COURT OF APPEALS
DECISION
DATED AND FILED

January 11, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1297

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

IN RE THE MARRIAGE OF:
FRANCES A. LEASE F/K/A FRANCES A. SKALITZKY,

PETITIONER-RESPONDENT,

V.

WILLIAM G. SKALITZKY,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. William Skalitzky appeals from an order denying his motion to reopen a prior child support order. For the reasons discussed below,

however, we conclude that the trial court properly exercised its discretion and affirm the order.

BACKGROUND

¶2 Skalitzky and Frances Lease were divorced in 1993. Lease initially had primary physical placement of the parties' three minor children, and Skalitzky was ordered to pay twenty-nine percent of his gross income in child support. A number of adjustments to the amount of child support occurred over the following few years. We recount only those events which are relevant to the present appeal.

¶3 In December 1997, the physical placement schedule was formally adjusted to give the parties substantially equal placement of the two children who were then still minors, apparently in response to changes which the parties had already effected. Skalitzky petitioned to modify the child support order in January 1998 to reflect the equal placement schedule, and the family court commissioner entered an order terminating his child support obligation in March of 1998.

¶4 On October 12, 1998, Lease moved to reinstate child support because their daughter, Joelle, had resumed living with her full time, contrary to the order which was then in effect. On October 30, 1998, the family court commissioner refused to order child support, stating that the request was premature because the parties were still disputing the placement schedule.

¶5 On November 12, 1999, Lease obtained primary physical placement of Joelle, while the parties continued to share equal placement of their son John. The trial court held a hearing on the issue of child support later that month, and on January 5, 2000, it issued an order imposing child support retroactive to October 12, 1998. Skalitzky retained counsel and moved to reopen the child

support order on several grounds. The trial court denied the motion to reopen, and this appeal followed.

STANDARD OF REVIEW

¶6 As a threshold matter, we note that the only order properly before us is the one dated May 1, 2000, which denied Skalitzky's motion to reopen the child support order that was entered on January 5, 2000. We have no jurisdiction to examine any alleged errors in the January 5 order. We will therefore not consider Skalitzky's arguments that the January 5 order improperly imposed a retroactive child support award or applied the wrong formula, other than in the context of whether the allegation of such errors provides a basis for reopening the judgment.

¶7 The trial court has discretion to determine a motion to reopen a judgment or order. ***Nelson v. Taff***, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (Ct. App. 1993). When reviewing discretionary determinations, we limit our inquiry to whether the trial court considered the facts of record under the proper legal standard and reasoned its way to a rational conclusion. ***Burkes v. Hales***, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991).

ANALYSIS

¶8 WIS. STAT. § 806.07(1) (1999-2000)[1] allows the trial court to reopen an order or judgment based upon:

> (a) Mistake, inadvertence, surprise, or excusable neglect; …

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

> (c) Fraud, misrepresentation, or other misconduct of an adverse party; … or
>
> (h) Any other reasons justifying relief from the operation of the judgment.

Skalitzky first argues that he should have been allowed to reopen the January 5 child support order under § 806.07(1)(a) to correct an alleged mistake in the trial court's calculation of the amount of the award. The trial court's authority to modify the amount of child support, however, is limited to the correction of mathematical errors. WIS. STAT. § 767.32(1m); ***State v. Jeffrie C.B.***, 218 Wis. 2d 145, 150, 579 N.W.2d 69 (Ct. App. 1998). Skalitzky's contention that the trial court erroneously failed to apply the proper formula under WIS. ADMIN. CODE § DWD 40.04 in order to take into account his status as a shared-time payor involves the methodology which the trial court employed, not a mathematical error in the trial court's calculation under the serial-payor formula it undertook to use. Thus, the trial court properly exercised its discretion in determining that the child support order should not be reopened on the basis of mistake.

¶9 Skalitzky also argues that he should have been allowed to reopen the child support order under WIS. STAT. § 806.07(1)(c) because Lease misrepresented to the trial court that the October 12, 1998, motion to modify child support was still pending. Skalitzky maintains that the family court commissioner actually denied that motion on October 30, 1998, when it stated that the motion was premature. We do not consider Lease's characterization of the family court commissioner's order as leaving the matter open to be a misrepresentation. It was an interpretation which could be made in good faith, even if an alternate interpretation could also be made. Therefore, the trial court properly exercised its discretion when it determined that the child support order should not be reopened on the basis of misrepresentation.

¶10 Even if Lease's child support motion from October 12, 1998 was still open, Skalitzky maintains that he could reasonably have believed that it was no longer pending. He argues that his belief, even if erroneous, constituted excusable neglect sufficient to reopen the subsequent child support order under WIS. STAT. § 806.07(1)(a). While we agree that Skalitzky could reasonably have thought that the family court commissioner's order disposed of Lease's motion, we are not persuaded that his belief excuses his failure to present "important evidence" in opposition to a retroactive award. To begin with, Skalitzky submitted a letter to the court prior to the November 30, 1999 hearing on child support in which he himself calculated the amounts of support he believed he owed for 1998 and 1999. He proceeded to testify about all the dates on which he believed the children were with him during those two years. In addition, the record shows that the trial court specifically commented to Skalitzky at the hearing that it was operating under the assumption that the October 1998 child support motion was still pending. Skalitzky did not object to the trial court's statement, instead indicating that he understood the trial court's position. We conclude the trial court properly exercised its discretion when refusing to reopen the child support award on the basis of excusable neglect.

¶11 Finally, Skalitzky argues that the trial court failed to consider his argument that the child support award should be reopened under WIS. STAT. § 806.07(1)(h) due to his confusion about the status of the motion and his failure to understand the possibility that a retroactive award of the size imposed could be issued. He insists that these are other reasons justifying relief from the judgment. However, we view his arguments in this respect as little more than restatements of arguments which he has already made under other sections. The only additional point he seems to make is that consideration should be given to the fact that he

was unrepresented at the hearing on child support. Many litigants choose to represent themselves in family law matters, however. Ann M. Zimmerman, *Going Pro Se*, WISCONSIN LAWYER, December 2000, p.11. Skalitzky has not persuaded us that there were any extraordinary circumstances present in his case which would have required the trial court to grant his motion to reopen.

By the Court.—Order affirmed.

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