

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 14, 2005

Cornelia G. Clark
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. 2004AP3146

Cir. Ct. No. 2000FA763

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

LORI L. JOHANSEN,

PETITIONER-RESPONDENT,

v.

WILLIAM J. JOHANSEN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
JOHN C. ALBERT, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. William Johansen appeals an order denying his post-divorce motion for a reduced maintenance obligation. The issue is whether

the circuit court erroneously exercised its discretion by concluding Johansen failed to show a substantial change in circumstances justifying a reduction. We affirm.

¶2 William and Lori Johansen divorced in October 2001 after eighteen years of marriage. William earned \$4,961 per month and Lori earned \$1,149 per month. By stipulation, William agreed to pay Lori child support of \$259 per week for the parties' three minor children and \$200 per week maintenance until the youngest child turned eighteen in 2009 or finished high school if that occurred later.

¶3 In May 2004, William moved for reduced maintenance based on Lori's increased income and his reduced income. After hearing the matter, the circuit court found Lori's income had increased to \$2,165 per month and William's income had diminished to \$4,489 per month. However, the court also considered the fact that William had remarried and his new wife's income added approximately \$19,000 per year to William's household. Consequently, the court found "no substantial change in financial circumstances as the respondent has more money available to him than he had at the time of divorce."

¶4 To obtain reduced maintenance, the moving party must show a substantial change in circumstances. *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶30, 269 Wis.2d 598, 676 N.W.2d 452. The standard is the same whether maintenance was originally contested or stipulated. *Id.* The decision whether a substantial change of circumstances has occurred is left to the circuit court's discretion. See *Cashin v. Cashin*, 2004 WI App 92, ¶44, 273 Wis. 2d 754, 681 N.W.2d 255. We affirm a circuit court's exercise of discretion if the court examines the relevant facts, applies the proper standard of law, and, using a

demonstrated rational process, reaches a conclusion a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶5 The circuit court properly exercised its discretion by concluding there was no substantial change of circumstances. Lori’s income had increased by roughly \$12,000 per year. However, so had William’s household income, considering his new wife’s income as an offset to his reduced wages. The circuit court reasonably determined that if both parties experienced a similar increase in income the maintenance award need not change.

¶6 William contends the circuit court used the now defunct “unjust or inequitable” standard to evaluate the change in circumstances, rather than the “fairness to both parties” standard that replaced it. *See Rohde-Giovanni*, 269 Wis. 2d 598 at ¶32. That contention is without support in the record. The circuit court considered both parties’ changed circumstances and made no determination that modifying maintenance would be unfair or unjust.

¶7 William also contends the court erred by factoring his wife’s income into his financial circumstances. He provides no persuasive authority for that proposition. The case he cites, *Van Gorder v. Van Gorder*, 110 Wis. 2d 188, 327 N.W.2d 674 (1983), stands for the proposition that the court should consider a party’s income from all sources, including that contributed by another household member. *Id.* at 196.

By the Court.—Order affirmed

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

