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**DISTRICT II**

October 21, 2015

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

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2014AP2337

In re the marriage of: Brian Matthew Weller v. Elisabeth Johnson  
(L.C. # 2012FA140)

Before Neubauer, C.J., Reilly, P.J. and Gundrum, J.

Brian Weller appeals from a circuit court order modifying child support. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm.

In March 2010, Brian Weller and Elisabeth Johnson were divorced via a consent decree in London, England. Upon the parties' agreement, the English court set Weller's child support obligation for the parties' minor child at \$1656 per month, or 5.4% of his \$367,596 annual

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

income. The English court foreclosed maintenance. Johnson now lives in Kenosha, Wisconsin and has primary physical placement of the child. Weller continues to reside in London.

In December 2013, Johnson moved the Kenosha county circuit court to increase child support and require Weller to reimburse her for one-half of the child's health insurance coverage and uninsured health care expenses. Weller moved the court to decrease his child support obligation, citing his reduced income, the substantially higher cost of living in London, and Johnson's increased income. Both parties agreed that a substantial change in circumstances had occurred since the English court's child support order. The court increased Weller's monthly child support obligation to \$2414 on current income of \$204,544. Weller appeals this child support award.

The modification of child support based on a substantial change in circumstances is within the circuit court's discretion. *See Thibadeau v. Thibadeau*, 150 Wis. 2d 109, 114-15, 441 N.W.2d 281 (Ct. App. 1989). We will affirm the circuit court's exercise of discretion if the court's decision "exhibits a rational reasoning process based on the facts in the record or reasonable inferences from those facts and the correct application of the proper legal standards to those facts." *Evjen v. Evjen*, 171 Wis. 2d 677, 683-84, 492 N.W.2d 361 (Ct. App. 1992).

A circuit court may revise child support only if it first determines there has been a "substantial change in circumstances." *See* WIS. STAT. § 767.59(1f)(a). The parties in this case agree that there was a substantial change in circumstances. Once a substantial change in circumstances has been established, the circuit court applies the same standards applicable to the initial child support determination. Sec. 767.59(2)(a); *see also* WIS. STAT. § 767.511(1j) and (1m).

After an evidentiary hearing, the circuit court made the following findings of fact and conclusions of law in support of its decision to increase Weller’s child support obligation. The court observed that the English court’s 2010 support order, \$1656 per month or 5.4% of Weller’s \$367,596 income, “would be totally unworkable and unfair had the same order been entered in Wisconsin.”

To resolve the parties’ competing motions to modify child support, the circuit court had to address Weller’s argument that the court should deem his higher cost of living a relevant factor warranting deviation from the percentage standards. WIS. STAT. § 767.511(1m)(i).<sup>2</sup> Johnson countered that Weller’s choice to reside in London should not affect his child support liability under the percentage standards. The court observed that the “high cost of living” argument had not been made to the court in prior cases where one parent was living in a high-cost American city.

The circuit court rejected Weller’s higher cost of living argument, observing that a higher cost of living should be accompanied by higher income. However, the court found a basis to deviate from the percentage standards after considering the child’s private school expenses and the extraordinary travel expenses necessary for Weller to have placement with the child. The

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<sup>2</sup> WISCONSIN STAT. § 767.511(1m) states that

the court may modify the amount of child support payments determined under sub. (1j) [the percentage standard] if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

....

(i) Any other factors which the court in each case determines are relevant.

court viewed the private school expenses borne by Johnson as offsetting the placement travel expenses borne by Weller. The court declined to deviate further from the percentage standards. In setting child support, the court focused on the standard of living available to the child under a modified child support order. The court applied the high-income payer child support standard to Weller's \$204,544 annual income and ordered Weller to pay monthly support of \$2414.<sup>3</sup>

On appeal, Weller argues that the circuit court erred when it declined to consider his cost of living in London as a factor in setting child support. In the appropriate circumstances, the cost of living might be a factor considered by the circuit court in exercising its discretion under WIS. STAT. § 767.511(1m)(i). Here, however, the circuit court made a reasonable and reasoned discretionary decision not to consider Weller's cost of living as a basis for deviating from the child support percentage standard. Rather, in its discretion, the court emphasized the standard of living the child would enjoy under a modified child support order more in line with the high-income payer standard. The court reasonably found that while the child's needs were being met by the funds currently available to him from both parents, the court was not foreclosed from considering an increased standard of living for the child under a modified child support award.

We do not agree with Weller that the circuit court's refusal to deviate further from the percentage guidelines effectively granted maintenance to Johnson because the modified child support award eclipsed the child's current needs. The court was concerned with the child's standard of living, which would be higher if Weller paid increased child support.

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<sup>3</sup> Weller does not dispute the circuit court's child support calculation under the high-income payer child support standard set out in WIS. ADMIN. CODE § DCF 150.04(5) (Nov. 2009).

We also do not agree with Weller that the circuit court was attempting to right a child support imbalance or deficit under the English child support order. The circuit court appropriately observed that the English order was problematic under Wisconsin law. That observation did not undermine a proper exercise of discretion in modifying child support under Wisconsin law after considering the appropriate statutory factors.

Upon the foregoing reasons,

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

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