COURT OF APPEALS
DECISION
DATED AND FILED

December 26, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0756 **Cir. Ct. No. 87-FA-13**

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

IN RE THE MARRIAGE OF:

GARY D. PICHA,

PETITIONER-APPELLANT,

V.

SUSAN T. PICHA,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Gary Picha appeals an order directing him to pay child support arrearages. The issues are whether the court made an improper retroactive revision of his support obligation, and whether support should have

been calculated based on his income as determined by the accrual accounting method. We affirm.

¶2 Gary and Susan Picha were divorced in 1988. In 2001, Susan moved for a money judgment for child support arrearages. The motion sought recalculation of all child support payments throughout the period of divorce, based on alleged inaccurate or incomplete information previously provided by Gary. The court ordered additional payments after concluding that the accrual method of accounting was the correct basis for Gary to have been calculating his child support payments, rather than the cash method.

¶3 On appeal, Gary first argues that in reaching this conclusion the court made a retroactive revision of the child support amount due, which is prohibited under WIS. STAT. § 767.32(1m) (1999-2000).[1] His argument is that the court's original support order directed him to use the cash method, and when the court later concluded that he should have been using the accrual method, the court revised the support order.

¶4 The original divorce judgment included a marital settlement agreement that obligated Gary to pay child support "in an amount equal to 25% of his gross income as received by him, according to State of Wisconsin DHSS guidelines for child support of two minor children." Gary argues that the use of the phrase "income as received by him" necessarily meant income actually received by him under the cash method, and not the gross income he reported to the Internal Revenue Service on the accrual basis, which he was required to use

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

because of his business. We disagree. The operative phrase in that provision is "gross income." We do not read the additional language as intending to alter the legal meaning of that term.

¶5 However, even if that was the intended meaning, the phrase was eliminated in 1990 when the court found that Gary was shirking and amended the judgment to state that he "shall pay child support in the amount of $378.65 per month … or twenty-five percent (25%) of his gross income, whichever is greater." Gary argues that this modification did not alter the original "definition" of gross income. There is no merit to this argument. The modification eliminated the phrase that he argues qualified "gross income" in some way. Under the support order that was in effect for the period relevant to this appeal, Gary was obliged to pay child support based on his "gross income," and nothing else.

¶6 Gary appears to concede, and Susan's financial witness testified, that Gary was required to report his gross income to the federal government using the accrual method. He also appears to concede that Wisconsin statutes and administrative code use the same definition of gross income for purposes of child support. However, Gary nevertheless argues that his support payments should be calculated on the cash method instead, because the accrual method requires him to pay support from income that he has not yet received, and this is inequitable. He asserts that a court has discretion to look past the tax figures in determining child support under WIS. STAT. § 767.25(1g) and (1m). Gary misreads these statutes. They apply to the initial setting of support, not to determinations of arrearages. In this case, the court's existing support order was based on Gary's gross income, which he was required by tax law to report on an accrual basis. If the court were to now conclude, on equity grounds, that his support obligation should be based on

some other measure, that would be a retroactive revision of the kind which Gary himself argues is prohibited by WIS. STAT. § 767.32(1m).

¶7 Gary also asserts that applying the accrual method would be an absurd result that should be avoided. The result is not absurd. Susan's financial witness testified that the I.R.S. requires the accrual method for businesses like Gary's because by taxing income when it is earned, rather than when it is collected, the accrual method prevents the taxpayer from intentionally delaying collections to misstate income.

¶8 Finally, Gary argues that the court erred in an order entered on April 2, 2002, after he filed his notice of appeal in this case. An appeal from a judgment does not embrace an order entered after judgment. ***Chicago & N.W.R.R. v. LIRC***, 91 Wis. 2d 462, 473, 283 N.W.2d 603 (Ct. App. 1979), *aff'd,* 98 Wis. 2d 592, 297 N.W.2d 819 (1980). We see no reason why this concept would not apply to appeals from orders, as well. Accordingly, the April 2 order is not before us in this appeal, and we do not address the issue argued.

By the Court.—Order affirmed.

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