

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 11, 2009

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. 2008AP2418-FT

Cir. Ct. No. 2000FA162

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

HAIYAN ANDERSON,

PETITIONER-RESPONDENT,

V.

BRIAN LEE ANDERSON,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County:
KAREN L. SEIFERT, Judge. *Affirmed.*

Before Brown, C.J., Anderson, P.J., and Neubauer, J.

¶1 PER CURIAM. Brian Lee Anderson appeals from the order of the family court that denied his motion to reduce child support. Brian argues that the family court erred when it denied his motion because it did not adopt the statutory

presumption that there has been a substantial change in circumstances after thirty-three months. WIS. STAT. § 767.59(1f)(b)2 (2005-06).¹ We conclude that the family court properly exercised its discretion and did not err as a matter of law. Consequently, we summarily affirm the order of the family court. *See* WIS. STAT. RULE 809.21.

¶2 Brian Anderson and Haiyan Anderson were divorced in 2001. They have two children. Brian and Haiyan have joint custody of the children, with Haiyan having primary placement. Brian lives in Wisconsin and Haiyan lives in California. In February 2008, Brian moved to modify the child support payment ordered at the time of the divorce. The basis for his motion was that his income had decreased since the time the judgment of divorce was entered.

¶3 The matter initially went before a family court commissioner who granted the motion and reduced the child support amount from \$2812.50 per month to \$2023.40 per month. The court commissioner found that more than thirty-three months had passed since the judgment of divorce had been entered, and therefore, a substantial change in circumstances was presumed to have occurred. Haiyan then moved the family court to review the court commissioner's determination.

¶4 The family court held a hearing on the matter and denied Brian's motion. The court found that Brian's employer was "capable of paying the respondent compensation at the same level he was receiving at the time of the divorce." The court concluded, therefore, that there had not been a substantial

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

change in circumstances since the entry of the last child support order. The court further noted that the court commissioner had not had all the financial information about the corporation at the time the court commissioner made its initial determination to grant Brian's motion.

¶5 Brian argues that the family court erred because it did not properly apply the statutory rebuttable presumption that there has been a substantial change in circumstances after more than thirty-three months. Generally, we review the family court's decision to modify an award of child support for a proper exercise of discretion. *Zutz v. Zutz*, 208 Wis. 2d 338, 342, 559 N.W.2d 919 (Ct. App. 1997). We inquire whether the court considered the needs of the child and the parents' ability to pay. *Id.* Our review, then, "is confined to whether the court examined the relevant facts, applied the proper legal standards and reached a logical decision." *Id.* (citation omitted). The "thirty-three month statutory presumption" did not curtail the discretion of the family court. *Id.* at 344. The thirty-three month presumption "did only one thing: it set out a rule that the elapse of thirty-three months gives a party a prima facie claim that child support should be modified." *Id.* Once reached, however, presumption becomes irrelevant to the issue of whether the support should be modified. *Id.* Because the family court, in that case, properly interpreted the statutory presumption, the question remaining was whether the court erred when denied the motion to modify. *Id.* at 345. In *Zutz*, the family court found that there was no reason to set aside the previous agreement because it was still serving the needs of the children and was fair to the parents. *Id.* at 344-45.

¶6 In this case, the family court rejected the presumption of a substantial change in circumstances based on the evidence presented. This was within the court's discretion, and the family court did not err. The family court

found that the corporation, of which Brian is the only shareholder, had the same ability to pay him as it did at the time of the initial agreement. Our review of the evidence supports this finding. We conclude that the family court properly exercised its discretion when it denied Brian's motion to modify the award of child support. We affirm the order of the circuit court.

By the Court.—Order affirmed.

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

