COURT OF APPEALS
DECISION
DATED AND FILED

June 15, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1334 **Cir. Ct. No. 99FA000225**

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

IN RE THE MARRIAGE OF:

MICHELE A. MEURER, N/K/A MICHELE A. BOWER,

PETITIONER-RESPONDENT,

V.

CHAD WM. MEURER,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Oneida County: ROBERT E. KINNEY, Judge. *Affirmed*.

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

¶1 PER CURIAM. Chad Meurer, pro se, appeals an order setting his child support obligation. Chad argues the circuit court erroneously exercised its discretion by (1) setting his child support obligation based on imputed income

rather than Chad's testimony regarding his current income; (2) denying Chad's request for the production of financial information from Michele Meurer (n/k/a Bower) and Lonnie Bower, her current spouse; and (3) denying what Chad claims was a request for an adjournment to have his attorney present. We reject Chad's arguments and affirm the order.

BACKGROUND

¶2 Chad and Michele were divorced in April 2001. At that time, custody of their minor children was awarded jointly, with primary physical placement of Shana awarded to Michele and primary physical placement of Dillian awarded to Chad. Although neither party was ordered to pay child support, the judgment indicated that child support would be "held open." Ultimately, primary physical placement of both children was transferred to Michele.

¶3 In October 2002, the Oneida County Child Support Agency filed the underlying petition for child support against Chad. After a hearing, an amended order set Chad's child support obligation at $375 per month. This appeal follows.

DISCUSSION

A. Imputed Income

¶4 Chad argues the circuit court erroneously imputed income to him based on its determination that he was capable of earning at least $9.50 per hour for 40 hours per week. A determination of child support is committed to the sound discretion of the trial court. ***Raz v. Brown***, 213 Wis. 2d 296, 300, 570 N.W.2d 605 (Ct. App. 1997). We will sustain a discretionary decision if we conclude that the trial 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. ***Id.*** A trial court is required to calculate the appropriate award of child support by applying the WIS. ADMIN. CODE § DWD 40 percentage standards to the payor's gross income. *See* ***Evenson v. Evenson***, 228 Wis. 2d 676, 691, 598 N.W.2d 232 (Ct. App. 1999). A court may impute income for child support purposes. S*ee* WIS. ADMIN. CODE § DWD 40.05. Chad, however, contends that the evidence does not support the trial court's determination of imputed income. We are not persuaded.

¶5 Chad cites the testimony of child support specialist Dawn Kennedy, who testified based on Chad's tax records, that child support should be calculated using the minimum wage as Chad's income base. During his testimony, however, Chad was asked how he was able to remain current on his bills when his expenses exceeded his claimed income, to which Chad answered that he shared expenses with his girlfriend and had obtained a loan from his future in-laws. During the course of his testimony, Chad testified regarding his employment history. The evidence adduced at trial indicates that Chad held jobs paying from what was calculated at approximately $2 per hour to as much as $11.25 per hour. Chad further testified that he was currently a self-employed handyman in Arizona earning between $3,000 and $10,000 per year.

¶6 Ultimately, the trial court, noting that Chad's substantial expenditures could not be reconciled reasonably with the limited income he claimed to have, concluded that Chad was either making considerably more money than he was declaring on his income tax forms or some third party was helping Chad with his substantial expenses. Under either scenario, there is sufficient evidence to support the trial court's determination of his imputed income. The court stated:

> [T]he expenditures that we've heard have been made on your behalf are fairly staggering. I mean, I don't have in-laws that pay $5,000 attorneys fees for me or $275 per month for travel expenses. And you've admitted that you really don't pay these back on a regular basis. Well … that's the kind of money that's available that could be paid for the support of the children.

Noting that Chad did not claim any disability, the court indicated there was no excuse for Chad's working only five hours a day and ultimately imputed income based on what it determined was Chad's ability to work a forty-hour week for at least $9.50 per hour.[1]

¶7 As arbiter of credibility, the court could reject Chad's explanations of his income and expenses. *See* ***Lellman v. Mott***, 204 Wis. 2d 166, 172, 554 N.W.2d 525 (Ct. App. 1996). To the extent Chad may have been making more money than he disclosed on his income tax forms, the deliberate manipulation of one's net income does not preclude the trial court from making an appropriate finding of fact. ***Id.*** at 172-73. "The trial court may make its finding based upon the available evidence when a party's intentional conduct precludes a precise determination of that annual income." ***Id.*** If, alternatively, Chad's income was properly reflected in his tax forms, the record supports the trial court's implicit finding that Chad's employment decisions were unreasonable under the circumstances. *See* ***Smith v. Smith***, 177 Wis. 2d 128, 138-39, 501 N.W.2d 850

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[1] To the extent Chad contends the trial court miscalculated his child support obligation at $412 per month, Chad is mistaken.

