COURT OF APPEALS
DECISION
DATED AND FILED

June 30, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

No. 98-0027-FT

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

IN RE THE MARRIAGE OF:

JODY MUSCHINSKE,

PETITIONER,

V.

JEFFREY MUSCHINSKE,

RESPONDENT-RESPONDENT,

STATE OF WISCONSIN,

INTERESTED PARTY-APPELLANT.

APPEAL from orders of the circuit court for Lincoln County: ROBERT O. WEISEL and MICHAEL NOLAN, Judges. *Reversed and cause remanded.*

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

PER CURIAM. The State appeals orders reducing Jeffrey Muschinske's child support arrearage by the amount of Social Security disability benefits paid to his children from 1977 through 1980, and denying his motion for reconsideration.[1] The State argues that the trial court lost jurisdiction to review the amount of an arrearage when the children turned eighteen-years old, that the court is statutorily prohibited from retroactively reducing an arrearage and that res judicata bars relitigation of the amount due because the circumstances had not changed since the 1977 divorce. We decline to review these issues because we conclude that relitigation of the arrearage is barred by a 1992 order setting the amount Muschinske owed.[2] Therefore, we reverse the orders and remand the cause for entry of an order determining the current arrearage based on the 1992 finding.

At the time of the 1977 divorce, Muschinske was ordered to pay $180 per month child support while he was disabled and $230 when he returned to work. Between November 1977 and March 1980, Muschinske paid no child support and accrued an arrearage. During that same time, the children received AFDC benefits and Muschinske's support payments were assigned to the State. The children also received Social Security benefits totaling $3,021.60. In 1992, the court issued an order fixing the arrearage owed to the State at $17,675.11. Five years later, Muschinske filed a motion to reduce his arrearages by the amount

[1] This is an expedited appeal under RULE 809.17, STATS.

[2] Even though the State did not properly preserve this issue and does not argue it on appeal, we conclude that the issue is dispositive. The waiver rule is one of judicial administration that, in the exercise of this court's discretion, we choose not to employ in this case. *See* ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). We conclude that this court should, in the interest of judicial efficiency, enforce a requirement that the parties present their evidence on an issue (credit for Social Security disability benefits) the first time the issue is ripe for adjudication.

of Social Security benefits paid to the children. The trial court granted the motion and denied a request for reconsideration.

The doctrines of issue and claims preclusion bar Muschinske's attempt to relitigate the amount of arrearage that existed at the time of the 1992 adjudication. Regardless whether Muschinske presented any evidence relating to the Social Security payments, the arrearage issue was litigated at that time. Muschinske should have presented any evidence he thought relevant to the question of how much he paid or owed. The doctrine of issue preclusion is designed to avoid relitigation of issues that have already been litigated. *See* ***Lindas v. Cady***, 183 Wis.2d 547, 558, 575 N.W.2d 458, 463 (1994). There is nothing fundamentally unfair about requiring a party to present all of his theories and evidence of payments or credits at the hearing in which that issue was initially determined.

In addition, the doctrine of claims preclusion bars relitigation of the State's claim against Muschinske for the arrearage accumulated from 1977 to 1980. Claims preclusion bars relitigation of a claim arising from the same transaction. The 1992 judgment is conclusive between Muschinske and the State on all matters that were litigated or could have been litigated at that time. ***Id***. Relitigation is not allowed merely because Muschinske was finally prepared to litigate the issue at the 1997 hearing based on a theory of the case that he overlooked at the earlier hearing. *See* ***DePratt v. West Bend Mut. Ins. Co.***, 113 Wis.2d 306, 312, 334 N.W.2d 883, 886 (1983).

By the Court.—Orders reversed and cause remanded.

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