COURT OF APPEALS
DECISION
DATED AND FILED

October 4, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2474 **Cir. Ct. No. 1999PA42**

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

IN RE THE PATERNITY OF H.A.T.S.:

MICHAEL JAMES MAYER,

PETITIONER-APPELLANT-CROSS-RESPONDENT,

V.

SHEILA MAE SCHULZ,

RESPONDENT-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Green County: ROBERT R. PEKOWSKY, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Higginbotham, P.J., Dykman and Bridge, JJ.

¶1 PER CURIAM. Michael Mayer appeals an order modifying placement and child support. He contends that: (1) Sheila Schulz is not a serial family payer for purposes of calculating child support for Hunter, the parties' child; and (2) that the circuit court erroneously exercised its discretion in calculating his income. Schulz cross-appeals, arguing that the circuit court erroneously exercised its discretion when it modified the placement schedule. We affirm in part and reverse in part.

¶2 Mayer first argues that the circuit court erred as a matter of law in treating Schulz as a serial family child support payer under WIS. ADMIN. CODE § DWD 40.02(25), which provides that a "serial family payer" is "a payer with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a court order."

¶3 In ***Brown v. Brown***, 177 Wis. 2d 512, 521, 503 N.W.2d 280 (Ct. App. 1993), we held that the serial family payer provisions of the administrative code apply only when determining child support for children from a *subsequent family*. We explained:

> This … makes sense and good public policy because a parent's voluntary reduction of the ability to support a family by having more children should not automatically penalize the earlier born children. Although both earlier and subsequently born children are innocent and have no control over their situation, the parent who brings children into the world knowing the existing prior obligation should not be entitled to an automatic reduction of child support.

Id. In this case, Hunter was first born to Schulz and Mayer. Schulz then brought two more children into her life with her husband Marty Schulz. Sheila Schulz's first legal obligation for support was to Hunter, though he lived with her so no court order was necessary to mandate this support. Schulz is not a serial child

support payer for purposes of calculating her support obligation for Hunter based on the subsequent additions to her family because Hunter was the earlier born child. Therefore, we reverse and remand for the circuit court to calculate Schulz's child support obligation to Hunter without applying the serial family payer formula.

¶4 Mayer next argues that the circuit court erroneously exercised its discretion by including the real estate taxes he pays on business property in his income for the purpose of determining child support. We agree. The circuit court did not adequately articulate its reasons for reversing its prior ruling on March 21, 2003, that real estate taxes were a business expense that should be deducted from Mayer's gross income for the purposes of determining child support. The court also did not explain how the facts as they exist now support the court's conclusion that the real estate taxes should be included. To this court, it seems self-evident that the real estate taxes were required to be paid, and thus constitute a necessary business expense related to renting and renovating property. Therefore, we reverse the circuit court's decision on this issue and remand for further proceedings.[1]

¶5 On cross-appeal, Schulz argues that the circuit court erroneously exercised its discretion in modifying the placement schedule so that Hunter has equal placement with each of his parents, alternating homes every four days. Schulz contends that the schedule frustrates the maximization of meaningful periods of placement with her because it does not take into account her work

[1] Schulz agrees on appeal that the circuit court's factual findings on this matter were inadequate.

schedule. She also contends that the circuit court did not adequately consider the proper statutory factors and that it should not have adopted the recommendation of the guardian ad litem.

¶6 We conclude that the circuit court properly exercised its discretion in modifying the placement schedule because it explained its reasons for doing so in light of the facts of this case and the appropriate legal standards. The court emphasized that Hunter should have equal time with both parents, who were both fit and loving. The court noted that transitions were difficult for Hunter, so the court had as a primary goal reduction of the number of transitions Hunter had to make. The transcript of the court's oral decision makes clear that the court formed its own conclusion about Hunter's best interests vis-à-vis placement and did not simply adopt the guardian ad litem's recommendations without comment or analysis. We conclude that the circuit court properly exercised its discretion in modifying the placement schedule.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).