job to take a halftime position. She did not take any additional courses the next semester. Shannon then requested a modification of the child support order, arguing that Paula's choice to voluntarily reduce her income without taking additional courses establishes that she is "shirking" and the trial court should calculate her support obligation based on her earning capacity rather than her actual earnings. The trial court raised the percentage Paula must pay from twenty-five percent to thirty-one percent, awarded Shannon all four tax deductions, but declined to find that she was shirking.

Modification of child support rests within the sound discretion of the circuit court and will not be overturned on appeal unless the court has misused its discretion. ***Jacquart v. Jacquart***, 183 Wis.2d 372, 381, 515 N.W.2d 539, 542 (Ct. App. 1994). Because the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary determinations. ***Schneller v. St. Mary's Hosp.***, 155 Wis.2d 365, 374, 455 N.W.2d 250, 254 (Ct. App. 1990). Whether specific facts constitute shirking is a question of law, but this court gives weight to the trial court's decision because the question of reasonableness is intertwined with factual findings. ***Van Offern v. Van Offern***, 173 Wis.2d 482, 492, 496 N.W.2d 660, 663 (Ct. App. 1982).

The trial court reasonably concluded that Paula's reduction of income did not constitute shirking. Shirking is established when the obligor intentionally avoids the duty to support or unreasonably diminishes his or her income in light of the support obligation. ***Id***. The law recognizes the right of an

[1] This is an expedited appeal under RULE 809.17, STATS.

obligor to make career decisions which, in some instances, will diminish the income available to meet the obligor's support duty. ***Id***. A prudent career decision over the long-term may temporarily adversely affect the obligor's income. ***Id***. Here, there is no evidence that Paula seeks to intentionally avoid her support obligations. The only question, therefore, is whether she unreasonably diminished her income in light of the support obligations. The trial court properly determined that Paula's career choice was not unreasonable under the circumstances. Paula's concern over the stability of her fulltime job makes it reasonable for her to retrain herself for the purpose of finding more stable employment. A temporary reduction in income during this retraining period can be a reasonable career choice.

Shannon complains that Paula was not enrolled in school at the time of the hearing. In light of her recent medical problems, some hiatus in her education is not unreasonable. The trial court has continuing jurisdiction in child support matters and, if Paula does not undertake her educational program within a reasonable time with a sufficient concentration of credits, the court may conclude at some future date that her reduction to parttime employment was unreasonable. Paula does not have the luxury of pursuing private interests secure in the knowledge that Shannon will provide for the children's needs. *See* ***Sellers v. Sellers***, 201 Wis.2d 578, 588, 549 N.W.2d 481 485 (1996). However, she does have the right to diligently pursue educational advancement with a reasonable expectation that it will produce long-term economic stability.

By the Court.—Order affirmed.

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