

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 2011

A. John Voelker
Acting 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. 2010AP2367

Cir. Ct. No. 2001FA188

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN AND ANGELA R. BRUNER,

PETITIONERS-RESPONDENTS,

V.

JEREMY L. BEST,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Chippewa County:
JAMES M. ISAACSON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jeremy Best, pro se, appeals an order modifying child support. Best argues the circuit court erroneously exercised its discretion by failing to set his modified support levels consistent with his prison earnings. Best also argues the modification of child support should be retroactive to the date he

first contacted the Chippewa County Child Support Agency concerning a modification. We reject Best's arguments and affirm.

¶2 Best is serving a federal prison sentence as a result of a drug conspiracy. On December 11, 2005, Best sent correspondence to the child support enforcement unit seeking to lower his child support obligation. On August 13, 2010, Best filed a "Complaint to Modify Child Support" in the Chippewa County Circuit Court. On September 3, 2010, the court held a hearing on Best's motion, and modified the child support from \$200 monthly to \$152 monthly, retroactive to the date of Best's motion. The court denied Best's request to modify the child support retroactive to December 11, 2005. Best now appeals.

¶3 Modification of child support is committed to the sound discretion of the circuit court. *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We generally look for reasons to sustain the circuit court's discretionary decision. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968).

¶4 A court may only revise a child support order when there has been a "substantial change in circumstances." WIS. STAT. § 767.59(1f)(a).¹ Parents with child support obligations should not automatically be rewarded with a payment reduction as a result of incarceration, although incarceration may be a factor for the court to consider. *Rottscheit v. Dumler*, 2003 WI 62, ¶30, 262 Wis. 2d 292, 664 N.W.2d 525. Parents have a duty to support their children, and the primary goals of the child support statutes are to "promote the best interests of the child."

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

Id., ¶31. Child support is supposed to reflect what is in the best interests of the child. *Id.*, ¶35. Accordingly, the court in *Rottscheit* noted that if an arrearage exists upon release from incarceration, the incarcerated parent should cooperate with the child support agency in negotiating a payment plan. *Id.*, ¶37.

¶5 Here, the circuit court reduced Best’s child support obligation from \$200 monthly to \$152 monthly, based upon imputing a minimum wage income.² The court was not obligated to base the reduction in child support on Best’s prison earnings. The court properly explained that if an arrearage existed upon Best’s release from incarceration, a payment schedule could be arranged. The court also appropriately revised the child support to be effective August 13, 2010, the date of Best’s motion. *See* WIS. STAT. § 767.59(1m). The court properly exercised its discretion.

¶6 Best insists the child support enforcement unit precluded him from earlier access to the court “by providing misleading information.” Best did not raise this argument at the hearing on his modification motion, and we therefore deem the issue forfeited. *See Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980).³

² The circuit court imputed the 2005 federal minimum wage. The court could have imputed the 2010 minimum wage. Because neither party alleges error in this regard, we will not address the issue further.

³ In support of his argument that the child support enforcement unit provided misleading information, Best attaches several documents to his brief that are not part of the record on appeal. A party cannot use the brief or the brief’s appendix to supplement the record. *See Reznichek v. Grall*, 150 Wis. 2d 752, 754 n.1, 442 N.W.2d 545 (Ct. App. 1989).

By the Court.—Order affirmed.

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

