COURT OF APPEALS
DECISION
DATED AND FILED

April 18, 2017

Diane M. Fremgen
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. 2015AP2082 **Cir. Ct. No. 1994PA35PJ**

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

IN RE THE PATERNITY OF Z.T.L.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

TINA MARIE LAFAVE,

PETITIONER-APPELLANT,

V.

DENNIS LAVERN LACROSSE, JR.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Vilas County: NEAL A. NIELSEN III, Judge. *Affirmed*.

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

¶1 PER CURIAM. Tina LaFave, pro se, appeals a post-paternity order awarding her over $14,000 in arrearages and interest, and denying her request for medical expense reimbursement from Dennis LaCrosse, Jr. LaFave argues that the amount awarded is inadequate. LaFave also claims the circuit court erred by concluding it had no authority to order reimbursement of medical expenses. We reject LaFave's arguments and affirm the order.

BACKGROUND

¶2 In October 1994, LaCrosse was adjudicated as Z.L.'s biological father in Vilas County and, pursuant to a stipulation incorporated into the paternity judgment, was ordered to "pay the sum of 14.11%" of his monthly income in child support beginning "the first of the month the [parents] no longer live together." LaCrosse was also ordered to pay "simple interest at the rate of 1.5[%]" on any unpaid child support and to "maintain any group health insurance benefits that he may have available through his employment." The parties were living in Arizona at the time of their 1996 separation, and LaFave remained in Arizona with the child while LaCrosse returned to Wisconsin.

¶3 In a January 1996 letter from the Vilas County Child Support Agency to LaFave, the agency inaccurately informed LaFave that no paternity had been established for the child. In August 1997, the parties entered into a private contract wherein LaCrosse agreed to pay LaFave $200 in monthly "assistance" for the child's care. In March 2012, Vilas County filed an action to convert the percentage support in the 1994 judgment to a fixed dollar amount. An April 2012 order set a monthly child support payment of $206.

¶4 It is undisputed that LaCrosse made no child support payments from the time of the couple's 1996 separation until entry of the 2012 order. After a

failed attempt to establish and collect arrears in October 2013, LaFave filed the underlying "motion for arrears, interest and medical reimbursement," seeking an arrearage amount of over $42,000. A circuit court commissioner determined LaCrosse owed an arrearage of $6,484.70, calculated as 14.11% of income established by LaCrosse's social security records, plus interest totaling $8,083.98, as calculated by the child support agency. LaFave's request for medical expense reimbursements preceding the 2012 order was denied. On de novo review of the commissioner's decision, the circuit court entered an order consistent with that of the commissioner's determination. This appeal follows.

DISCUSSION

¶5 A determination of child support is committed to the sound discretion of the circuit court. ***Brad Michael L. v. Lee D.***, 210 Wis. 2d 437, 446, 564 N.W.2d 354 (Ct. App. 1997). Exercising discretion contemplates a reasoned application of proper principles of law to the facts of the case. ***Joyce P. v. Alonzo R.***, 230 Wis. 2d 17, 21, 601 N.W.2d 328 (Ct. App. 1999). Furthermore, the determination of back support in paternity cases, like the determination of child support in general, is committed to the circuit court's discretion. ***Id.***

¶6 Here, LaFave contends the circuit court's arrearage calculation "does not comply with the dictates of WIS. STAT. § 767.511(1m) (2015-16),"[1] which allows for a deviation from the percentage standard when its application is unfair to the child or to any of the parties. The parties, however, stipulated to the percentage standard in 1994, and the resulting judgment remained in effect until

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise stated.

2012, when the support obligation was modified to a fixed dollar amount. To the extent LaFave seeks a retroactive revision of the 1994 judgment, the revision of a support obligation must be prospective; a circuit court may not retroactively revise child support "or an amount of arrearages in child support" other than to correct previous errors in calculations. *See* WIS. STAT. § 767.59(1m).

¶7 LaFave nevertheless argues LaCrosse had to have earned more income during the subject years than what was reflected on his social security statements. Although the circuit court acknowledged it is unrealistic to believe LaCrosse earned little to no income for particular years within a nearly twenty-year period, the court could not establish the amount of arrearages based on speculation. The court reasonably relied upon the best evidence in the record—LaCrosse's social security statements. LaFave failed to prove LaCrosse earned any more income than what was reflected on his social security statements, and she has ultimately failed to establish that the circuit court erroneously exercised its discretion by establishing the amount of arrearages based on the record before it.

¶8 To the extent LaFave alternatively contends that the parties' 1997 contract should govern calculation of the arrearage amount, the circuit court noted that agreement was never approved by a court or incorporated into a child support order. The circuit court further explained that "for purposes of establishing liability" based on this private contract, the court could not say whether a monthly obligation of $200 would have been approved. From the circuit court's present standpoint, it surmised such an amount would not have been sanctioned as it is "an excessive amount in relation to [LaCrosse's] income." The circuit court, in the reasonable exercise of its discretion, properly refused to set the arrearage amount based on the parties' extrajudicial agreement.

¶9 Finally, LaFave asserts the circuit court erred by concluding it had no authority to order reimbursement of medical expenses for the child from 1996 to 2012. The 1994 judgment, however, was silent as to LaCrosse's responsibility for the payment of unreimbursed medical expenses, and revisions to a parties' responsibility for health care expenses are prospective in nature. *See* WIS. STAT. § 767.59(1m); *see also* ***Kuchenbecker v. Schultz***, 151 Wis. 2d 868, 876-77, 447 N.W.2d 80 (Ct. App. 1989) (assignment of health care responsibility is a child support provision subject to revision under what is now § 767.59). The circuit court, therefore, properly determined it could not hold LaCrosse responsible for the medical expenses LaFave sought.

¶10 To the extent LaFave sought reimbursement for health insurance premiums, the 1994 judgment ordered only that LaCrosse was to "maintain any group health insurance benefits that he may have available through his employment." LaCrosse testified that he never had health insurance available to him through his employment at any time from 1994 through entry of the 2012 order. The circuit court, finding no evidence in the record to prove otherwise, properly concluded LaCrosse could not be held responsible for health insurance costs when the 1994 judgment indicated only that he was to procure such insurance if it was available to him through his employment.

By the Court.—Order affirmed.

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