COURT OF APPEALS
DECISION
DATED AND FILED

January 15, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2509-FT

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

IN RE THE MARRIAGE OF:

KIMBERLY KAY ARNESON N/K/A KIMBERLY KAY TOLIFSON,

PETITIONER-APPELLANT,

V.

ROBERT ERIC ARNESON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Juneau County: JOHN W. BRADY, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Roggensack, JJ.

PER CURIAM. Kimberly Arneson, n/k/a Kimberly Tolifson, appeals from an order finding her in contempt of court for refusing to sign IRS Form 8332 (claim of child as exemption) after the circuit court clarified this aspect

of a previous judgment of divorce. Because we conclude that the circuit court could, and correctly did, clarify its previous decision, we affirm.

Kimberly and Robert Arneson were divorced in 1996. The following provision appeared in the divorce judgment:

> The Court finds that based upon the present circumstances Robert Eric Arneson shall be entitled to claim the minor children of the parties as dependents for federal and state income tax purposes, so long as he is current with his child support obligation as of December 31st of any year for which he is seeking to claim the exemptions. It is further ordered by the Court that if Kimberly Kay Arneson has income that exceeds $15,350.00 under the present tax codes, or, if as a result of any amendment of the tax codes, she shall benefit by receiving a refund of withholdings or a reduction in tax liability, she shall be entitled to claim Dallas Arneson as a dependent for income tax purposes, and Robert shall be entitled to claim Brandy and Cody Arneson as dependents.

In 1997, Robert (who was current in his child support obligations) asked Kimberly to sign IRS Form 8332 for all three children, in effect giving him the right to claim all three children as dependents. Kimberly refused, arguing that because she was remarried and her joint tax return with her new husband showed over $106,000 gross income, she was entitled to claim Dallas as her dependent.

In adjudicating the matter, the circuit court determined that: (1) Kimberly herself had earned approximately $4900 in 1996; (2) it should consider only Kimberly's earned income (under the terms of the divorce agreement); (3) including Kimberly's new husband's income in the calculations would be inappropriate because he has no legal obligation to support the children; and (4) Kimberly had violated the terms of the divorce judgment and was in contempt unless she signed IRS Form 8332.

Schultz v. Schultz, 194 Wis.2d 799, 535 N.W.2d 116 (Ct. App. 1995), presented a similar issue. The divorce judgment of Anne and William Schultz had stipulated that if Anne sold, assigned or transferred the house within ten years, William would have the right of first refusal at the offered price. Within the ten-year period, Anne died. When William notified the estate of his intention to exercise his right of first refusal, the estate contended that Anne's death did not constitute a sale, assignment or transfer, and thus did not come under the terms of the divorce judgment. The circuit court determined that the language in the judgment was ambiguous, and clarified the ambiguity in William's favor. The estate appealed.

We affirmed and made the following holdings: (1) a judgment will be interpreted in the same manner as other written instruments, such as contracts; (2) whether a judgment is ambiguous is a matter of law to which we grant no deference; (3) we interpret judgments, like contracts, in light of the whole judgment and the circumstances present at the time of entry; (4) ambiguity exists where the language of a written instrument is subject to two or more reasonable interpretations; and (5) under the standard of review where a circuit court has clarified the ambiguity by subsequent interpretation, we will pay the circuit court deference in resolving the ambiguity. ***Id***. at 805-08, 535 N.W.2d at 118-20. Further, if a reasoned rationale supports the conclusion that the court is clarifying, not modifying, its original decision, we will not reverse. ***Id***. at 809, 535 N.W.2d at 120.

Applying these holdings here, we first determine, as a matter of law requiring no deference to the trial court, that the language in the divorce judgment was ambiguous. Specifically, the words "if Kimberly Kay Arneson has income that exceeds $15,350.00" could be interpreted to refer to any income imputed to

Kimberly, for example, through remarriage and the application of Wisconsin's marital property laws, as well as to Kimberly's personal earnings.

Interpreting this ambiguous language in light of the circumstances at the time of entry, we conclude that the circuit court did not err in determining that the words applied to Kimberly's personal earnings. The circumstances at the time of the divorce, when the judgment regarded the parties as independent earners, support this interpretation.

Like the court in ***Schultz***, we pay deference to the circuit court's determination because the circuit court here "clarified" rather than "modified" its holding. The court stated: "I recall at that time the decision was made, what was under consideration was the earnings of each party, and I think that is the way the provision should be interpreted." We are satisfied that this language indicates a clarification, not a modification, of the original judgment.

We are also satisfied that the court's determination was reasonable. The court correctly noted that Kimberly's present husband has no financial obligation to the children of the Arneson marriage and determined that it would therefore be unreasonable to permit consideration of his earnings to gain a tax exemption.[1] *See also* ***In re Paternity of Steven J.S.***, 183 Wis.2d 347, 350, 515 N.W.2d 719, 719-20 (Ct. App. 1994). We therefore affirm.

By the Court.—Order affirmed.

[1] Even if we adopted Kimberly's argument and imputed to her one-half of the Tolifson joint income, she still would not have earned over $15,350. Their adjusted gross income (the amount on which they paid taxes) was $18,000, which included Kimberly's 1996 earnings of $4900. Her share of adjusted gross income under marital property laws would be only $9000. *See* § 766.31(3), STATS.

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