

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 2009

David R. Schanker
Clerk of Court of Appeals

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.

Appeal No. 2008AP1518

Cir. Ct. No. 2004FA746

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

KENNETH J. YOUNG,

PETITIONER-RESPONDENT,

V.

PATRICE M. YOUNG,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
JAMES R. KIEFFER, Judge. *Reversed.*

Before Dykman, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Patrice Young appeals a postjudgment order in a divorce case relating to family support. We reverse.

¶2 Respondent Kenneth Young moved for a change in a negotiated family support payment. The circuit court concluded that his obligation should be reduced due to his reduced income caused by a voluntary change from paid employment with an advertising agency to self-employment in the advertising business.

¶3 On appeal, the parties appear to agree that to modify the support obligation there must be a substantial change in circumstances. *See* WIS. STAT. § 767.59(1f)(a) (2007-08).¹ The parties dispute whether Kenneth’s voluntary change of employment can be considered such a change. However, the parties also appear to agree that, even if it is such a change, the voluntary change must have been reasonable. *See, e.g., Chen v. Warner*, 2005 WI 55, ¶¶22-25, 280 Wis. 2d 344, 695 N.W.2d 758. Because we have concluded that the circuit court erred in holding Kenneth’s change was reasonable, we need not address whether it could properly be considered a substantial change in circumstances.

¶4 The court made several statements to explain why it found Kenneth’s voluntary change of employment reasonable. The court stated that Kenneth had previously moved into periods of self-employment during the marriage, and therefore this “is not something that came out of the blue or was done with any intention at all of somehow leading to shirking his obligations.” The court appeared to be echoing Kenneth’s argument that Patrice had previously approved those changes during the marriage, “[s]o it certainly was okay then and it should be okay now because he has a track record of it.”

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶5 We see two problems with this reasoning. The first is that there is no evidence that Kenneth’s prior track record of self-employment was financially successful. The evidence appears to be undisputed that after self-employment he returned to employment with agencies. Second, even if Kenneth pursued self-employment before, it does not necessarily follow that doing so now satisfies the reasonableness requirement. His change must be reasonable in light of his current support obligations, which did not exist at the previous times.

¶6 The circuit court noted that Kenneth was continuing in the same field he had been in, and that the court believed “that in the very near future that Kenneth ... should be able to get this business to a point where an income flow will definitely increase above and beyond what he is currently earning.” Later, the court stated, “through time, and not a significant amount of time, that Kenneth should be able to easily increase the amount of income flow to his business and to himself.” However, neither the court nor Kenneth on appeal has pointed to any evidence to support this income projection. We have reviewed the record, and we see no more evidence than Kenneth’s own expressed hope during the current year to match his previous salary from employment. This is not a sufficient basis to support the court’s statement about his future income increasing in an insignificant amount of time.

¶7 In addition, the record and the circuit court’s decision are lacking an indication of why it was reasonable to leave the employment Kenneth was already in at the time of his voluntary change. There is no indication that the security of that position was precarious or that it was not suitable in any other manner. The circuit court itself noted that his reasons for leaving the last employment “were not abundantly clear.”

By the Court.—Order reversed.

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

