

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 26, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-1775

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

PATRICIA WATHEN,

PETITIONER-RESPONDENT,

v.

ROBERT MOORE,

RESPONDENT-APPELLANT.

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

Before Dykman, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Robert Moore appeals the trial court's order modifying child support. The issue is whether the trial court properly refused to

retroactively amend the amount of child support Moore owed to his former wife Patricia Wathen. We affirm.

¶2 This case is before us for the second time. During a previous appeal, we reversed and remanded the trial court's order setting child support, directing the trial court to apply the support percentage guidelines or provide reasons for choosing to deviate from the guidelines. *See* WIS. STAT. § 767.32(2) (1997-98).¹ On remand, the trial court reduced Moore's support obligation to \$193 per month commencing April 1, 1999. The trial court refused to retroactively reduce Moore's obligation for the period of September 1, 1997 through March 31, 1999.

¶3 Moore argues that the trial court should have retroactively amended the amount of child support he owed Wathen because he paid approximately \$10,000 more than the guidelines would have required between September 1, 1997 and March 31, 1999.

¶4 As we explained during the initial appeal, the trial court must use the child support guidelines during postjudgment proceedings seeking to modify child support. *See* WIS. STAT. § 767.32(2); *Kelly v. Hougham*, 178 Wis. 2d 546, 554, 504 N.W.2d 440 (Ct. App. 1993). The trial court may deviate from the guidelines "if, after considering the factors listed in s. 767.25(1m), 767.51(5) or 767.62(4)(e), as appropriate, the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or any of the parties." *See* § 767.32(2m). We will not reverse the trial court's decision to depart from the

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

guidelines unless the trial court misuses its discretion. *See Nelsen v. Candee*, 205 Wis. 2d 632, 641, 556 N.W.2d 784 (Ct. App. 1996).

¶5 The trial court did not adjust the support order for the period of September 1, 1997 to March 31, 1999 because it concluded that, although Moore had paid more than the guidelines required, the “overpayment” had been offset by Wathen’s “overpayment” of the children’s expenses. It is well established that we will not reverse a trial court’s discretionary decision if the record shows that the court exercised its discretion and we can perceive a reasonable basis for the court’s ruling. *See Prahl v. Brosamle*, 142 Wis. 2d 658, 667, 420 N.W.2d 372 (Ct. App. 1987). A review of Moore’s testimony about expenses paid for the children during the period in question supports the trial court’s decision. So, too, does a prior court order that required Wathen to pay a disproportionate share of the children’s medical expenses. Therefore, we will not overturn the trial court’s decision.

By the Court.—Order affirmed.

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

