

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 6, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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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.

**No. 00-0835**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE PATERNITY OF JUSTIN L.:**

**CORINNE L.,**

**PETITIONER-APPELLANT,**

**v.**

**DOUGLAS P.,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
WILLIAM A. JENNARO, Reserve Judge. *Affirmed.*

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

¶1 PER CURIAM. Corinne L. appeals from the circuit court order denying her request that Douglas P. pay what she describes as child support

arrearage plus interest, and awarding Douglas the dependency exemption for their child, Justin L., for tax purposes beginning with the year 2000. We affirm.

## I. BACKGROUND

¶2 The appellate record in this case is complicated, perhaps incomplete, and, in some ways, difficult to decipher as a result of several factors including the retirement of one of the judges involved, the death of one of the attorneys involved, the presence of an unsigned “Adjudgment,” and other circumstances we will relate in this opinion. We have undertaken a fastidious record review in order to understand the background and resolve this appeal.

¶3 In January 1988, Corinne, alleging that Douglas had fathered her nonmarital child, Justin, who was born on July 7, 1987, petitioned for adjudication of paternity. Douglas ultimately filed an acknowledgement of paternity and, in July 1988, the circuit court granted temporary custody of Justin to Corinne and ordered Douglas to pay future child support of \$289 per month.<sup>1</sup>

¶4 On April 4, 1991, the circuit court issued a written decision stating, in relevant part:

Counsel for Corinne shall prepare an order amending the Judgment entered in this action awarding joint custody to Corinne and Douglas, as that term is defined in Section 767.001(1), Stats. Corinne shall continue to be primary caretaker and her home shall continue to be the child’s primary home.

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<sup>1</sup> The July 1988 document entitled “Findings and Judgment” contains the finding that Douglas earned “\$1708 gross twice monthly.” Douglas’s financial statement filed July 6, 1988, however, indicates that although he was paid twice monthly, his gross monthly income was \$1,708.34. Utilizing the percentage standard for determining child support, Douglas’s monthly child support obligation for Justin would have been 17% of his base monthly income—\$289 according to the child support percentage conversion table. *See* WIS. ADMIN. CODE § HSS 80.03(1)(a) & App. A (1987).

Douglas shall continue to pay support, shall be given a 17 percent credit against his gross income before applying the mandated 17 percent for Justin.<sup>2</sup> Support payments shall be by income assignment as previously ordered.

Douglas shall have liberal periods of physical placement ....

(Footnote added.)

¶5 In a May 1995 letter to the circuit court, Corinne sought help in enforcing the court's April 4, 1991 decision regarding child support. Explaining that she was still receiving \$289 per month for child support, she claimed: "[Douglas] is now earning an extremely large amount of money more than what he was [when the \$289 per month amount was established in 1988] and for some reason, the new order was never set up." A court reporter replied to Corinne's letter, informing her:

It is not the responsibility of the judge to either locate Mr. P[]'s employer or prepare the paperwork. It is [the judge's] responsibility to sign orders that you/your lawyer submit which comply with court orders.<sup>3</sup>

I strongly suggest you hire a lawyer to help you, request the services of the Child Support Enforcement (in the courthouse), or do the paperwork yourself. The Family Court Commissioner's office is also a valuable resource for information.

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<sup>2</sup> Earlier in its written decision, the circuit court noted that Douglas had married since his breakup with Corinne, and that his wife had subsequently given birth to their daughter. The circuit court's decision to grant Douglas "a 17 percent credit against his gross income before applying the mandated 17 percent for Justin" complied with the administrative rules for determining the child support obligation of a serial family payer. *See* WIS. ADMIN. CODE § HSS 80.04(1) (1987).

<sup>3</sup> The appellate record contains a copy of amended "Findings of Fact, Conclusions of Law, Adjudgment" purportedly prepared by Corinne's attorney, as well as the attorney's cover letter stating that the document was filed with the court on June 20, 1991. Although the document addresses physical placement of Justin and awards joint legal custody of him to Corinne and Douglas, it neither addresses modification of child support nor bears the judge's signature.

(Footnote added.)

¶6 In November 1998, Douglas moved for modification of placement. At the December 1998 hearing on the motion, based upon stipulation of the parties, an assistant family court commissioner: (1) ordered continuance of joint custody and granted temporary primary placement of Justin to Douglas, as of January 15, 1999; (2) suspended and held open Douglas's child support payments, effective January 15, 1999; and (3) held open child support payments from Corinne, effective January 15, 1999.

¶7 At an August 30, 1999 hearing, the circuit court ordered Corinne to pay temporary child support of \$240 per month.

¶8 In pertinent part, the circuit court's March 14, 2000 written "decision and order": (1) determined that the \$289 per month Douglas was originally ordered to pay for child support was "the only existent judgment that needed to be complied with," and that Douglas had complied with it; (2) held that "the issue of interest on an asserted arrears [wa]s moot"; (3) denied Corinne's "application for ... additional child support after April 1991"; (4) found that ordering Corinne to pay child support of \$240 per month was appropriate; and (5) awarded Douglas the dependency exemption for Justin for tax purposes beginning with the year 2000.

