

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 29, 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. 2008AP2746**

**Cir. Ct. No. 2004FA15**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN RE THE FINDING OF CONTEMPT IN  
IN RE THE MARRIAGE OF:**

**SHARON BARROCK-DINGES,  
P/K/A SHARON SCHOENWALDER,**

**PETITIONER-RESPONDENT,**

**v.**

**TODD SCHOENWALDER,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Waukesha County:  
DONALD J. HASSIN, JR., Judge. *Affirmed.*

¶1 SNYDER, J.<sup>1</sup> Todd Schoenwalder appeals from a remedial contempt order entered as a remedy for Todd's failure to provide income information in a timely manner as required by his divorce judgment, by a family court order, and by WIS. STAT. § 767.58. The contempt order required Todd to reconcile his child support obligation to his actual annual income for the 2007 calendar year. Todd argues that § 767.58(1) does not require constant income fluctuation reporting and that, if it did, the trial court erroneously exercised its discretion in holding Todd in contempt on that basis. We affirm the contempt finding and order.

¶2 The essential facts are not contested. Todd and Sharon Barrock-Dinges, p/k/a Sharon Schoenwalder, were divorced on September 7, 2004. Todd was ordered to pay monthly child support of \$1,160 for their three minor children. On July 12, 2006, a family court order set Todd's child support at \$700 per month based upon Todd's reported annual income of \$48,000. The child support order contained the following directive:

That the Court further orders [Todd] to provide [Sharon] with monthly statements substantiating his complete income, including full time, part time work, cash payments, and any bonuses, or the like.

¶3 The income reporting requirement in the July 12 order is consistent with WIS. STAT. § 767.58(1), which requires that each child support order include a provision that:

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

the payer [Todd] notify the county child support agency under s. 59.53(5) and the payee [Sharon], within 10 business days ... of any substantial change in the amount of his or her income, including receipt of bonus compensation, affecting his or her ability to pay child support ....

¶4 Todd paid \$8,400 in child support during calendar year 2007 pursuant to the existing family court order. In 2007, Todd received total income of approximately \$163,560, which included his \$48,000 salary plus additional commission/bonus compensation.<sup>2</sup> Todd did not report his complete monthly income to Sharon as required by the family court order. This would have included the additional commission/bonus income he had received during 2007. Furthermore, Todd did not report the additional income to the child support agency and to Sharon as required by WIS. STAT. § 767.58.

¶5 Todd claims that the trial court erroneously found him in contempt because WIS. STAT. § 767.58 does not require that child support payers report each and every deviation from the payer's base pay to a payee and the child support agency. Todd is correct in part. Section 767.58(1) requires that "any substantial change in the amount of his or her income" must be reported. If the 2007 income deviation was limited only to the \$401.63 commission received by Todd on January 20, 2007, it is doubtful that a failure to report the additional income would meet the "substantial change" requirement of the statute.

¶6 Todd does not dispute that his 2007 income was a "substantial change" from the \$48,000 per year income underlying the support order of \$700

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<sup>2</sup> Todd does not challenge the amount of total income he received during 2007 of \$163,560. Nor does he challenge the allegations that he received nine periodic payments beginning on January 20, 2007 and ending on December 27, 2007, that resulted in his total 2007 income.

per month. An annual income of \$163,560 is substantially more than an annual income of \$48,000 as a matter of fact and of law. Regardless, Todd's failure to comply with the monthly income reporting requirement in the July 12, 2006, family court order was a sufficient basis upon which the trial court could consider a remedial contempt order.

¶7 We read Todd's appeal as challenging the trial court's authority to impose a contempt order and purge requirement for his failing to timely report substantial changes in his income, as required in WIS. STAT. § 767.58, the divorce judgment, and the July 12, 2006 family court order.

