

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 15, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-3294

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TERRY A. MILLER,

PETITIONER-RESPONDENT,

v.

VALARIE K. STOHR,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Valarie Stohr appeals an order increasing the monthly child support she must pay Terry Miller from \$623 to 29% of her gross income. She argues that Terry failed to show changed circumstances based on the children's needs and the parents' economic circumstances, that applying the

percentage standards was unfair and that the court should have considered Valarie a serial family payer. We reject these arguments and affirm the order.

Much of Valarie's brief is based on cases that construed an outdated version of § 767.32(1), STATS. Under the current version of that statute, passage of more than thirty-three months since the last support order constitutes a rebuttable presumption that circumstances have changed. Once a change of circumstances has been established, support must be modified in accordance with the percentage standard set out in WIS. ADM. CODE § HSS 80 unless the party opposing the percentage standards shows that it would be unfair to apply them. *See Raz v. Brown*, 213 Wis.2d 296, 301, 570 N.W.2d 605, 608 (Ct. App. 1997). Without a showing of unfairness, the trial court is not required to consider any other factors.

Valarie did not present sufficient evidence to rebut the presumption that circumstances had changed. Terry's evidence that expenses increased as the children reached driving and dating age confirmed the changed circumstances.

The trial court properly exercised its discretion when it determined that using the percentage standard was not unfair to Valarie. The percentage standards are presumed to be fair and the court may deviate from them only if it finds by the greater weight of the credible evidence that applying them is unfair. *See Abitz v. Abitz*, 155 Wis.2d 161, 179, 455 N.W.2d 609, 616 (1990). Valarie earned over \$45,000 in 1997.¹ That income and her new husband's \$100,000 annual income are used to support one daughter. The record discloses no

¹ Valarie argues that her present gross income was inflated by an \$8,000 bonus that was double the bonus she ordinarily receives. The percentage guidelines automatically increase or decrease the amount due depending on the payer's varying income.

extraordinary circumstances that would render it unfair to require Valarie to support the three children from her previous marriage in the amount determined by the percentage standards.

The trial court properly refused to consider Valarie a serial family payer under § HSS 80.02(21). Valarie's daughter from her second marriage is a subsequently incurred legal obligation that does not qualify Valarie for serial payer status. See § HSS 80.04(1)(a). The child support obligation for previous children is not affected by having additional children. The serial family payer rule cannot be used to reduce support payments for earlier born children. See *Brown v. Brown*, 177 Wis.2d 512, 521, 503 N.W.2d 280, 283-84 (Ct. App. 1993).

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

