COURT OF APPEALS
DECISION
DATED AND FILED

April 15, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1418

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

IN RE THE MARRIAGE OF:

KATHERINE E. BROOKS
N/K/A KATHERINE E. KRANIG,

PETITIONER-APPELLANT,

V.

ROBERT D. BROOKS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Portage County: EDWARD F. ZAPPEN, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

PER CURIAM. Katherine E. Kranig, f/k/a Katherine E. Brooks, appeals from an order that amended her judgment of divorce from Robert D. Brooks to provide a mechanism by which Brooks could be reimbursed in the event

that Kranig did not file re-amended tax returns that included the full amount of her family support payments from Brooks in her income. She claims that the trial court failed to address the tax treatment of the family support in its prior judgment and orders, and that it could not correct its oversight by amending the judgment in violation of the applicable tax laws. However, we disagree with the appellant's characterization of the trial court's action and conclude that it had the authority to provide relief to Brooks by amending its judgment to conform with its original intent. Accordingly, we affirm.

When the parties were divorced in 1990, the trial court entered an order requiring Brooks to pay Kranig 25% of his gross income in child support and $600 in maintenance each month for a period of two years, and thereafter to pay Kranig 37% of his gross income in combined family support. In 1991, the judgment was amended by stipulation to require Brooks to pay 44% of his gross income to Kranig in family support for a period of two years, and to pay her 37% of his gross income in family support thereafter. In 1997, the judgment was again amended to reduce the amount of family support to 32% of Brooks' gross income. Shortly thereafter, Kranig remarried, family support was terminated and Brooks was ordered to pay Kranig 17% of his gross income in child support for the parties' one remaining minor child.

Neither the original divorce judgment nor any of the orders amending the amount of family support due to Kranig explicitly addressed how the family support was to be treated for tax purposes. Kranig included the payments in her income, and Brooks excluded them from his income on tax returns filed for 1991, 1992, 1993, 1994 and 1995. However, based upon the advise of a new tax accountant, Kranig excluded from her income that portion of the family support payments that she calculated was attributable to child support

based upon the percentage guidelines in her 1996 return, and she amended her earlier returns to do the same. As a result of the amended returns, the Wisconsin Department of Revenue (DOR) notified Brooks that he had a tax liability in the amount of $5,831.68.

Brooks objected to the tax liability and filed a motion in the trial court seeking an order requiring Kranig to re-amend her returns claiming the full amount of the family support as income. The trial court declined to order Kranig to file re-amended tax returns,[1] but amended the judgment of divorce *nunc pro tunc* to provide:

> That such family maintenance will be considered as income to the petitioner and as a deduction for the respondent in the form of maintenance. That in the event the petitioner shall elect to file such family maintenance as other than income to herself, the respondent shall and may apply to the court for an order of reimbursement from the petitioner to the respondent for an amount equal to the additional income tax resulting from the failure of the petitioner to file the same as family maintenance on her respective state and federal income tax returns.

The trial court reasoned that its prior orders had all been based upon the assumption that the family support would be taxable to Kranig and deductible to Brooks, and it noted that the record and the conduct of the parties supported its finding of original intent.

Kranig first claims that the trial court failed to take into consideration the tax consequences of its prior family support awards. While she recognizes that the original judgment and the orders adjusting the amount of

[1] The record shows the trial court was operating under the assumption that it could not order anyone to file a tax return. We are not asked to review that determination.

family support are not the subject of this appeal, she argues that the current order represents a significant change, rather than a clarification, of the divorce judgment.

There is merit to her contention, assuming that the DOR would have accepted Kranig's amended returns excluding from her income that portion of Brook's family support payments that she attributed to child support under the original order.[2] In other words, if the DOR were to agree with Brooks that the entire amount of his family support payments should have been taxable to Kranig and deductible to him under the original order, then the trial court's amended order would not have changed the amount of support for Brooks to pay. If, however, the DOR were to agree with Kranig that a portion of the family support was attributable to child support under the original order, then the total amount of support which Brooks would be required to pay Kranig under the amended order would be reduced by the amount of the taxes he would pay on his lost deductions.

It would appear from these scenarios that the trial court's *nunc pro tunc* order was not a clarification of ambiguous language in the original judgment,[3] but rather an attempt to adjust the amount of support due according to its original intention in the event that its original order was based upon a misunderstanding of the relevant tax consequences. Thus, the question presented by this appeal is whether the trial court had the authority to modify or amend a family support award if the award was based upon the trial court's own mistake of law.

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[2] The record does not reveal the outcome of Brooks' challenge to the back taxes.

