COURT OF APPEALS
DECISION
DATED AND FILED

June 8, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1244 **Cir. Ct. No. 1991PA98962**

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

IN RE THE PATERNITY OF D. E.:

CYNTHIA EMANUELE,

PETITIONER-APPELLANT,

V.

DANIEL MUELLER,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Cynthia Emanuele appeals from a circuit court order denying her motion to reinstate Daniel Mueller's obligation to pay child support. Because Emanuele failed to demonstrate a substantial change in

circumstances that would warrant modification of the order suspending Mueller's child support obligation, we affirm.

BACKGROUND

¶2 In 2008, Mueller moved to terminate his obligation to pay child support to Emanuele because their youngest son, D.E., was eighteen years old. Emanuele objected on the ground that D.E. was pursuing a high school diploma. *See* WIS. STAT. § 767.511(4) (circuit court shall order payment of child support for a child of the parties who is less than nineteen years old if the child is pursuing a high school diploma through an accredited course of instruction). In proceedings before a family court commissioner, Emanuele explained that she had home-schooled D.E. but could not award him a diploma. According to Emanuele, D.E. therefore had enrolled in a distance learning high school program, and he studied for approximately twenty hours each week in order to obtain a diploma. Emanuele told the court commissioner that D.E. also worked at McDonalds for "twenty-eight to thirty-three hours per week," and that he was "spending a lot of time studying to be an assistant manager at McDonald's." Additionally, D.E. performed housework, yard work, and barn work for Emanuele. The court commissioner found that D.E. "is not diligently pursuing a high school diploma," and suspended Mueller's obligation to pay child support.

¶3 Emanuele moved the circuit court for a *de novo* hearing. The circuit court, the Honorable Bonnie Gordon presiding, found that Emanuele did not present any evidence of D.E.'s participation in an "on-going course of study towards a high school diploma." The circuit court therefore entered an order in November 2008 that affirmed the court commissioner's decision and suspended Mueller's child support obligation. Emanuele did not appeal.

¶4 In February 2009, Emanuele filed a motion to reinstate Mueller's child support obligation. A family court commissioner denied the motion, and Emanuele again moved the circuit court to conduct a hearing *de novo*. The circuit court, the Honorable Francis T. Wasielewski presiding, asked Emanuele to explain "how the facts ha[d] changed" since Judge Gordon entered a decision in 2008. Emanuele offered no new facts, stating "it [sic] not a matter so much of the facts changing." Instead, Emanuele offered documents demonstrating that D.E. had paid for correspondence school. The circuit court determined that Emanuele's claim was barred because it had previously been considered and resolved by another circuit court judge. The circuit court therefore denied Emanuele's motion to reinstate child support, and Emanuele appeals.

DISCUSSION

¶5 This appeal presents a single issue, namely, whether the circuit court properly denied Emanuele's motion for reinstatement of child support.[1] The circuit court determined that the doctrine of issue preclusion bars Emanuele's claim. Upon a review of the Record, we conclude that the circuit court properly refused to reinstate child support, but we rely upon a legal analysis somewhat different from that used by the circuit court. *See* ***State v. Gaines***, 197 Wis. 2d 102, 100 n.5, 539 N.W.2d 723, 726 n.5 (Ct. App. 1995) ("[W]e may affirm a judgment

[1] In addition to denying Emanuele's motion to reinstate child support, the circuit court ordered Emanuele to contribute $500 to Mueller's attorney fees. Emanuele states in the conclusion of her appellate brief that we should "reverse the circuit court's order that she pay $500 towards [Mueller's] attorney fees." Emanuele does not, however, make any argument in her brief to explain how the circuit court erred by obligating her to make the payment. We decline to address this issue because it is inadequately briefed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992).

or order supported by the [R]ecord even though the [circuit] court may have reached the same result for a different reason.").

¶6 "The decision whether a child support judgment should be modified is left to the circuit court's discretion." ***State v. Dumler***, 2003 WI 62, ¶11, 262 Wis. 2d 292, 302, 664 N.W.2d 525, 529. With an exception not relevant here, the circuit court may modify child support only upon a finding of a substantial change in circumstances.[2] *See* WIS. STAT. § 767.59(1f)(a). The party seeking modification has the burden of establishing a substantial change in circumstances. ***Dumler***, 2003 WI 62, ¶11, 262 Wis. 2d at 302, 664 N.W.2d at 529.

¶7 We will sustain the circuit court's decision resolving a motion to modify child support unless the circuit court erroneously exercised its discretion. ***Ibid.***

> "All that is required for us to affirm a [circuit] court's exercise of discretion is a demonstration that the court examined the evidence before it, applied the proper legal standards and reached a reasoned conclusion." Even if a circuit court fails to articulate the reasons for its decision, this court will independently review the [R]ecord to determine whether there is any reasonable basis upon which we may uphold the circuit court's discretionary decision.

Id., 2003 WI 62, ¶11, 262 Wis. 2d at 302, 664 N.W.2d at 529–530 (citations omitted). Accordingly, we turn to the Record before us.

[2] A circuit court may, without finding a substantial change in circumstances, revise a child support order to state the amount of support as a fixed sum rather than as a percentage of the payor's income. *See* WIS. STAT. § 767.59(1f)(a) & (d). This exception to the rule requiring that a substantial change in circumstances underpin a child support modification is not implicated in the instant case.

¶8 In the 2009 circuit court hearing underlying this appeal, Emanuele asserted that the decision suspending child support in 2008 stemmed from "a mistake in the[] finding." She insisted that the circuit court wrongly concluded in 2008 that D.E. was not pursuing a high school diploma. Rather than offer new facts to the circuit court in 2009, she offered "additional paperwork" supporting her contention that D.E. was enrolled in a correspondence course to obtain a high school diploma. Emanuele argued that Mueller's child support obligation therefore should be reinstated pursuant to WIS. STAT. § 767.511(4).

¶9 The circuit court rejected Emanuele's arguments, stating: "[y]ou don't have the right to keep coming back until you get the answer that you want on the same facts.... [Y]ou have the burden of showing a substantial change in circumstances." Thus, the circuit court implicitly found that Emanuele did not demonstrate a substantial change in circumstances. This finding is not clearly erroneous, and we accept it. *See* ***Town of Avon v. Oliver***, 2002 WI App 97, ¶23, 253 Wis. 2d 647, 664, 644 N.W.2d 260, 268 (reviewing court accepts implicit findings that are supported by the Record). Because Emanuele did not demonstrate a substantial change of circumstances, the circuit court properly denied her motion to modify the order suspending child support. *See* WIS. STAT. § 767.59(1f)(a).

¶10 "[I]f a party believes that a trial court has erred, the remedy is an appeal, not a new action." ***Aon Risk Servs., Inc. v. Liebenstein***, 2006 WI App 4, ¶44, 289 Wis. 2d 127, 175, 710 N.W.2d 175, 197, *abrogated on other grounds by* ***Burbank Grease Servs., LLC v. Sokolowski***, 2006 WI 103, ¶33, 294 Wis. 2d 274, 298, 717 N.W.2d 781, 794. Emanuele failed to pursue the proper recourse of an appeal to seek correction of a perceived mistake made by the circuit court in the 2008 litigation. She was not entitled to present her arguments in another round of

motions, hoping that a second circuit court judge would assess the facts differently than did the first one.

By the Court.—Order affirmed.

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