

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 16, 2007

David R. Schanker
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. 2006AP876

Cir. Ct. No. 1995FA122

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

LAWRENCE E. SCHROEDER,

PETITIONER-APPELLANT,

V.

STORMI O. SCHROEDER,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Columbia County:
DANIEL S. GEORGE, Judge. *Reversed and cause remanded for further proceedings.*

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Lawrence Schroeder appeals an order requiring him to pay his former wife, Stormi Schroeder, \$630 per month in child support. He contends that the award is excessive because the circuit court erroneously computed the income he has available to pay support. Because we conclude that the circuit court failed to articulate a reasonable basis for the computed income, we reverse.

¶2 Lawrence and Stormi divorced in 1997. In 2005, Stormi moved for primary placement of and child support for the couple's remaining minor child. Lawrence stipulated to the child's placement and did not oppose an award of 17% of his income, under the child support guidelines set forth in WIS. ADMIN. CODE § DWD 40.03. The issue the parties litigated, at hearings in October and December 2005, was the computation of Lawrence's income for child support purposes.

¶3 Lawrence is self-employed as a dairy farmer. The circuit court concluded that the best evidence of his farm income was a financial report prepared by Lawrence's principal lender, DMB Community Bank, and a bank officer's testimony about it. The report, described as a "collateral and cash analysis sheet," calculated Lawrence's 2004 net farm income as \$26,424, after subtracting business expenses that included \$36,313 for depreciation of equipment. Because the depreciation was a non-cash expense, DMB considered the \$36,313 as "money [Lawrence had] available to spend." Consequently, DMB included that amount in determining how much money Lawrence had available to make his debt payments.

¶4 Although DMB's analysis covered 2002-04, the circuit court based its computation solely on DMB's figures from 2004. The circuit court concluded

that Lawrence's annual income used to compute child support would be \$44,424, consisting of his \$26,424 net business income for 2004 plus roughly half of the \$36,313 depreciation expense for that year, giving him a child support obligation of \$630 per month under the standard 17% award for the support of one child. Lawrence contends that the court erred by including a portion of the depreciation expense in his income. He also contends that it was error to base the award solely on his 2004 income, rather than considering his income averaged over several years, and his projection of reduced income in 2005.

¶5 To award child support using the percentage standard under the DWD guidelines, the court shall, if applicable, use the parent's annual income modified for business expenses to determine the parent's obligation. WIS. ADMIN. CODE § DWD 40.03(1).

“Income modified for business expenses” means the amount of income after adding wages paid to dependent household members, adding undistributed income that the court determines is not reasonably necessary for the growth of the business, and subtracting business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

WIS. ADMIN. CODE § DWD 40.02(16).

¶6 In calculating child support income, the circuit court exercises discretion in determining whether to include depreciation as a business expense. *See Stephen L.N. v. Kara L.H.*, 178 Wis. 2d 466, 475-76, 504 N.W.2d 422 (Ct. App. 1993). We will sustain discretionary acts as long as 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. *State v. Gudenschwager*, 191 Wis. 2d 431, 440, 529 N.W.2d 225 (1995).

¶7 The circuit court here failed to adequately explain why it found half the 2004 depreciation expense available for child support. Lawrence contended, and DMB's officer testified, that none of the money classified as 2004 depreciation was available to Lawrence as personal income because he needed it to meet his farm expenses. Lawrence also offered evidence that in 2005 his wife no longer contributed to farm expenses as she had in previous years, and his expenses were substantially increased in 2005 by the economic necessity of expanding his business.¹ The court acknowledged that money deducted from gross income as depreciation can legitimately be spent on the business, but made no findings as to why, in Lawrence's case, it would consider only half the claimed depreciation expense as reasonably needed for business expenditures. To properly exercise discretion, the court need not exhaustively analyze each piece of evidence, but it must articulate its findings and reasoning. See *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). Here, we are unable to discern the basis for the court's decision that only half the claimed depreciation was needed to meet business expenses. Because a proper exercise of discretion is not apparent from the record, we remand and direct the circuit court to address the topic.

¶8 Lawrence also contends that the court erred by basing the award solely on his 2004 income. DMB's representative testified that Lawrence was doing better in 2004 due to high milk prices. Applying the court's formula (net income plus one-half of depreciation) to DMB's income and depreciation

¹ Lawrence's wife had formerly contributed to family income through employment, but had stopped working for pay several months before the hearings to focus her attention on caring for the couple's infant child.

calculations for 2002 produces a child support income of \$13,215, and applying that formula to 2003 produces no child support income. The financial data in evidence for 2005 suggests a substantially reduced child support income under the formula for that year as well. Although we are reversing on other grounds, it is not apparent from the briefing or the record that it was an appropriate exercise of discretion to examine and use only the 2004 data.

¶19 Lawrence additionally argues that the court “should deduct the cost of Larry’s debt service as a reasonable and necessary business expense for purposes of determining his income before calculating his child support.” However, Lawrence’s financial reports appear to show that in each year in evidence, including 2004, debt payments were subtracted from gross income to determine Lawrence’s annual net farm income, and were thus already factored in to the court’s determination. If Lawrence is arguing that this is not so, he has failed to support his argument with sufficient facts to make his case. If this is not Lawrence’s argument, then his point is not sufficiently clear for this court to understand.

By the Court.—Order reversed and cause remanded for further proceedings.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