[3] *See* ***Schultz v. Schultz***, 194 Wis.2d 799, 808, 535 N.W.2d 116, 120 (Ct. App. 1995) (holding the trial court may clarify ambiguous provisions in its own judgment).

Brooks argues that the trial court had authority to revise or alter the amount of family support, or to issue any order which it might have done in the original judgment, under § 767.32, STATS.[4] However, revisions under § 767.32 are to be prospectively based upon substantial changes in the parties' circumstances. The trial court cannot use that section to revise the amount of family support due or accrued prior to the date that the respondent receives notice of a revision motion, except to correct previous errors in calculations. *See* § 767.32(1m); *see also* ***Strawser v. Strawser***, 126 Wis.2d 485, 377 N.W.2d 196 (Ct. App. 1985) (trial court could not retroactively create maintenance obligation that it concluded should have been in place during the pendency of the divorce action); ***State v. Jeffrie C.B.***, 218 Wis.2d 145, 579 N.W.2d 69 (Ct. App. 1998) (trial court could not retroactively reduce child support payments that were based upon a mistake of fact presented to the court by the parties). As we have explained above, the trial court's error, if any, was a mistake of law, not a mathematical miscalculation.

We note, however, that the trial court did not cite § 767.32, STATS., as the basis for its decision. Instead, after finding that it had intended Brooks to be able to deduct the entire amount of the family support payments,[5] it stated, "I am going to think of a solution here," and "we are going to have to find some way to make it right and carry out the court's intent." The principle of efficient judicial administration allows this court to affirm trial court decisions that reach the proper result for the wrong reasons. *See* ***State v. Holt***, 128 Wis.2d 110, 124, 382 N.W.2d

[4] Brooks actually cites § 736.32, STATS., in his brief. However, since no such section exists, we presume he meant to refer to § 767.32, STATS.

[5] This finding was amply supported by the record and is not clearly erroneous.

679, 687 (Ct. App. 1985). We will therefore consider whether the trial court had any other source of authority for the action which it took.

Section 806.07(h), STATS., provides a mechanism by which the trial court may relieve a party from a judgment or order upon such terms as are just. There do not appear to be any appellate cases in this state addressing whether this section permits the trial court to modify a support order that was based upon its own mistake of law in order to effectuate its original intent.[6] However, because the language of the statute is clear and unambiguous, we can simply apply its plain language to the facts of this case. *See* ***Truttschel v. Martin***, 208 Wis.2d 361, 365, 560 N.W.2d 315, 317 (Ct. App. 1997).

The trial court issued its original family support order based upon the understanding that the full amount of the support would be deductible to the payor, Brooks, and taxable to the recipient, Kranig. Several years went by during which the parties acted in conformity with the trial court's understanding. In 1996, long after the time to appeal the original support order had passed, Kranig changed her interpretation of the order, and attempted to exclude a portion of the support payments from her income. We are satisfied that the trial court could properly conclude, pursuant to § 806.07(h), STATS., that Kranig's delay in deciding to exclude part of the support, which precluded Brooks from obtaining timely review or relief under § 806.07(a), was a reason justifying relief from the

[6] There is case law holding that the trial court could not relieve a party from a judgment which was based on the trial court's mistake of law under § 269.46, STATS., 1975, the predecessor to § 806.07, STATS. *See* ***Sikora v. Jursik***, 38 Wis.2d 305, 156 N.W.2d 489 (1968). However, the current statute does not qualify the grounds of "mistake, inadvertence, surprise or excusable neglect" with the possessive pronoun "his" (referring to a party's), and it adds several other grounds for relief. Because the statutes differ significantly, ***Sikora*** does not control the question presented here.

terms of the divorce judgment in the event that that Kranig was successful in excluding the income. Therefore, the trial court had the authority to enter an order retroactively adjusting the amount of family support.

The only question remaining is whether the trial court properly exercised its discretion by the manner in which it modified the support order. Kranig appears to argue that the trial court exceeded its authority by entering an order which contradicted the tax code. Regardless of the merits of Kranig's tax analysis, we do not agree that the trial court's order intrudes upon the authority of the taxing authority to determine the deductibility of the support payments. Although the order does state that the payments should be considered deductible to Brooks and taxable to Kranig, it then proceeds to make specific provisions in the event that Kranig is able to exclude a portion of the payments from her taxable income. In this context, the directive is nothing more than an indication of the trial court's intent, which the taxing authorities may properly consider. Clearly, neither the DOR nor the IRS are precluded by the trial court's order from making their own determinations as to who should be reporting the support payments as income. We see no misuse of discretion.

By the Court.—Order affirmed.

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