¶8 Initially, we note that WIS. STAT. § 767.58(1) specifically states that “[a]n order under this subsection is enforceable under ch. 785.” Chapter 785 is the “contempt of court” chapter. In addition, a trial court's authority to use remedial contempt powers to order a payer to make purge payments for loss suffered as a result of contemptuous conduct, including the failure to report substantial changes in income relating to child support, has been previously addressed by our supreme court in *Frisch v. Henrichs*, 2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85.<sup>3</sup>

¶9 In *Frisch*, the issue before the court was “whether the circuit court may use its remedial contempt power to craft a remedy where a party has consistently failed to provide tax returns and income information in a timely manner as required under statute, a divorce judgment, and a court order, but does produce the information before the contempt hearing.” *Id.*, ¶1. There, the circuit

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<sup>3</sup> Neither party cites to *Frisch v. Henrichs*, 2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85 in their briefs. *Frisch* was released on July 17, 2007, well before the February 2, 2009 certification of Todd's brief and the March 10, 2009 certification of Sharon's brief. We are taken aback by counsels' failure to raise and argue recent controlling case law.

court found Henrichs in contempt for failing to produce tax information on an annual basis and for failing to timely report substantial changes in his income as required by statute and court order. *Id.*, ¶2. The circuit court ultimately held that Henrichs had “breached his obligation to notify the court and [Frisch] of his changes in income.” *Id.*, ¶23. The court concluded that it had the authority to sanction Henrichs for contempt and to compensate Frisch for losses suffered as a result of that contempt. *Id.*

¶10 We reversed the circuit court order, holding that it lacked “the necessary hallmarks of remedial contempt.” *Id.*, ¶25 (citation omitted). We reasoned that remedial sanctions may be imposed only to terminate a continuing contempt of court. *Id.*, ¶26. We concluded that the contempt was no longer continuing once Henrichs produced the financial records in accordance with the court’s order. *Id.*

¶11 The supreme court reversed, noting that although Henrichs eventually did produce the required documentation before the circuit court found him in contempt, “his contempt was continuing under WIS. STAT. § 767.27(2m) because his production of documents came too late to undo the problems he had created by failing to produce documents on time.” *Id.*, ¶47. Likewise, Todd’s failure to timely report fluctuations in his 2007 income was not remedied by his income reporting in January 2008.

¶12 In cases where a parent’s income fluctuates with commissions or bonuses, the duty to report substantial changes is not concerned with the convenience to the payer but with the statutory goal of providing for the best interest of the child. See *Ondrasek v. Tenneson*, 158 Wis. 2d 690, 696, 462 N.W.2d 915 (Ct. App. 1990) (“[t]he paramount goal of the child support statute is

to promote the best interests of the child.”). Furthermore, where the payer violates a clear court order to report monthly, a circuit court may properly employ remedial contempt. *Frisch*, 304 Wis. 2d 1, ¶81. In *Frisch*, our supreme court held that the “timely provision of information was an essential element of the court’s order.” *Id.* Accordingly, remedial contempt was appropriate where continuing violations of a child support order, specifically the child support payer’s “failure to produce the information in a timely manner, as required, permitted [Henrichs] to evade exposure to the possibility of a modification of his child support obligation and thereby deprived [Frisch] and their children of their traditional remedies under the statutory law.” *Id.*<sup>4</sup>

¶13 Pursuant to the supreme court holding in *Frisch*, the notice requirements contained in WIS. STAT. § 767.58(1), the statutory authority to use contempt powers to enforce § 767.58(1), and the continuing violations of the family court order requiring Todd to report his monthly income to Sharon during 2007 and to report any substantial change in income to both the child support agency and to Sharon, we affirm the trial court’s order holding Todd in remedial contempt of court and the setting of purge conditions.

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<sup>4</sup> The supreme court explained the rationale for the authorization of contempt powers to address a continuous violation of child support orders and legal requirements:

Our holding promotes the intent behind the contempt statute, which is to provide the court with a mechanism, or toolbox, to effect compliance with court orders. Without such a tool, a parent could avoid his or her child support obligations by failing to provide court-ordered financial information for years and then complying at the last moment.

*Frisch*, 304 Wis. 2d 1, ¶82 (citation omitted).

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)4.