> $9.50 (hourly wage) x 40 hours = $380
> $380 x 52 weeks = $19,760
> $19,760 / 12 months = $1,646.67
> $1,646.67 x 0.25 (for two children) = $411.66

Chad's ultimate child support obligation of $375 per month reflects credit awarded by the court for a portion of his travel expenses from Arizona.

(Ct. App. 1993). The trial court thus properly imputed income to Chad based on his earning capacity. *See* ***id.***

B. Michele and Lonnie's Financial Information

¶8 Chad next argues that the trial court erred by denying his request for Michele and Lonnie's financial information. During the trial court's oral ruling, Chad interrupted the court, stating: "I'm requesting that the court bring in Michele Bower's financial statement and Lonnie Bower's financial statement … to be viewed." The court responded: "[I]f you want to bring a further motion and subpoena her and so forth, that's fine, but … what you have to pay in terms of a percentage … is not based on what she makes, it's based on what you make." On appeal, Chad cites no authority for the proposition that a trial court should order the provision of information by one party to the other absent a reasonable attempt at discovery. This court need not consider an argument that is generally made but not specifically argued. ***State v. Beno***, 99 Wis. 2d 77, 91, 298 N.W.2d 405 (Ct. App. 1980). Moreover, WIS. STAT. § 804.12(1) (2001-02) allows a trial court to order compliance with discovery when discovery is properly attempted but not properly responded to. Here, Chad provides no evidence to indicate that he made any attempt to properly discover the financial information.

¶9 Chad further argues that it was inconsistent for the court to order the parties to exchange tax returns in the future, while denying his request for financial information at the hearing. Again, Chad provides no authority for his claim. To the extent Chad intimates that the court's amended order does not reflect the court's oral ruling with respect to the future exchange of tax returns, the record belies his assertion.

C. Adjournment

¶10 Finally, Chad contends the trial court erroneously exercised its discretion by denying what Chad claims was a request for an adjournment to have his attorney present. We are not persuaded. Whether to grant a party an adjournment in a civil case is within the discretion of the circuit court. ***Robertson-Ryan & Assocs, Inc. v. Pohlhammer***, 112 Wis. 2d 583, 587, 334 N.W.2d 246 (1983). Chad claims he was denied the right to counsel after he was threatened with contempt of court. Although a party has a right to counsel in contempt cases, *see* ***Brotzman v. Brotzman***, 91 Wis. 2d 335, 283 N.W.2d 600 (Ct. App. 1979), the underlying action was not filed as a contempt case and Chad was not found in contempt.

¶11 At the hearing, Chad initially refused to answer questions concerning his girlfriend's income and the trial court explained:

> [I]f somebody … pays my expenses, that reduces the amount of money that's required for me to live, and you've already indicated that you share certain expenses, so her economic circumstances are relevant to these proceedings. Now, of course, it's true that she's not obligated to pay for the support of your children. … While it's not required that she pay for the support of your children, the fact that she pays expenses for you or that you share expenses tends, as I've said, to offset your expenses. So to that extent her circumstances are relevant.

When Chad later refused to answer who his girlfriend worked for, the following exchange occurred:

> [Court]: Well, you'll either have to answer it or you'll be found in contempt for –
>
> [Chad]: I have to answer that or I'll be found in contempt?
>
> [Court]: Right. In other words –

> ….
>
> [Chad]: I reserve to have my attorney present. So if you want to reschedule this hearing, we can do that –
>
> [Court]: Well, I don't have any –
>
> [Chad]: because you're – asking me questions that I –
>
> [Counsel for Oneida County]: Your Honor, I'll withdraw the question.

Because this was not a contempt proceeding and the question prompting the contempt discussion was ultimately withdrawn, we conclude the circuit court properly exercised its discretion by denying Chad's adjournment request.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2001-02).