

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 6, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2946

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

LAURIE ANN (LUND) BIGALKE,

PETITIONER-RESPONDENT,

V.

RICKY JAMES LUND,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
MICHAEL W. GAGE, Judge. *Reversed and cause remanded.*

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

¶1 PER CURIAM. Ricky James Lund appeals an order denying his motion to modify a divorce judgment to compel his former wife, Laurie Ann Bigalke, to pay child support. The trial court concluded that Lund failed to

establish a substantial change of circumstances since the July 16, 1996, order which was based on the parties' stipulation. Because we conclude that the court should have used the parties' expectations at the time of the earlier stipulation to create the baseline from which change is measured, we reverse the order and remand the cause for further proceedings.

¶2 The 1996 stipulation gave Lund custody of the parties' three children, with substantial visitation rights to Bigalke. At that time, Lund earned \$60,000 and Bigalke earned \$45,000 annually. The stipulation recited that Bigalke intended to relocate to another state and "does not anticipate being employed." The parties agreed that Bigalke would not be required to pay child support.

¶3 When Lund filed the present motion for modification, Bigalke was employed and earned \$58,000 annually. Lund's income had increased from \$60,000 to \$76,000. The trial court compared the increases in each party's income and concluded that the \$13,000 increase in Bigalke's income roughly matched the \$16,000 increase in Lund's income, and therefore no substantial change of circumstances occurred.

¶4 When child support is set by a stipulation that recites future facts the parties envision rather than the current circumstances, the facts they envision become the baseline upon which any future change is measured. See *Rosplock v. Rosplock*, 217 Wis. 2d 22, 36, 577 N.W.2d 32 (Ct. App. 1998). The baseline consists of the fundamental premises upon which the stipulation was constructed. See *id.* The critical question is whether there has been a substantial change in a factor that was taken into account when the parties entered their stipulation. See *Enders v. Enders*, 147 Wis. 2d 138, 146, 432 N.W.2d 638 (Ct. App. 1988).

¶5 The parties' stipulation recited their expectation that Bigalke would not be working and would not be earning any money. The trial court questioned whether zero income for Bigalke was envisioned by the parties because another part of the stipulation gave Bigalke one of the three tax exemptions. The trial court thought that this indicated an expectation that Bigalke would have income. If Bigalke remarried as was planned, she could use the dependency exemption in a joint tax return. Giving her one of the exemptions partially offset expenses she would incur during several months of summer visitation and the expense of sharing the children's air fare to Florida. On the other hand, there would be no reason to recite the parties' expectation that Bigalke would be unemployed unless they intended that to be a factor upon which the stipulation was based. By acquiring employment at \$58,000 per year, she substantially changed the facts the parties envisioned at the time they entered the stipulation. The trial court should not have compared her present income to the \$45,000 she earned before, but rather to zero income that the parties envisioned when they entered the stipulation.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

