COURT OF APPEALS
DECISION
DATED AND FILED

August 26, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0960-FT

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

IN RE THE MARRIAGE OF:

CRAIG D. HANSON,

PETITIONER-RESPONDENT,

v.

KATHRYN M. HANSON,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sawyer County: NORMAN L. YACKEL, Judge. *Affirmed.*

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

MYSE, J. Kathryn M. Hanson appeals an order that in effect denied her request to modify a stipulated divorce judgment so as to make Craig D.

Hanson responsible for a $100 monthly contribution in child support.[1] Kathryn contends she is unable to pay for the increased costs of foster care for the parties' minor daughter, and that the trial court erroneously exercised its discretion when it ruled Kathryn should pay the additional costs. Because we conclude that under the facts of this case the trial court could reasonably choose to enforce the provisions of the recently executed divorce stipulation, we affirm.

Kathryn and Craig Hanson were divorced in March 1996. During their marriage, Craig adopted Kathryn's natural child, Pamela, a minor. Also during their marriage, Pamela was placed in foster care after becoming difficult to control. At the time of the divorce and afterward, SSI payments were covering most of the costs of Pamela's care, and Kathryn was paying the remaining balance of approximately $208 per month. Under the terms of the divorce stipulation, Craig was to pay no child support until further order of the court. According to Craig's undisputed claim, Kathryn received specific consideration in the property division for this provision.

In October 1996, a hearing was held to extend the order placing Pamela in foster care. During this hearing, the subject of an increase in the costs of Pamela's care was discussed, and the court ordered Craig to pay $100. Craig later claimed, and the trial court agreed, that he did not receive notice of this hearing, and that if he would have had adequate notice, he would have appeared

[1] The appeal is actually based on an order granting Craig's motion that he be reimbursed by Kathryn for sums billed to him for an increase in the costs of foster care. The rather convoluted facts leading up to the appeal are discussed infra. For simplicity's sake, we treat the case as a motion by Kathryn for an increase in child support, noting that this changes neither the applicable law nor our analysis.

This is an expedited appeal under RULE 809.17, STATS.

and objected. He therefore instituted this action, requiring that Kathryn reimburse him for those costs imposed on him at the extension hearing. The trial court granted Craig's motion, reasoning that the stipulation was recently entered into; that Kathryn agreed to assume all expenses for Pamela; that Kathryn's assumption of the expenses was the product of the "give and take" normally involved in a stipulated divorce; and that the parties reasonably should have known that the costs of Pamela's care might increase. Kathryn appeals this order.

As noted earlier, for the sake of simplicity we treat this motion as one of Kathryn to modify the divorce judgment and increase Craig's child support contribution. Such a request is reviewed under an erroneous exercise of discretion standard. ***Smith v. Smith***, 177 Wis.2d 128, 133, 501 N.W.2d 850, 852 (Ct. App. 1993). A trial court's "[d]iscretion is properly exercised where the decision reflects a rational reasoning process based on the application of the correct legal standards to the record facts." ***Id***. The record must reflect that the court considered the needs of the custodial parent and children, and the ability of the noncustodial parent to pay. ***Burger v. Burger***, 144 Wis.2d 514, 523-24, 424 N.W.2d 691, 695 (1988). Furthermore, modification is only proper where the court finds a substantial or material change in the circumstances of the parties or the children. ***Id***. at 523, 424 N.W.2d at 695.

We first look to whether the increase in the costs of care is a change of circumstances sufficient to give the trial court jurisdiction to modify the divorce judgment. Among the relevant factors to consider in determining the existence of a material change of circumstances are: "the aging of the children, the increased cost of living, the ability of the noncustodial parent to pay, the marital status of the parents, and the financial status of the parents and their spouses …." ***Miller v. Miller***, 67 Wis.2d 435, 442-43, 227 N.W.2d 626, 630 (1975) (notes omitted).

Reviewing these factors, are satisfied that the increase in costs not covered by SSI constitutes a material change of circumstances. The increase in those costs from $208 to $296 was in excess of 40%. Furthermore, while Kathryn has stated she will face difficulty in meeting the additional costs, Craig has stipulated that he has the ability to make these contributions towards Pamela's support. Therefore, notwithstanding the relative short time span between the entry of the stipulated divorce and the petition for modification, we conclude that a sufficient change of circumstances existed to vest the trial court with the power to enter an order modifying the divorce judgment. We note that the trial court appears to have reached the same conclusion, as it did not base its judgment on a finding that there was an insufficient change of circumstances.

Turning now to the trial judge's reasoning and decision, we conclude that the court properly reviewed the relevant factors and came to a reasonable conclusion. The record reflects that the trial court considered the needs of Pamela and Kathryn, as well as Craig's ability to pay. Evidence on these issues was presented, and the court apparently accepted it insofar as it held that Craig will have to contribute to the costs of care if Pamela's SSI payments are reduced. We also note that Kathryn does not argue the trial judge erred by not considering these factors; rather, she claims the outcome, and not the process, constituted the error.

We also conclude the court's decision to be a reasonable one. The court based its determination primarily on the unfairness of changing the terms of a stipulated divorce barely nine months old, especially where the change in circumstances involved (i.e., the increased costs of care) could easily be anticipated. Noting that a stipulated divorce involves give and take by both sides, the court implicitly accepted Craig's argument that he had given up valuable consideration in the property division to Kathryn for her assumption of this

responsibility. Therefore, the court held, Kathryn should not be able to come back into court and rewrite the terms so soon. We are unwilling to conclude that this does not reflect a rational reasoning process. Furthermore, in exercising its discretionary decision to alter child support awards, the trial court determines the weight it will accord to various relevant factors. Here, the trial court could reasonably conclude that the terms of the stipulation were entitled to greater weight than Kathryn's demonstration of need. Therefore, we hold that the trial court did not erroneously exercise its discretion.

Kathryn also argues that the court order requiring Craig to pay up to $100 in the event that SSI payments are reduced places an improper ceiling on Craig's contribution to pay child support. We do not agree. Our review of the record suggests that the trial court concluded a reduction in SSI payments was likely in the immediate future. To avoid the need of another hearing, the court imposed this support obligation on Craig. We do not regard it as a ceiling, but rather as a determination as to his responsibility when the first $100 reduction (that amount Craig stipulated he could pay) occurs. Beyond that, the trial court left the issue open. Of course, the trial court could not have limited child support obligations without considering all the relevant factors that exist at the time of the hearing. *See, e.g.,* ***Ondrasek v. Tenneson***, 158 Wis.2d 690, 695, 462 N.W.2d 915, 917 (Ct. App. 1990) (noting that child support is continually left open to take into account circumstances unforeseen at the time of the divorce judgment).

In the interest of clarity, we wish to note that nothing in this decision changes the well established rule that while obligations of maintenance sometimes can be contracted away, *see, e.g.,* ***Nichols v. Nichols***, 162 Wis.2d 96, 105, 469 N.W.2d 619, 622 (1991), obligations involving child support are always subject to modification, *see, e.g.,* ***Ondrasek***, 158 Wis.2d at 695, 462 N.W.2d at 917. We

therefore do not mean to suggest that the trial court lacked the authority to modify the stipulated provisions regarding child support; rather, our holding is limited to the proposition that the court could properly conclude, based upon the specific circumstances of this case, that child support should not be modified at the present time. The court could have,[2] and could still, impose child support contributions on Craig. For the forgoing reasons, the judgment is affirmed.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

[2] The trial court's opinion expressly noted that the "parties cannot by stipulation foreclose the court's ability to review child support at any time."