

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 7, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2005AP182

Cir. Ct. No. 1998FA115

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

TURI JO MILLER F/K/A TURI JO HALVORSON,

PETITIONER,

DUNN COUNTY CHILD SUPPORT AGENCY,

APPELLANT,

V.

TERRANCE J. HALVORSON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Reversed and cause remanded for further proceedings.*

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

¶1 PER CURIAM. The Dunn County Child Support Agency appeals an order modifying Terrance Halvorson's child support obligation. The agency argues that the circuit court's decision to deviate from the presumptive child support amount is not rationally related to evidence in the record. We agree and reverse the order. We remand for further proceedings consistent with this decision.

BACKGROUND

¶2 In a November 1998 judgment dissolving the marriage of Halvorson and Turi Jo Miller, the trial court ordered Halvorson to pay \$161.74 per biweekly pay period as child support for the couple's two minor children, Talley and Tarrin. This amount did not reflect twenty-five percent of Halvorson's gross income, as he also had two prior child support obligations, thus implicating the serial family formula. At the time of the divorce, Halvorson was employed full-time as a truck driver, earning an hourly wage of \$10.50 to \$11 per hour.

¶3 In November 2004, the agency filed a motion for child support modification on grounds that both the cost of living and needs of the children had increased since the last order. Rather than increasing Halvorson's child support obligation, the circuit court ordered support in an amount less than the presumptive child support amount. This appeal follows.

DISCUSSION

¶4 Generally, we review modification of child support under the erroneous exercise of discretion standard. *Jacquart v. Jacquart*, 183 Wis. 2d 372, 381, 515 N.W.2d 539 (Ct. App. 1994). A circuit court may modify child support

if there has been a substantial or material change of circumstances of the parties or the children. See *Poehnelt v. Poehnelt*, 94 Wis. 2d 640, 648-49, 289 N.W.2d 296 (1980). This determination is measured by the needs of the custodial parent and children and the ability of the noncustodial parent to pay. See *Burger v. Burger*, 144 Wis. 2d 514, 523-24, 424 N.W.2d 691 (1988). The burden of demonstrating a substantial change in circumstances, however, is on the party seeking modification. *Kelly v. Hougham*, 178 Wis. 2d 546, 556, 504 N.W.2d 440 (Ct. App. 1993).

¶5 Here, Halverson testified at the motion hearing that he was working full-time, earning \$19 per hour. The agency argued this constituted a substantial change in circumstances because, applying the serial family calculation to Halverson's income, his support obligation for Talley and Tarrin would increase to \$677 per month.¹ Halverson nevertheless sought a departure from the presumptive amount based on the travel expenses related to alternate placement, his contribution for uninsured prescription medications and his inability to realize a tax benefit for his children. In consideration of Halverson's concerns—significantly, his travel costs incurred by driving 171 miles roundtrip every other weekend to pick up and drop off his daughters—the agency recommended a monthly support obligation of \$600. After hearing the evidence, the court

¹ The agency's brief outlines the calculations for arriving at Halverson's presumptive child support obligation. Halverson's weekly gross income is \$760 (40 hours per week times \$19 per hour). His monthly gross income is determined by multiplying \$760 per week by 4.3 weeks/month, resulting in \$3,268. After subtracting Halverson's prior child support obligation of \$560 per month, his adjusted monthly income available for child support would be \$2708. Applying the presumptive percentage for two children (25%), Halverson's child support obligation would be \$677 per month. See WIS. STAT. § 767.25; see also WIS. ADMIN. CODE § DWD 40.02 and 40.04. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

concluded: “Well, taking everything into consideration, the – travel time, the fact that [Ms. Miller] has both dependents ... the court feels that \$450 per month is appropriate.”

¶6 On appeal, the agency argues the evidence did not support the circuit court’s downward departure from the presumptive child support amount. We agree. A court must calculate child support according to the percentage guidelines or provide a rationale for deviating from the guidelines. *See* WIS. STAT. § 767.259(1j). Here, the court referenced Halverson’s travel time and Miller’s tax credit. Although these are relevant factors for consideration, the court did not explain how these factors led to the downward deviation. A court erroneously exercises its discretion if it neglects to provide a rational explanation of how its findings lead to a support award. *See Vlies v. Brookman*, 2005 WI App 158, ¶¶18-19, 701 N.W.2d 642; *see also King v. King*, 224 Wis. 2d 235, 252, 590 N.W.2d 480 (1999). Because we cannot discern from the record how the circuit court arrived at the reduced \$450 per month amount, we are left to speculate about how the facts influenced the court’s decision. We therefore set aside the modified child support award and remand the matter to the circuit court for further proceedings employing a proper exercise of discretion.

By the Court.—Order reversed and cause remanded for further proceedings.

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

