

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 21, 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. 2010AP2513

Cir. Ct. No. 2003FA700

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

SUSIE Y. CHON,

PETITIONER-APPELLANT,

V.

TIMOTHY J. SORENSEN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Kenosha County:
ANTHONY G. MILISAUSKAS, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. For the second time, Susie Y. Chon appeals from an order denying her motion seeking to reverse an order of a Kenosha county

family court commissioner. Chon contends the trial court wrongly failed to find her ex-spouse, Timothy J. Sorenson, in contempt of the divorce judgment and erred in granting Sorenson's motion for a reduction in child support. The trial court balanced the overall equities, found Sorenson's testimony credible and concluded his actions were not willful or intentional. It also found that Chon did not sufficiently prove that applying the percentage standard for child support was unfair to her. *See* WIS. STAT. § 767.511(1j), (1m) (2009-10).¹ We have no basis to disturb the court's findings. We affirm.

¶2 Chon and Sorenson divorced in 2004. Chon sought enforcement of the divorce judgment in 2007 before a family court commissioner. She filed a request for a de novo review of the commissioner's order. The trial court denied all issues at a November 2007 hearing, leaving the commissioner's order in force. Chon appealed. This court reversed the trial court and remanded with directions. In the meantime, in July 2009, the court commissioner granted Sorenson's motion for a reduction in child support based on shared placement. Chon also filed for a de novo review of that order. The trial court held a de novo hearing on the commissioner's two orders. It is this hearing that is the subject of this appeal.

¶3 The de novo hearing was held on four separate dates. Chon sought to have Sorenson found in contempt for allegedly breaching duties under the divorce judgment. She claimed that he failed to pay a Bank of America debt, thus entitling her to twelve percent interest on payments she made, and to provide tax returns each year.

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

¶4 The trial court found that Sorenson overpaid maintenance, essentially cancelling out the credit card debt. It also found that Sorenson's failure to furnish his tax returns was not willful and intentional and, further, could have resulted in reduced child support. The court thus concluded there was an insufficient basis for contempt and denied Chon's motion. Chon appeals. More facts will be supplied as needed.

¶5 Chon first argues that the trial court erred in finding that Sorenson had satisfied the Bank of America debt and therefore erred in failing to sanction him for contempt. We review a circuit court's use of its contempt power for an erroneous exercise of discretion. *Haeuser v. Haeuser*, 200 Wis. 2d 750, 767, 548 N.W.2d 535 (Ct. App. 1996), *abrogated on other grounds by Kruckenberg v. Harvey*, 2005 WI 43, 279 Wis. 2d 520, 694 N.W.2d 879. Its findings are reviewed under a clearly erroneous standard. *Currie v. Schwabach*, 132 Wis. 2d 29, 36, 390 N.W.2d 575 (Ct. App. 1986), *aff'd*, 139 Wis. 2d 544, 407 N.W.2d 862 (1987). The key findings are that the person is able to pay and willfully refuses with intent to avoid payment. *See Krieman v. Goldberg*, 214 Wis. 2d 163, 169, 571 N.W.2d 425 (Ct. App. 1997).

¶6 The trial court found that the marital settlement agreement required Sorenson to pay a \$7,500 Bank of America debt; that, post-divorce, Sorenson's payroll checks were deposited into Chon's bank account from which she made \$700 in payments on the Bank of America debt; that Chon transferred \$7,000 from a different credit card account to pay off the Bank of America debt; that Sorenson added a total of \$220 in charges to the card; and that he received a statement from Bank of America indicating a balance due of \$99. The court expressly found credible Sorenson's testimony regarding the payment of the credit card debt. We defer to the circuit court's credibility determinations. WIS. STAT. § 805.17(2).

¶7 The court further found that Sorenson overpaid maintenance by \$7,128 and paid Chon the \$372 difference between the \$7,500 Bank of America debt and the maintenance overpayment. After tallying the original debt less payments made plus Sorenson's expenditures and equalization payment, the court found that he essentially overpaid what he owed and so did not violate the divorce judgment. The record supports these findings. We reject Chon's argument that the court arrived at its findings only by ignoring other evidence. If more than one reasonable inference can be drawn from the credible evidence, we must accept that drawn by the trier of fact. *Wallen v. Wallen*, 139 Wis. 2d 217, 224, 407 N.W.2d 293 (Ct. App. 1987).

¶8 As to the tax returns, the court found credible Sorenson's testimony that he provided tax returns except for 2005 and that his failure then was because he was unrepresented, was not present at the relevant hearing and was unaware of the requirement. The court expressly found that Sorenson's actions were not willful and intentional and thus were insufficient to form a basis for contempt. These findings, too, are supported by credible evidence. We see no basis to disturb them.

¶9 Chon contends, however, that even if Sorenson produced his tax returns, he did not do so by April 20, as set forth in the divorce judgment. She argues that the court erred in not finding that the untimely production of the tax returns constituted a "continuing contempt," entitling her to remedial sanctions. She relies on *Frisch v. Henrichs*, 2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85, where the supreme court concluded that, although the husband finally supplied his tax returns, the contempt continued because his implicitly willfully delayed compliance allowed him to avoid increases in child support. *See id.*, ¶¶47, 81. But here, the court saw no willfulness or intent necessary to a finding of contempt.

Further, it found that timely production of the returns would have warranted *reductions* in child support such that Chon would have owed Sorenson for overpayment. These findings have adequate record support.

¶10 The last issue relates to child support. The divorce judgment ordered Sorenson to pay child support of \$1,265.33 per month, a straight seventeen percent of his gross income. The family court commissioner granted Sorenson's motion to reduce the amount on the basis of a fifty-fifty shared placement, and reduced it to \$903 per month. On de novo review, the trial court found that the evidence supported using the shared-placement formula, but increased the amount to \$1,010 per month. Chon does not dispute the parties' shared-placement arrangement but argues that the court's use of the shared-placement formula is unfair to her, given the disparities in their incomes.

¶11 We review a trial court's determination of child support under an erroneous exercise of discretion standard. See *Modrow v. Modrow*, 2001 WI App 200, ¶9, 247 Wis. 2d 889, 634 N.W.2d 852. The calculation of the presumptive child support obligation under WIS. STAT. § 767.511(1j) includes the shared-time payer formula. See *Rumpff v. Rumpff*, 2004 WI App 197, ¶14, 276 Wis. 2d 606, 688 N.W.2d 699 (applying predecessor statute).

¶12 The trial court considered the parties' fifty-fifty placement arrangement, their incomes, Chon's "substantial" earning capacity and that Sorenson provides medical insurance for their son. It explained the basis for its calculations. The court concluded that, on the "limited evidence" Chon provided, she did not demonstrate by the greater weight of the credible evidence that the percentage standard was unfair to her. As the party requesting a deviation, it was her burden of proof. See *Luciani v. Montemurro-Luciani*, 199 Wis. 2d 280,

295-96, 544 N.W.2d 561 (1996); *see also* WIS. STAT. § 767.511(1m). We see no erroneous exercise of discretion.

By the Court.—Order affirmed.

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

