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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT III**

December 9, 2014

To:

Hon. Mark J. McGinnis  
Circuit Court Judge  
Outagamie County Justice Center  
320 S Walnut St  
Appleton, WI 54911

Lonnie Wolf  
Clerk of Circuit Court  
Outagamie County Courthouse  
320 S. Walnut Street  
Appleton, WI 54911

Elisabeth Duran  
1003 Martinez St.  
Weslaco, TX 78596

Jesus E. Quinonez  
2930 North 25th Street  
Milwaukee, WI 53206

You are hereby notified that the Court has entered the following opinion and order:

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2014AP386

Elisabeth Duran v. Jesus E. Quinonez (L. C. No. 2005PA61PJ)

Before Hoover, P.J., Stark and Hruz, JJ.

Jesus Quinonez, pro se, appeals an order denying a motion to modify his child support obligation. Based upon our review of the brief and record, we conclude at conference that this case is appropriate for summary disposition. We reject Quinonez's arguments, and summarily affirm the order. *See* WIS. STAT. RULE 809.21.<sup>1</sup>

Quinonez was adjudicated Jesus Q.'s father in June 2005 and ordered to pay child support. Quinonez filed the underlying motion to modify his support obligation and the circuit court denied the motion after a hearing. This appeal follows. We review a circuit court order denying a motion to modify child support under an erroneous exercise of discretion standard.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

*Rottscheit v. Dumler*, 2003 WI 62, ¶11, 262 Wis. 2d 292, 664 N.W.2d 525. A circuit court may modify child support upon a finding of a substantial change in circumstances. *Id.* The burden of demonstrating a substantial change in circumstances, however, is on the party seeking modification. *Id.*

Quinonez argues he is entitled to modification of his child support obligation based upon his 2011 incarceration and reduced ability to pay. Specifically, Quinonez contends the circuit court erred by failing to consider Quinonez's gross income when denying the motion to modify support. This court has recognized that one need not be excused from his or her child support obligation because of a willful act resulting in imprisonment. *Parker v. Parker*, 152 Wis. 2d 1, 5, 447 N.W.2d 64 (Ct. App. 1989). The fact of incarceration by itself neither mandates nor prevents modification of child support. *Rottscheit*, 262 Wis. 2d 292, ¶1. Rather, "[i]ncarceration is one factor that should be considered, but the determination should be made on a case-by-case basis, looking at the totality of the relevant circumstances." *Id.* The factors for consideration include, but are not limited to

the length of incarceration, the nature of the offense and the relevant course of conduct leading to incarceration, the payer's assets, the payer's employability and the likelihood of future income upon release, the possibility of work release during incarceration, the amount of arrearages that will accumulate during the incarceration, and the needs of the children.

*Id.*, ¶41.

After a hearing, the court denied the modification request in an order indicating that Quinonez's incarceration was due to his own voluntary conduct and that his earning capacity remained unchanged. Although Quinonez challenges this order, he fails to provide a transcript of the motion hearing. See *Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶35, 298 Wis. 2d 468,

727 N.W.2d 546 (2006) (it is appellant's responsibility to provide this court with a record sufficient to allow review of issues raised, including any necessary transcript). The scope of our review on appeal is necessarily confined to the record before us, and we assume that any missing transcript would support the circuit court's findings of fact and discretionary decisions. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979); *see also Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Based on the language used in the order, we conclude the circuit court considered proper factors when denying Quinonez's motion, and we assume the missing transcript further supports the court's discretionary decision. We therefore affirm the order.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*