## II. DISCUSSION

### *A. Child Support*

¶9 "The determination of appropriate child support is committed to the sound discretion of the circuit court." *State v. Wall*, 215 Wis. 2d 595, 599, 573 N.W.2d 862 (Ct. App. 1997). Whether the circuit court's March 14, 2000 decision

was a proper exercise of discretion presents a question of law, which we review *de novo*. *Id.* We must sustain the March 14, 2000 decision if we conclude that the circuit court “examined the evidence before it, applied the proper legal standards and reached a reasoned conclusion.” *Voecks v. Voecks*, 171 Wis. 2d 184, 189, 491 N.W.2d 107 (Ct. App. 1992).

¶10 In its March 14, 2000 written “decision and order,” the circuit court considered the issue of the April 1991 decision to modify Douglas’s child support obligation. The court stated that it would be “pure speculation ... to find that \$289.00 a month was high or low from the facts available” since the record did not “conclusively identify what Douglas’ income was in 1991 from which 17% would have been reduced,” and concluded that “the \$289.00 order [wa]s in fact the only existent judgment that needed to be complied with.”<sup>4</sup>

¶11 The circuit court did not erroneously exercise discretion in reaching this conclusion. The pertinent statute in effect in April 1991 mandated: “Any change in child support because of alleged change in circumstances shall take into consideration each parent’s earning capacity and total economic circumstances.” WIS. STAT. § 767.32(1) (1989-90). Under WIS. STAT. § 767.32(1)(a) (1997-98), revision of a child support award “may be made only upon a finding of a substantial change in circumstances.” Corinne cites nothing in the record documenting any change in Douglas’s earning capacity after his \$289 per month

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<sup>4</sup> The March 14, 2000 written decision repeatedly refers to the circuit court’s April 1991 “oral” decision but does not refer to the April 4, 1991 written decision. The appellate record contains no transcript of an April 1991 oral decision. We must assume, therefore, that the circuit court, in its March 14, 2000 decision, actually meant to be referring to the written decision, or that any such oral decision supports the circuit court’s March 14, 2000 ruling. See *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993) (“[W]hen an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court’s ruling.”).

child support obligation was established in 1988. Thus, because Douglas paid the \$289 per month as ordered, no arrearage existed. Accordingly, the circuit court correctly denied Corinne’s claim for child support arrearage and interest.<sup>5</sup>

### *B. Dependency Exemption*

¶12 The award of an income tax dependency exemption lies within the circuit court’s discretion. *Sommerfield v. Sommerfield*, 154 Wis. 2d 840, 850, 454 N.W.2d 55 (Ct. App. 1990). We will sustain a discretionary act if the circuit 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.” *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶13 WISCONSIN STAT. § 71.07(8)(b) (1997-98) provides for a personal exemption of “\$50 for each person for whom the taxpayer is entitled to an exemption for the taxable year under section 151(c) of the federal internal revenue code.” Section 151(c) allows a personal exemption for a taxpayer’s dependent child. 26 U.S.C. § 151(c)(3) (2000). The federal internal revenue code states, in pertinent part:

(1) Custodial parent gets exemption.—Except as otherwise provided in this subsection, if-

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<sup>5</sup> Additionally, we note that WIS. STAT. § 767.32(1) (1989-90) granted the circuit court discretionary authority to modify a child support award only on “a petition, motion or order to show cause.” The appellate briefs and record do not reveal the existence of any “petition, motion or order to show cause” prior to the April 1991 decision.

Finally, we observe that Corinne waited until May 1995 to seek assistance from the circuit court in enforcing the April 1991 written decision’s child support modification. Even after a court reporter informed her that the responsibility to prepare the order mandated by the written decision fell to her, rather than to the court, Corinne failed to either complete the necessary paperwork that would comply with the written decision’s mandate or enlist anyone else to complete it on her behalf.

(A) a child (as defined in section 151(c)(3)) receives over half of his support during the calendar year from his parents-

....

(iii) who live apart at all times during the last 6 months of the calendar year, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year, such child shall be treated, for purposes of subsection (a) [defining the term “dependent”], as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year

....

26 U.S.C. § 152(e) (2000).

¶14 In its March 14, 2000 written decision, the circuit court noted: “[T]here is a dispute in the briefs submitted as to how many days the child is with Corinne as opposed to Douglas. The dispute is such that I cannot make a finding specifically that there is a 50/50 shared placement situation.” The court continued:

Because Douglas now has the primary placement of Justin, it would appear appropriate that he have the dependency exemption for Justin, but in light of the fact that the placement order here was made effective September 1, 1999,<sup>6</sup> the dependency exemption should be exercised by Corinne for the year 1999 and by Douglas in the years thereafter so long as he remains the primary placement parent.

(Footnote added.)

¶15 Corinne has offered nothing to establish that the circuit court’s determination failed to satisfy the *Loy* criteria; accordingly, we uphold its tax dependency exemption decision. *See Loy*, 107 Wis. 2d at 414-15.

*By the Court.*—Order affirmed.

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<sup>6</sup> The appellate record does not clarify the basis for the court’s reference to September 1, 1999, rather than January 15, 1999. *See* ¶6, above.

This opinion will not be published. *See* WIS. STAT. RULE  
809.23(1)(b)5 (1999-2000).



