COURT OF APPEALS
DECISION
DATED AND FILED

September 6, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

Nos. 99-2874, 99-2875

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

NO. 99-2874

IN RE THE PATERNITY OF BRANDON J.K.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

PATRICIA A.K.,

PETITIONER-APPELLANT,

V.

DANIEL N.P.,

RESPONDENT-RESPONDENT.

NO. 99-2875

IN RE THE PATERNITY OF NICHOLAS D.K.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

PATRICIA A.K.,

PETITIONER-APPELLANT,

V.

DANIEL N.P.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Shawano County: EARL W. SCHMIDT, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Patricia A.K. appeals an order denying her motion to reduce or suspend her support obligation during summer months when her two children are with her half the time. Patricia also sought to reduce or suspend her obligation until she was no longer participating in the Wisconsin Works program. Patricia argues (1) pursuant to WIS. ADMIN. CODE § DWD 40.02(13)(1), the payments made under the Wisconsin Works program should not have been considered as gross income for child support purposes; (2) the court erroneously considered Wisconsin Works benefits and support for another child to determine her support obligation; (3) there was no evidence that she was "shirking," precluding the application of imputed income; (4) the court failed to apply the serial family standards set out in WIS. ADMIN. CODE § DWD 40.04(1); and (5) fairness dictates a deviation from the percentage standards. We reject these arguments and affirm the order.

¶2 This is a consolidation of appeals from paternity actions relating to Patricia's two minor children. Daniel N.P was adjudicated their father in 1990. In 1998, after Patricia was admitted to a mental health facility, Daniel received primary placement of the children.[1] After her October 1998 release, the trial court ordered Patricia to pay $227.50 per month child support. Patricia was participating in the Wisconsin Works program, attending school and was unemployed. The court based her support obligation upon twenty-five percent of an imputed minimum wage. This order was never challenged on appeal.

¶3 In July 1999, Patricia moved to reduce or suspend her support obligation for the summer months when the children were with her one-half the time. She also sought a reduction or suspension of her support obligation until she was no longer participating in the Wisconsin Works program. The trial court denied Patricia's motion. Patricia appeals the order denying her motion.

¶4 The trial court may modify a child support obligation if it finds a substantial change in circumstances since the entry of the previous support order. WIS. STAT. § 767.32(1)(a);[2] *see also* ***Carpenter v. Mumaw***, 230 Wis. 2d 384, 393, 602 N.W.2d 536 (Ct. App. 1999). The trial court's decision whether to modify a child support order is discretionary. *See* ***Smith v. Smith***, 177 Wis. 2d 128, 133, 501 N.W.2d 850 (Ct. App. 1993). Discretion is properly exercised where the decision reflects a rational reasoning process based on the application of the correct legal standards to the record facts. *See* ***id.***

[1] Patricia retained primary placement of a third child, who was not fathered by Daniel N.P.

[2] All statutory references are to the 1997-98 version unless otherwise noted.

¶5 Here, Patricia fails to identify any substantial change in circumstances. Her income and the physical placement arrangements remained unchanged from the time of the previous order to the hearing on her motion to modify support. At the time of the previous hearing, in October 1998, Patricia was participating in the Wisconsin Works program, attending school and was unemployed. Her monthly income consisted of $620 from Wisconsin Works and $258 child support for a third child living with her.

¶6 At the July 1999 hearing, nine months later, Patricia testified that she was still participating in Wisconsin Works, attending classes six hours per week, and was unemployed. Her income was the same as in October 1998.

¶7 The periods of physical placement also remained unchanged. The October 1998 order provided that the parties would have alternating two-week placement periods during the summer. Consequently, the circumstances of the previous order and the current placement and financial arrangements are identical and, therefore, do not provide a basis to reduce Patricia's support. *See* WIS. STAT. § 767.32(1)(a).

¶8 Patricia contends, nonetheless, that pursuant to WIS. ADMIN. CODE § DWD 40.02(13)(1), the payments made under the Wisconsin Works program should not have been considered as gross income for child support purposes at the initial hearing or at the subsequent motion hearing. She further contends that the court erroneously considered the child support received on behalf of a third child living with her. The record indicates that Patricia's factual premise is erroneous, because the trial court based its support order not upon Wisconsin Works or child support payments, but upon an imputed minimum wage.

¶9 Patricia also asserts, however, that there was no evidence of "shirking," a prerequisite to a support order based on earning capacity. She further claims that the trial court failed to apply the serial family formula, pursuant to WIS. ADMIN. CODE § DWD 40.04(1). Additionally, she claims that fairness dictates a deviation from the percentage standards under WIS. STAT. § 767.51(5). We reject these arguments.

¶10 Any challenge to the court's October 1998 order setting support is not before us because no appeal was taken from that order. A timely notice of appeal is a jurisdictional prerequisite. *See* WIS. STAT. RULE 809.10(1)(b).

¶11 In addition, Patricia did not raise these issues at the subsequent motion hearing, thereby failing to preserve them for appellate review. Our supreme court recently observed: "It is a fundamental principle of appellate review that issues must be preserved at the circuit court." ***State v. Huebner***, 2000 WI 59, 235 Wis. 2d 486, ¶10, 611 N.W.2d 727. "Issues that are not preserved at the circuit court, even alleged constitutional errors, generally will not be considered on appeal." ***Id.*** "The party who raises an issue on appeal bears the burden of showing that the issue was raised before the circuit court." ***Id.***

¶12 This rule is "not merely a technicality or a rule of convenience; it is an essential principle of the orderly administration of justice." *See* ***id.*** "The rule promotes both efficiency and fairness, and 'go[es] to the heart of the common law tradition and the adversary system.'" ***Id.*** (quoting ***State v. Caban***, 210 Wis. 2d 597, 604-05, 563 N.W.2d 501 (1997)). The rule serves several important objectives:

> Raising issues at the trial court level allows the trial court to correct or avoid the alleged error in the first place, eliminating the need for appeal. It also gives both parties

> and the trial judge notice of the issue and a fair opportunity to address the objection. Furthermore, the waiver rule encourages attorneys to diligently prepare for and conduct trials. Finally, the rule prevents attorneys from "sandbagging" errors, or failing to object to an error for strategic reasons and later claiming that the error is grounds for reversal.

Id. at ¶12 (citations omitted).

¶13 The record indicates that Patricia represented herself before the trial court. We do not, however, have two sets of rules so that different standards may be applied to pro se civil litigants. *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Therefore, because Patricia failed to make her arguments at the trial level and the record supports the trial court's discretionary determination that no substantial change of circumstances justified a reduction or suspension of support, we affirm the court's order denying her motion.

By the Court.—Order affirmed.

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