OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
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
Web Site: www.wicourts.gov

DISTRICT I

June 13, 2017

To:

Hon. Marshall B. Murray
Circuit Court Judge
Children's Court Center, # 2414
10201 Watertown Plank Road
Milwaukee, WI 53226-3532

John Barrett
Clerk of Circuit Court
Room G-8
901 N. 9th Street
Milwaukee, WI 53233

John K. Conley
Child Support Legal Counsel
Rm. 101
901 North 9th Street
Milwaukee, WI 53233

Steven Gravatt
4863 N. 87th St.
Milwaukee, WI 53225

Kristen Laura Rydstrom
4854 N. 87th St.
Milwaukee, WI 53225

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

2016AP1698 Kristen Rydstrom v. Steven Gravatt (L.C. # 2009FA5955)

Before Kessler, Brash and Dugan, JJ.

Kristen Rydstrom, *pro se*, appeals from an order of the circuit court that set Steven Gravatt's monthly child support obligation at $495. 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 (2015-16).[1] The order is summarily affirmed.

Rydstrom and Gravatt jointly petitioned for divorce in October 2009 after approximately twelve years of marriage. It appears the split was largely amicable; among other things, the

---

[1] All references to the Wisconsin Statutes are to the 2015-16 version.

parties agreed to share a residence and, thus, the placement and expenses of their minor child. Though Gravatt would pay sixty percent of the child's variable expenses, neither party requested nor received maintenance or child support. The judgment of divorce was entered in March 2010.

In January 2013, Rydstrom moved for a change in child support after she became unemployed and unable to find work due to, as she describes it, a "permanent physical disability" caused by a "deteriorating neurological disorder." On November 4, 2013, the family court commissioner found Gravatt's monthly income was $8626 and ordered him to pay $789 a month for child support.

In December 2014, Gravatt moved for a change in child support, citing a reduction in his income. The commissioner determined that Gravatt's monthly income in 2014 had been $6000 and, utilizing the appropriate percentage standard and shared-time formula, reduced the support obligation to $495 per month. The commissioner's order was entered July 21, 2015.

Rydstrom petitioned for *de novo* review by the circuit court. She argued the circuit court should deviate from the percentage standard "because there is a significant disparity in the standard of living [her] child … enjoys between that his father provides and that which I am able to provide." Rydstrom further argued that Gravatt's gross income had not been appropriately calculated, and she claimed that his income had declined because he was "not working to his full capacity."

Both parties presented a written brief and answered questions posed by the circuit court at a hearing in June 2016, though neither party appears to have been sworn. No witnesses were called. Ultimately, the circuit court reached the same result as the commissioner and set Gravatt's child support obligation at $495 per month, or $114.23 per week. Rydstrom appeals.

Child support determinations are entrusted to the circuit court's discretion and will not be disturbed on review absent an erroneous exercise of discretion. *See* ***Ladwig v. Ladwig***, 2010 WI App 78, ¶15, 325 Wis. 2d 497, 785 N.W.2d 664. We accept the circuit court's findings of fact unless clearly erroneous. *See* ***id.***; WIS. STAT. § 805.17(2). If a circuit court "does not explicitly state its reasons for a child support order, we may search the record for reasons to sustain the [circuit] court's discretionary decision." ***Rumpff v. Rumpff***, 2004 WI App 197, ¶14, 276 Wis. 2d 606, 688 N.W.2d 699.

The circuit court found that Rydstrom's monthly income was $2116 and Gravatt's monthly income was $6000.[2] Rydstrom claims that Gravatt's monthly income was miscalculated because, she asserts, he has substantial additional assets, including but not necessarily limited to "stocks, cash and deposit accounts, and retirement accounts," which she thinks should have been included in his gross income. *See* WIS. ADMIN. CODE § DCF 150.02(13)(a) (through Apr. 2017).[3]

While the circuit court's decision references Gravatt's "gross income," it appears that it was actually utilizing Gravatt's income as "modified for business expenses." *See* WIS. ADMIN. CODE § DCF 150.03(1). The circuit court not only relied on Gravatt's tax return, which had accounted for the business expenses,[4] but it expressly stated that Gravatt's monthly income was

[2] Rydstrom does not dispute that the $495 amount is correctly calculated based on the monthly incomes as found by the court. She also does not dispute that Gravatt was entitled to seek modification of the support order based on the change in income. *See* WIS. STAT. § 767.59(1f)(c)1.

[3] All references to the Wisconsin Administrative Code are to the version current through April 2017.

[4] Presumably, the return also accounted for income from any investments.

