

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 9, 2003

Cornelia G. Clark
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. 03-0940
STATE OF WISCONSIN**

Cir. Ct. No. 89PA000026

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE PATERNITY OF

TYLER JAMES KEVIN HARVEY:

**STATE OF WISCONSIN AND BOBBI JO NETZER,
N/K/A BOBBI J. BRENEMAN,**

PETITIONERS-RESPONDENTS,

v.

JAMES KEVIN HARVEY,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Taylor County:
GARY L. CARLSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. James Harvey appeals orders that set his child support and arrearages based on imputed income of \$78,000 per year. The court found that Harvey understated his income and that, if he worked and earned as little as he claimed, he was shirking his child support obligations. Because either of these findings would be sufficient to support the orders and the record supports both findings, we affirm the orders.

¶2 Harvey fathered the child in 1989. He never married the child's mother. The paternity judgment and child support order required Harvey to pay child support of 17% of his gross income or \$125 per month, whichever is greater. Harvey paid \$125 per month based upon his tax returns showing less than \$10,000 per year income. During the years in question, 1998 through 2001, Harvey was an officer in a business run by his wife. Michael Salm, a certified public accountant, testified that Harvey's wife was paid \$78,000 to \$93,600 annually while Harvey claimed to have earned less than \$10,000. In the year 2000, tax returns indicate that Harvey had sales income of over \$44,000 that he returned to the corporation. In 2001, he returned \$130,000 to the corporation. Salm testified that the Harveys shifted income from James to his wife, making him eligible for reduced child support payments. Salm concluded that Harvey should be credited with half of the business income. The trial court adopted Salm's calculation and imputed \$78,000 annual income to Harvey for purposes of calculating his child support and arrearages since 1998.

¶3 Sufficient evidence supports the trial court's finding that Harvey understated his true income. That decision was based on the court's assessment of the witnesses' credibility, a matter that is solely committed to the trial court. *See Wurtz v. Fleischman*, 97 Wis. 2d 100, 107, 293 N.W.2d 155 (1980). Salm's expert testimony provided a reasonable basis for the trial court to find that

Harvey's claimed income was the result of accounting gimmicks. The court found Harvey's testimony "totally unbelievable" regarding his low income and the few hours per week he worked. His decision to return sales income to the corporation and the decision to shift income from Harvey to his wife support the trial court's finding.

¶4 The trial court did not, as Harvey argues, order Harvey's wife to contribute to his child support. Rather, the court merely accepted expert testimony that some of the income attributed to Harvey's wife should actually be attributed to him.

¶5 The record also supports the trial court's finding that Harvey shirked his child support obligations if he worked only ten hours per week and earned less than \$10,000 per year. A parent shirks his responsibility when he makes voluntary and unreasonable employment decisions. See *Van Offeren v. Van Offeren*, 173 Wis. 2d 482, 496, 496 N.W.2d 660 (Ct. App. 1992). At the time Harvey fathered the child, he was gainfully employed as the manager of a business. The child's mother testified that Harvey earned \$1,000 per week plus a \$2,000 monthly bonus in five out of the six months they were together. Later, when they moved to Oklahoma, Harvey paid himself \$500 per week as a base salary but took more out of the company as living expenses demanded. The rest of his earnings remained in the company as retained earnings. Harvey's nonworking activities since 1998 consisted of fishing, watching television and drinking beer. His deliberate choice to reduce his income constitutes shirking.

¶6 Harvey's circumstances are not comparable to those in *Edwards v. Edwards*, 97 Wis. 2d 111, 293 N.W.2d 160 (1980), or *Balaam v. Balaam*, 52 Wis. 2d 20, 187 N.W.2d 867 (1971). In *Edwards*, the court concluded that the

father was working in the profession for which he was trained and that his income had remained stable throughout the marriage. He did not reduce his hours of work or his income to avoid his support obligations. He worked sporadically for low pay throughout the marriage. In *Balaam*, the father was a mink rancher whose fortunes were determined by market forces beyond his control. Again, there was no evidence that Balaam was not fairly or diligently working at the occupation for which he was best suited or that he willfully reduced his income. Harvey, on the other hand, chose to reduce his working hours and income and has not diligently applied himself to his profession.

By the Court.—Orders affirmed.

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

