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DISTRICT II

September 12, 2018

To:

Hon. Robert S. Repischak
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2017AP2109

Mable C. Blair v. Everett J. Ratliff (L.C. # 2004PA97PJ)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Everett J. Ratliff, pro se, appeals from an order of the circuit court denying his motion to modify child support. The State, which previously brought actions to recover unpaid support from Ratliff through the Racine County Child Support Department, is not a party to this appeal, nor has a response brief been filed by the child's mother. Based upon our review of Ratliff's

brief and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm.

In September 2017, Ratliff filed a pro se motion to have his child support judgment modified while he was incarcerated for convictions of multiple drug offenses. At the time, Ratliff was obligated to pay \$108 in monthly support. He had also accumulated \$10,459.49 in support arrears. With his motion, Ratliff sought to have these obligations reduced or suspended until he was released, which he represented to the court was projected for November 2022. The court summarily denied his motion.

On appeal from that order, Ratliff asserts that the circuit court failed to consider how his incarceration affected his ability to make child support payments. He contends that the court focused solely on his unchanged earning capacity and did not account for his gross income and future indebtedness.

“The decision whether a child support judgment should be modified is left to the circuit court’s discretion.” *Rottscheit v. Dumler*, 2003 WI 62, ¶11, 262 Wis. 2d 292, 664 N.W.2d 525. Except for actions under WIS. STAT. § 767.59(1f)(d), modification of a child support judgment may only occur upon a finding of a substantial change in circumstances. Sec. 767.59(1f)(a). The party seeking modification bears the burden of establishing that circumstances have substantially changed. *Rottscheit*, 262 Wis. 2d 292, ¶11. We will affirm a circuit court’s exercise of discretion if the court examined the relevant evidence before it, applied the proper legal standards, and reached a reasonable conclusion. *Id.*

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

In reviewing a motion for modification, a court may consider the movant's incarceration. *Id.*, ¶30. However, "the fact of incarceration alone is insufficient for a court to modify, or refuse to modify, a child support order." *Id.* Recognizing Ratliff's incarceration, the circuit court explained that it did not alter his earning capacity and that his child and the child's mother should not have to subsidize his illegal activity and its attendant consequences. Leaving intact a support obligation that was set before incarceration merely reflects and preserves the long-term responsibility a parent takes on by having a child. *Id.*, ¶32. In *Rottscheit*, our supreme court quoted another court's emphasis on the duty parents have to support their children: "[T]he only person to benefit if support is suspended would be [the incarcerated parent]. The purpose of the child support system is to protect the *child* and his best interest." *Id.*, ¶¶31, 35 (alterations in original; citation omitted).

After having considered all of the circumstances of his case, the circuit court determined that Ratliff's child support judgment should not be modified. We hold that, in so doing, the court properly exercised its discretion in denying his motion.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals