COURT OF APPEALS
DECISION
DATED AND FILED

April 7, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2847-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE MARRIAGE OF:

TINA ARCISZEWSKI, F/K/A TINA HURLBUTT,

PETITIONER-RESPONDENT,

V.

DAN HURLBUTT,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County: MICHAEL W. GAGE, Judge. *Affirmed.*

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

PER CURIAM. Dan Hurlbutt appeals an order requiring that he pay child support in the sum of $430 per month for his two minor children.[1] He

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

argues that (1) an order entered upon a stipulation that neither party is to pay child support "at this time" prevents the trial court from setting support at a later time; and (2) his former wife, Tina Arciszewski, failed to make the requisite showing of a substantial change in circumstances. We reject his arguments and affirm the order.

Dan and Tina were divorced in 1990. The parties were awarded joint legal custody of their three children, Nathan, Melissa and Monica. Dan was awarded primary physical placement of all three children. The judgment provided "no child support at this time."

In 1995, the parties stipulated to an order amending the judgment of divorce. The stipulation provided that Tina would have primary physical placement of Melissa and Monica, and that Dan would have primary physical placement of Nathan. The stipulation further provided that "neither party is required to pay child support to the other at this time." The parties also agreed that Dan would maintain life and medical insurance for the children and pay uninsured health care expenses. Dan would also pay Melissa's orthodontia expenses, and Tina would pay Nathan's orthodontia expenses. Monica's orthodontia expenses, if any, would be divided equally. The stipulation recited that Dan's annual income was $30,000 and Tina's was $20,000.

In 1997, Tina requested that child support be set for Monica and Melissa. The trial court found that Dan's annual income was $36,000 and Tina's was $21,000. The court applied the percentage standards, WIS. ADM. CODE § HSS 80, and calculated child support based upon 25% of Dan's income ($9,000) minus 17% of Tina's income, ($3,570), leaving a difference of $5,430. Based

upon these calculations, the court set support at $430 per month.[2] The court ruled that because no child support had previously been ordered, there was no requirement that it make a finding of a substantial change in circumstances from the previous order.

Dan argues that the trial court had no authority to order child support because, under § 807.05, STATS., it was bound by the parties' 1995 stipulation that neither party would pay child support. We disagree. Child support issues are addressed to trial court discretion. ***Van Offeren v. Van Offeren***, 173 Wis.2d 482, 492, 496 N.W.2d 660, 663 (Ct. App. 1992). We affirm a discretionary decision if the trial court examined relevant facts, applied correct legal standards and reached a rational decision. ***Nelsen v. Candee***, 205 Wis.2d 632, 641, 556 N.W.2d 784, 787 (Ct. App. 1996). We must search the record for reasons to support a discretionary decision. ***Loomans v. Milwaukee Mut. Ins. Co.***, 38 Wis.2d 656, 662, 158 N.W.2d 318, 320 (1968). We conclude that the record supports the trial court's determination.

Dan's reliance on § 807.05, STATS., is misplaced. Because the child has rights that should be protected, the controlling question is not what the parties' agreed, but what is in the child's best interests. The trial court does not solely arbitrate between two parties. In its "role as a family court, the trial court represents the interests of society in promoting the stability and best interests of the family." ***Kritzik v. Kritzik***, 21 Wis.2d 442, 448, 124 N.W.2d 581, 585 (1963). In any event, the plain language of the parties' stipulation does not and could not contemplate a waiver of child support forever. *See* ***Ondrasek v. Tennesen***, 158

[2] Dan does not challenge the trial court's calculations.

Wis.2d 690, 696-97, 462 N.W.2d 915, 918 (Ct. App. 1990). It merely provides that no child support was required "at this time." Because the plain language of the stipulation could not contemplate a permanent waiver of child support, and because the best interests of the children are paramount, we reject Dan's suggestion that a stipulated order forever binds the trial court's discretionary authority to set child support. *See* ***id***. at 695, 462 N.W.2d at 917 (The paramount goal of the child support statute is to promote the best interests of the child.).

The critical issue is whether, having accepted the stipulation, the court is required to find a substantial change in circumstances in order to enter a support order. We reject Dan's contention that the trial court erred when it ruled that it was not required to make a finding of a substantial change in circumstances from the 1995 stipulated order. Section 767.32(1)(a), STATS., provides that "a judgment or order providing for child support" may be revised only upon a finding of a substantial change in circumstances. Here, no order providing for child support had been previously entered. Rather, the order provided no support obligation "at this time," holding open the issue of child support. As a result, we conclude that § 767.32 does not apply and that the trial court correctly proceeded under § 767.25, STATS.

By the Court.—Order affirmed.

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