COURT OF APPEALS
DECISION
DATED AND RELEASED

JULY 2, 1996

No. 95-3356-FT

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

In re the Marriage of:

JANICE SIMMONS,

Petitioner-Respondent,

v.

ALLEN SIMMONS,

Respondent-Appellant.

APPEAL from an order of the circuit court for Milwaukee County: GARY A. GERLACH, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. In June 1994, the trial court granted Janice and Allen Simmons a divorce. In doing so, the trial court accepted their stipulation by which Allen agreed to pay child support according to the support guidelines promulgated by the Department of Health and Social Services. One year later, the trial court, at Janice's request, entered an order clarifying Allen's child support responsibilities. Allen appeals from the trial court's order, contending that the trial court erred when it included Social Security Disability Income

(SSDI) he was receiving in its calculation of his gross monthly income available for child support purposes. He further contends that, even assuming that his SSDI benefits are includable in the calculation of child support, the trial court erred when it failed to reduce his support obligation by the amount of SSDI benefits being paid directly to Janice for the benefit of their three minor children. Pursuant to this court's order dated January 18, 1996, this case was submitted to the court on the expedited appeals calendar. We conclude that Allen failed to raise before the trial court the first issue he raises here. Consequently, he has waived our consideration of this issue. We also conclude that the trial court properly exercised its discretion in denying Allen credit for the SSDI payments made directly to Janice for the children's benefit. We therefore affirm.

The facts are largely undisputed. Allen and Janice had four children during their marriage. At the time of the divorce, one of the children, Sacha, was an adult, and the remaining children lived at home with their mother.

In regard to child support, Allen and Janice stipulated that Allen would "pay child support at the rate applicable under the Department of Health and Social Services percentage standards." The stipulation recognized that Allen was a disabled veteran of the Viet Nam war, who was "unemployed, and possibly unemployable." Allen's income was comprised of veteran's benefits and SSDI.

On June 9, 1994, Janice and Allen appeared before the trial court *pro se*, and the trial court accepted the stipulation and granted them a judgment of divorce. No written judgment was entered at that time, however.

In June 1995, Janice filed an affidavit with the trial court stating that, because she was confused regarding the trial court's child support order, she had been unable to draft the final findings of fact, conclusions of law and judgment of divorce for the trial court's signature. Janice asked the trial court to hold a hearing and clarify its orders.

At the hearing, there was no dispute that Allen received $2,177 monthly in veteran's benefits. Of that amount, he paid $168 per month directly to Sacha for her schooling. Allen received $489 per month in SSDI benefits. Another $267 per month in SSDI benefits was paid directly to Janice by the social security administration for the benefit of the three minor children.

After hearing the arguments of both parties, the trial court held that Allen should pay $724 per month in child support. It reasoned that Allen's gross income was $2,666—the sum of his $2,177 veteran's benefits and his $489 SSDI payments. The trial court reduced Allen's gross income by the $168 he was paying to Sacha, resulting in $2,498 net income available for child support purposes. The trial court then multiplied that amount by the DHSS percentage for three children—29%—to reach monthly child support payments of $724.

On appeal, Allen contends first that the trial court erred when it included his SSDI benefits in its calculation of his income available for child support. Allen contends that, as a matter of Wisconsin law, income from SSDI may not be included in the calculation of income available for child-support purposes.

The record shows, however, that Allen never presented this argument to the trial court. In fact, the record clearly shows that, in making his argument to the trial court, Allen included the SSDI benefits in the calculation of his income available for child support. He specifically argued that his child support obligation should be $535 per month. He calculated that amount by totalling his benefits,[1] and reducing that amount by the $168 that he paid directly to Sacha. He then calculated 29% of the total amount, for a child-support benefit of $802 per month. He then reduced that amount by the $267 in SSDI benefits paid to Janice. In her argument, Janice agreed that Allen's SSDI benefits should be included in the calculation of Allen's income available for child support. She only argued against Allen receiving a credit for the $267 SSDI benefits being paid directly to her for the children.

[1] He included in his total benefits the $267 in SSDI benefits that was being paid directly to Janice for the three minor children.

This court generally does not review issues raised for the first time on appeal. ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). Although this court has the authority to review issues raised for the first time on appeal, *see* ***id.***, we decline to do so in this instance.

We thus turn to the second issue: whether Allen should receive a credit against his child support obligation for the $267 being paid directly to Janice for the children. We review a trial court's award of child support for an erroneous exercise of discretion. ***Van Offeren v. Van Offeren***, 173 Wis.2d 482, 492, 496 N.W.2d 660, 663 (Ct. App. 1992). We will sustain a trial court's discretionary decisions if we find "that the trial court ... examined the relevant facts, ... applied a proper standard of law, and ... using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***State v. Gudenschwager***, 191 Wis.2d 431, 440, 529 N.W.2d 225, 229 (1995).

The record shows that while the trial court never elaborated on its reasoning, its decision to deny Allen credit for the SSDI payments to the children is supported by the record.[2] Allen contended that his child support payment should be reduced by the $267 SSDI benefit paid directly to Janice for the minor children. The trial court denied the request, reasoning that the guidelines require child support to be calculated based on gross income. It reasoned that any amounts taken from the payments to which Allen was entitled should reduce his income available for child support purposes. Thus, the trial court gave Allen credit for the $168 benefit he paid directly to Sacha. It denied Allen credit for the $267 being paid directly by SSDI to Janice for the minor children, reasoning that the amount was not paid to Allen and did not reduce his income. The trial court's conclusion that Allen's child support obligation should not be reduced for the SSDI payments made directly to his children, but to which he had no independent entitlement was not an erroneous exercise of discretion.

By the Court.—Order affirmed.

[2] If a trial court fails to adequately "set forth its reasoning in exercising its discretion," we will "independently review the record to determine whether it provides a basis for the trial court's exercise of discretion." ***State v. Pharr***, 115 Wis.2d 334, 343, 340 N.W.2d 498, 502 (1983).

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