COURT OF APPEALS
DECISION
DATED AND FILED

December 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1706-FT **Cir. Ct. No. 2012FA622**

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

IN RE THE MARRIAGE OF:

SUSAN PULDA,

PETITIONER-RESPONDENT,

V.

DONALD PULDA,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Reversed and cause remanded for further proceedings*.

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Donald Pulda appeals a postdivorce order denying modification of child support.[1] We conclude the circuit court erroneously exercised its discretion by determining Donald's actions precluded modification of his child support obligation.[2] Accordingly, we reverse the order and remand for further proceedings.

¶2 Pursuant to a marital settlement agreement incorporated into their divorce judgment, the parties agreed Donald would pay $1,103.82 per month in support of their one minor child. This amount reflected 17% of Donald's $6,493.07 gross monthly income as an employee of Voith Fabric.

¶3 Approximately two weeks after the divorce, Donald's employment with Voith was terminated. Soon thereafter, Donald obtained employment earning $9 hourly, or $1,334.78 monthly.

¶4 Donald moved to modify child support. A court commissioner denied the motion, and Donald sought de novo review in the circuit court. After hearings, the circuit court concluded the "clean hands" doctrine precluded child support modification. Donald had testified prior to the divorce judgment that his employment at Voith was secure to the best of his knowledge. However, Donald did not mention he had received disciplinary action and was put on notice that one more disciplinary action would result in his termination. In its oral ruling, the court stated that Donald was dishonest in his testimony and "when it is a court of

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. References to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] Both parties use the phrase "abuse of discretion." We have utilized the phrase "erroneous exercise of discretion" since 1992. *See* ***State v. Plymesser***, 172 Wis. 2d 583, 585-86 n.1, 493 N.W.2d 367 (1992).

equity, you have to come into the court with clean hands. If you don't come into the court with clean hands, you cannot claim any … remedy." The court's written order provided, "Respondent is not entitled to a modification of his child support based upon his actions." Donald now appeals.

¶5 A court may revise child support only if it first determines there has been a "substantial change in circumstances." *See* WIS. STAT. § 767.59(1f)(a). The determination of whether there has been a substantial change of circumstances sufficient to warrant a modification of child support presents a mixed question of fact and law. ***Benn v. Benn***, 230 Wis. 2d 301, 307, 602 N.W.2d 65 (Ct. App. 1999). We will not overturn a circuit court's findings of fact regarding what changes of circumstances have occurred unless the findings are clearly erroneous. ***Id.*** However, the question of whether those changes are substantial is a question of law that we review de novo. ***Id.*** A change in a payer's income as determined by the court in its most recent judgment or order for child support may constitute a substantial change in circumstances sufficient to justify a modification. WIS. STAT. § 767.59(1f)(c)1.

¶6 In the present case, it is irrefutable that Donald's loss of employment at Voith, and the resulting decrease in his income of over 75%, demonstrated a change of circumstances.[3] Susan Pulda nevertheless insists that in order to constitute a substantial change of circumstances, Donald was required to show that his termination from Voith was an unforeseen event that occurred after the parties reached the marital settlement agreement. Instead, she claims Donald knew at the

[3] The circuit court failed to make explicit findings of fact regarding what changes of circumstances had occurred.

time of the final hearing his employment was in jeopardy. Susan argues "not only did the parties rely on Donald's inaccurate statements as to his employment in creating the marital settlement agreement, but the Court itself also relied on the same inaccurate statement in adopting the marital settlement agreement into its Judgment of Divorce." According to Susan, this conduct "places his conduct squarely into the clean hands doctrine." We disagree.

¶7 "Clean hands" is an equitable doctrine which can be used to deny relief to a party if "the things from which the plaintiff seeks relief are the fruit of its own wrongful or unlawful course of conduct." ***S & M Rotogravure Serv. v. Baer***, 77 Wis. 2d 454, 467, 252 N.W.2d 913 (1977). Assuming without deciding the doctrine is appropriate in the context of a child support modification request, it does not apply under the facts of this case.

¶8 Here, Donald did not seek relief from anything that was the fruit of his own wrongful conduct. At the hearings on the motion to modify support, Donald testified that despite the disciplinary action, prior to the divorce judgment he did not believe his employment with Voith would be terminated. He had worked at Voith for twenty-five years and had followed all requests from his supervisors to correct any work concerns. As such, Donald's statement that his job was secure reflected his opinion. We fail to see how that statement was relevant to his motion to modify support. At most, it could demonstrate Donald withheld information at the time of the divorce about the questionable security of his employment at Voith as part of a plan to reduce available income so as to avoid child support. However, the circuit court did not find that Donald engaged in shirking, and the current record would not support such a finding.

¶9 Moreover, there is no basis to conclude that Donald's statements resulted in any detriment to Susan with regard to the amount of child support she was awarded in the divorce judgment. Donald agreed in the marital settlement agreement to pay an amount equivalent to the full "straight percentage" standard, which applies 17% of gross monthly income for one child. *See* WIS. ADMIN. CODE § DCF 150.03(1) (Nov. 2009). The percentage standard may be modified if it is demonstrated that application would be unfair to the children or either party. *See* WIS. STAT. § 767.59(2)(b). However, the record does not support an argument that Donald could have been required to pay child support in an amount *greater* than the straight percentage standard based upon jeopardized employment.[4]

¶10 Accordingly, we conclude the circuit court erroneously exercised its discretion by misapplying the clean hands doctrine. We therefore reverse the order and remand for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded for further proceedings.

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

[4] Susan argues that "[h]ad this information been accurately disseminated to Susan and/or the Court a different outcome with respect to the support orders contained in the divorce judgment would have been likely and potentially warranted." However, her argument is conclusory, and Susan fails to address any evidence indicating the parties would have reached some other agreement. We will not abandon our neutrality to develop arguments, and we will not consider conclusory and unsupported arguments. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).