



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](http://www.wicourts.gov)

**DISTRICT IV**

January 24, 2019

To:

Hon. Paul S. Curran  
Circuit Court Judge  
Juneau County Justice Center  
200 Oak St.  
Mauston, WI 53948

Daniel M. Berkos  
Berkos Law Office  
104 W. State St.  
Mauston, WI 53948-1354

Patty Schluter  
Clerk of Circuit Court  
Juneau County Justice Center  
200 Oak St., P.O. Box 246  
Mauston, WI 53948

Brittney Busalacchi  
P.O. Box 556  
Baraboo, WI 53913

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

---

2018AP641

In re the marriage of: Steven Samuel Asdigian v.  
Michelle A. Asdigian (L.C. # 2015FA83)

Before Lundsten, P.J., Kloppenburg and Fitzpatrick, JJ.

**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).**

Steven Samuel Asdigian appeals an order denying his motion to modify 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 (2015-16).<sup>1</sup> We affirm.

Steven and Michelle Asdigian divorced in 2016 after a two-day trial to the court and following post-trial briefing. Michelle was awarded sole legal custody and primary physical

---

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

placement of the parties' two minor children. The circuit court found that Steven's annual income for child support purposes was \$100,000. Steven's child support obligation was set at twenty-five percent of this amount, or \$2,083.33 per month.

About six months later, Steven filed a motion to modify his child support, claiming that the original child support order "was excessive" and "was not based upon any evidence presented at trial." The circuit court reviewed the original divorce file and, after a hearing, denied Steven's motion for failure to show a substantial change in circumstances. Steven appeals.

The decision whether to modify child support is left to the circuit court's sound discretion and will not be overturned absent an erroneous exercise of that discretion. *Abitz v. Abitz*, 155 Wis. 2d 161, 174, 455 N.W.2d 609 (1990). Under WIS. STAT. § 767.59(1f)(a), revision of a child support order "may be made only upon a finding of a substantial change in circumstances." Sec. 767.59(1f)(a). The burden of showing a change in circumstances sufficient to warrant modification is on the party seeking modification. *Parker v. Parker*, 152 Wis. 2d 1, 4, 447 N.W.2d 64 (Ct. App. 1989).

On appeal, Steven primarily complains about the original divorce proceeding and support order, arguing that the divorce court erred in determining his income for child support purposes. The sufficiency of the original divorce court's findings of fact and conclusions of law and the propriety of its original support order are not before this court. Steven did not appeal the final divorce judgment, and the time for initiating an appeal from that judgment has long passed. *See* WIS. STAT. § 808.04(1) (establishing ninety-day time to appeal a final order); WIS. STAT. RULE 809.82(2)(b) (providing that this deadline "may not be enlarged"). "The filing of a timely

notice of appeal is necessary to give the court jurisdiction over the appeal.” WIS. STAT. RULE 809.10(1)(e). Steven may not use this appeal from a final order denying his motion to modify child support to challenge the circuit court’s prior final orders, including the judgment of divorce. *See* RULE 809.10(1)(e), (4).

At the postjudgment modification hearing, Steven’s testimony about his income was similar to that at the 2016 divorce trial. He failed to support his income-related testimony with a financial disclosure statement or records documenting what he actually paid to his employees. He presented no medical documentation or other evidence to support his testimony that various physical ailments limited his ability to work. At the hearing’s conclusion, the circuit court rejected Steven’s testimony about his current income as “unreliable ... information from an unreliable source.” When it acts as the fact finder, “[t]he weight of the evidence and the credibility of the witnesses are matters within the province of the trial court.” *Ondrasek v. Ondrasek*, 126 Wis. 2d 469, 480, 377 N.W.2d 190 (Ct. App. 1985); *see also* WIS. STAT. § 805.17(2) (in actions tried to the court, “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses”). Because the circuit court rejected Steven’s testimony about his income as not credible, Steven failed to meet his burden to show a change in circumstances warranting modification of the child support order.

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*