

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 4, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3413

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

In re the Marriage of:

LINDA J. TOFTNESS,

Petitioner-Respondent,

v.

DAVID R. TOFTNESS,

Respondent-Appellant.

APPEAL from an order of the circuit court for Polk County:
JAMES R. ERICKSON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. David Toftness appeals a postjudgment order that found him in contempt of court for nonpayment of maintenance and child support and that rejected his request to reduce his \$5,700 annual maintenance and \$2,700 annual child support payments. David is a self-employed chiropractor. Since the divorce, however, David had lost \$6,000 in annual nonbusiness income he formerly received as president of the Foundation for Chiropractic Research. The trial court ruled that David had not shown a

substantial change in economic circumstances, despite his loss of the foundation income.

The trial court found that David had the ability to pay maintenance and child support, despite the loss of the foundation income, making his nonpayment contemptuous. The trial court's decision to continue the current maintenance and child support was discretionary. See *Tozer v. Tozer*, 121 Wis.2d 187, 190, 358 N.W.2d 537, 539 (Ct. App. 1984). On appeal, Toftness argues that his loss of foundation income made his nonpayment noncontemptuous and warranted a reduction of both maintenance and child support. We reject these arguments and therefore affirm the trial court's order.

The trial court found no substantial change of economic circumstances. Only substantial changes in economic circumstances warrant modifications of maintenance or child support. *Bentz v. Bentz*, 148 Wis.2d 400, 407, 435 N.W.2d 293, 296 (Ct. App. 1988) (maintenance); *Piaskoski v. Piaskoski*, 151 Wis.2d 549, 552, 445 N.W.2d 327, 329 (Ct. App. 1989) (child support). The trial court acknowledged that David's foundation annual income had declined by \$6,000. The trial court also inferred, however, that David's business income may have risen to a level sufficient to counteract the \$6,000 decline in his foundation income. In addition, the trial court apparently inferred that David had the ability to increase his business income beyond what he now earned in order to offset the decline in foundation income.

The trial court could rationally draw such inferences. David supplied incomplete information about the financial condition of his business. For example, he did not show that his business expenses were ordinary and necessary or that his business revenue was nonincreasable. Further, he made no showing that he was incapable of increasing his income through sources outside his business, like he had previously done through the foundation income. Faced with this evidence, the trial court could reasonably infer that David's financial condition and capacity had not genuinely changed by \$6,000 per year. On appeal, we must accept the trial court's reasonable inferences. *Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979).

In addition, the trial court noted that David had originally stipulated to the maintenance and child support. The trial court held that David could have reasonably foreseen the future discontinuance of his foundation income at the time of the stipulation. From this fact, the trial court essentially concluded that David's reasonably foreseeable loss of foundation income did not qualify as a change in circumstances. The trial court could reasonably arrive at this conclusion. Most reasonably foreseeable events will not qualify as changes of circumstances. *See Severson v. Severson*, 71 Wis.2d 382, 391-92, 238 N.W.2d 116, 122 (1976); *Erath v. Erath*, 141 Wis.2d 948, 956, 417 N.W.2d 407, 410 (Ct. App. 1987).

On that basis, the trial court could reasonably conclude that David had not shown a substantial change in economic circumstances, in spite of the \$6,000 decline in his foundation income. We will uphold the trial court's discretionary decision if it had a reasonable basis. *Littmann v. Littmann*, 57 Wis.2d 238, 250, 203 N.W.2d 901, 907 (1973). For the same reason, the trial court had a reasonable basis to hold David in contempt for nonpayment of maintenance and child support. David did not show that the loss of foundation income reduced his ability to pay maintenance and child support. This in turn permitted the conclusion that David's nonpayment of maintenance and child support was contemptuous.

By the Court. – Order affirmed.

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