$6000 "after business expenses."[5] Regardless of its calculation method, Rydstrom has not shown that the circuit court erred in determining Gravatt's income.[6]

Rydstrom also argues Gravatt was not working to his full potential and a higher income should be imputed to him. Because they shared a residence[7] at the time, Rydstrom claimed she could tell when Gravatt was home or home early. She kept notes on a calendar and, by her calculations, he was only working seventy-one percent of a typical forty-hour week. The circuit court found that Rydstrom offered "no convincing evidence … only suspicion" that Gravatt was shirking.[8]

Rydstrom complains that the circuit court erred when it failed to ask Gravatt whether the evidence Rydstrom offered was accurate, but cites no authority for the circuit court's obligation to undertake such an inquiry. In any event, before a court can consider a parent's earning capacity rather than actual income, it must conclude the parent was shirking—that is, that the parent made an "employment decision to reduce or forgo income" that was "voluntary and unreasonable under the circumstances." *See* ***Chen v. Warner***, 2005 WI 55, ¶20, 280 Wis. 2d

---

[5] Rydstrom additionally complains that Gravatt's business expenses include "normal daily living expenses" like his cell phone and internet. Gravatt told the court how he used these items in the course of his employment as a traveling salesperson, *see* WIS. ADMIN. CODE § DCF 150.03(2)(c), and Rydstrom has not demonstrated the offsets were improper. While Rydstrom believes she should receive offsets for the same expenses, her only argument is a conclusory statement that she is "the sole owner of an LLC."

[6] While Rydstrom also complains the circuit court should have averaged Gravatt's prior years' income before calculating the support obligation, she cites no authority for this proposition.

[7] The residence was apparently a duplex, with Rydstrom in one unit and Gravatt in the other.

[8] We note that the calendar actually tracks less than half a year.

344, 695 N.W.2d 758. Rydstrom cites no evidence that goes to either factor. The circuit court's conclusion that shirking has not been established is not clearly erroneous.

Finally, Rydstrom takes issue with the circuit court's refusal to deviate from the percentage standard so as to equalize her son's standard of living between his parents. "Except as provided [below], the court *shall* determine child support payments by using the percentage standard[.]" *See* WIS. STAT. § 767.511(1j) (emphasis added). The circuit court "*may* modify" a support obligation by deviating from percentage standards if, after considering the appropriate 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[.]" *See* WIS. STAT. § 767.511(1m) (emphasis added).

Use of the word "may" in WIS. STAT. § 767.511(1m) means deviation from the percentage standard is permissive and, thus, is a matter left to the circuit court's discretion. *See* ***Joyce P. v. Alonzo R.***, 230 Wis. 2d 17, 24, 601 N.W.2d 328 (Ct. App. 1999). As the party seeking deviation from the percentage standard, Rydstrom is required to show, by the greater weight of the credible evidence, that applying the percentage standard would be unfair before the circuit court considers whether it will deviate from that standard. *See* ***Ladwig***, 325 Wis. 2d 497, ¶¶23-24.

Rydstrom asserts that when the child support order was $789, her son's "quality of life with me and his father was finally equalized" but, when the order was reduced to $495,

> while I had to say "no" to literally just about every single request my son made of me, his father was taking him on pretty extravagant vacations …; paying all of his extracurricular activities fees and equipment; regularly taking him out for dinner; purchasing him expensive birthday and Christmas gifts such as a

> PlayStation console and games, a 60 in. plasma flatscreen TV, multiple iPhones as well as their service plans, $100 movie gift cards, $250 Beats by Dr. Dre headphones, etc. I, on the other hand, didn't have a Christmas tree for a couple of years and was able to give him a $15 iTunes gift card.

Use of the percentage standard is presumed fair. *See* ***id.***, ¶23. Rydstrom has failed to overcome this presumption. It is true that a court is to consider the standard of living the child would have enjoyed but for the divorce in deciding whether to deviate from the percentage standard. *See* WIS. STAT. § 767.511(1m)(c). However, the percentage standard for child support is meant to "insure that children are not adversely affected by divorce" and that "both parents pay a fair amount for their children's *essential care*." *See* ***Raz v. Brown***, 213 Wis. 2d 296, 305, 570 N.W.2d 605 (Ct. App. 1997) (emphasis added). "Equalizing lifestyles between divorced parents is not one of the objectives of the provisions."[9] ***Id.*** "The amount of discretionary income which either parent may have available to spend on their child is also a secondary consideration." ***Id.***

Rydstrom admits their son has not suffered materially because of the child support order and that his needs are being met. What she complains about is a lack of discretionary income for the child's wants. We are not persuaded that Rydstrom met her burden to make a threshold showing of unfairness, so we cannot conclude the circuit court erroneously exercised its discretion in refusing to deviate from the required percentage standard.

---

[9] We do not believe the circuit court improperly characterized Rydstrom's request as a maintenance question. Rather, it appears to have alluded to maintenance, based on Rydstrom's emphasis on equalizing the standard of living, because while comparing the standard of living is a potential consideration relative to child support orders, maintaining roughly equal standards of living between the spouses is an actual objective of maintenance orders. *See* ***Bentz v. Bentz***, 148 Wis. 2d 400, 406, 435 N.W.2d 293 (Ct. App. 1988).

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals