COURT OF APPEALS
DECISION
DATED AND FILED

November 9, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-1382-FT

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

IN RE THE MARRIAGE OF:

PAMELA MONA IMME,

PETITIONER-RESPONDENT,

V.

BRUCE WAYNE IMME,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Burnett County: JAMES H. TAYLOR, Judge. *Affirmed.*

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

¶1 PER CURIAM. Bruce Imme appeals an order denying his motion to reduce child support and an order denying reconsideration of a 1997 order that

construed the parties' stipulation regarding child support.[1] Because the trial court had no authority to reconsider the 1997 order and Bruce has not established substantial change in circumstances, we affirm the orders.

¶2 In the initial divorce judgment, the court awarded Pamela Imme primary physical placement of the parties' three children. In September 1997, based on the parties' stipulation, the court granted equal physical placement. Bruce immediately sought to modify child support. In November 1997, the court construed the stipulation as a modification of physical placement with no change in the child support provision that required Bruce to pay Pamela 29% of his income. In February 1999, Bruce filed a motion to reduce child support, alleging that the children were with him more than 50% of the time and the oldest child stayed with him substantially more than 50% of the time. The court denied Bruce's motion, concluding that Bruce had "locked himself in to the statutory standard …" by his September 1997 stipulation. Bruce then filed a motion to reconsider the November 1997 order construing the stipulation. The trial court denied that motion and Bruce appeals the order denying reconsideration and the order denying his motion to amend child support.

¶3 The trial court correctly concluded that it had no authority to reconsider the November 1997 order construing the stipulation on placement and child support. Bruce's motion to reconsider was not made within twenty days of entry as required by § 805.17(3), STATS. Even if his motion is construed as a motion for relief from the order or stipulation, it was not filed within a reasonable time or within one year of entry as required by § 806.07(2), STATS.

[1] This is an expedited appeal under RULE 809.17, STATS.

¶4 Bruce argues that an error committed in 1997 will be perpetuated by his inability to seek reconsideration at this time. In the interest of finality, the legislature has created deadlines for challenging trial court decisions. When those deadlines are not met, the court's decision, whether right or wrong, has *res judicata* effect. A party cannot circumvent the deadlines for challenging the trial court's decision by belatedly asking for reconsideration and appealing the denial of reconsideration. *See* ***Ver Hagen v. Gibbons***, 55 Wis.2d 21, 25-26, 197 N.W.2d 752, 754-55 (1972). In the context of child support, the decision remains in effect until either party establishes a substantial change of circumstances. *See* § 767.32, STATS.

¶5 Bruce argues that the trial court abused its discretion when it denied his motion to modify child support. Much of his argument is based on an incorrect standard of review and a mischaracterization of the trial court's decision. Child support may be modified only if Bruce establishes a substantial change in circumstances. *See* § 767.32, STATS. Whether circumstances have changed is a question of fact. Whether the change is substantial is a question of law. *See* ***Rosplock v. Rosplock***, 217 Wis.2d 22, 33, 577 N.W.2d 32, 37 (Ct. App. 1998). The trial court is not presented with a discretionary decision unless it concludes that there is a substantial change in circumstances. *See* ***Long v. Wasielewski***, 147 Wis.2d 57, 60, 432 N.W.2d 615-16 (Ct. App. 1988).

¶6 Bruce's argument also relies on a mischaracterization of the trial court's decision. He focuses on the language stating that he "locked himself in to the statutory standard," suggesting that the trial court believed that the 1997 stipulation stripped it of the authority to modify child support. The trial court's statement that Bruce locked himself into paying 29% of his income does not reflect any misunderstanding of the law. The court specifically noted that a child

support decision is never final. Rather, it correctly recognized that the 1997 order construing the stipulation is the benchmark upon which any alleged change in circumstances must be measured.

¶7 Bruce has not established a substantial change in circumstances justifying a modification of the 1997 support order. At the close of the 1999 proceedings, the court-ordered placement and percentage of Bruce's income to be paid as child support remain the same as at the close of the 1997 proceedings, 50-50 placement and 29% of his income. While Bruce established that the children actually spent more than 50% of their time with him, he did not request a change in the placement order. As the trial court noted, the departure from the 50-50 placement order occurred because Pamela consented to Bruce's requests for additional time with the children. Bruce did not notify Pamela that he intended to use her cooperation as a basis to request a change in the amount of child support. At the close of the hearing, the court notified Pamela that she may risk a reduction in child support if she continues to agree to a placement schedule other than that authorized by the court. The court reasonably concluded, however, that it should not alter the child support award at this time based solely on Pamela's permission for the children to spend additional time with their father when she had no notice that her acquiescence would have financial repercussions.

By the Court.—Orders affirmed.

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