COURT OF APPEALS
DECISION
DATED AND FILED

November 1, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2652 **Cir. Ct. No. 2014FA395**

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

IN RE THE MARRIAGE OF:

DANIEL CLEMENT DUFRENE,

PETITIONER-RESPONDENT,

V.

DEBORAH JEAN DUFRENE,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County: R. MICHAEL WATERMAN, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Deborah DuFrene appeals from a divorce judgment. She argues the circuit court erred when it gave her former husband,

Daniel DuFrene, credit toward his child support obligation for payments Deborah receives from the Minnesota Adoption Assistance Program. We conclude the circuit court properly exercised its discretion by giving Daniel credit for the payments. Accordingly, we affirm.

BACKGROUND

¶2 The parties have two minor children, both of whom were adopted. They receive Monthly Adoption Assistance (MAA) payments from the Minnesota Department of Human Services to provide for one of the children, who has special needs. The total amount received each month is $582, which consists of $307 for "basic maintenance"—that is, money to provide for the child's food, clothing, and shelter—and $275 in "supplemental maintenance"—that is, money for treatment or services related to the child's disability.

¶3 Daniel petitioned for divorce on October 31, 2014. The parties agreed that Deborah would have primary placement of the children, and Daniel would have placement for less than ninety-two days per year. They also agreed that, pursuant to the applicable child support guideline, Daniel would pay twenty-five percent of his gross income in child support. In addition, they agreed Deborah would receive the full amount of the MAA payments each month. However, they disagreed as to whether Daniel should receive credit for those payments against his child support obligation.

¶4 Following a hearing and briefing by the parties, the circuit court issued a written decision, in which it concluded the MAA payments were a "marital asset … a stream of income that the parties receive from a government program because they adopted a child with special needs." The court noted that, but for the parties' agreement that Deborah would receive the full amount of the

MAA payments, Daniel would have been entitled to half of each payment, or $291 per month, twenty-five percent of which would have then been payable to Deborah as child support. Because the parties had agreed Deborah would receive the full amount of each payment, the court concluded failing to account for the payments in the child support calculation would provide Deborah with a windfall. The court reasoned:

> To not account for the adoption assistance money—either in the property division or in the child support calculation—would be inequitable and simply unfair. There is no bona fide reason why Daniel should not share in the economic benefit that the [MAA] payments provide, especially since he and Deborah both share a legal obligation to support the children.

¶5 The circuit court analogized the MAA payments to social security payments received by a child whose parent is entitled to federal disability or old-age insurance benefits, noting that, in both instances, "the parent receives a payment that is intended to benefit a child." WISCONSIN ADMIN. CODE § DCF 150.03(5) governs the adjustment of child support based on social security benefits received by a child.[1] Applying the procedure set forth in that subsection, the circuit court: (1) added half of the monthly MAA payments—or $291—to Daniel's monthly gross income; (2) calculated twenty-five percent of Daniel's monthly gross income as his child support obligation; and (3) gave Daniel a credit against his monthly child support obligation for his half of the monthly MAA payments received and retained by Deborah.

¶6 Deborah moved for reconsideration, arguing the circuit court erred by treating the MAA payments as an "asset." Deborah argued the court should

[1] All references to WIS. ADMIN. CODE § DCF ch. 150 are to the November 2009 version.

"order guideline support and not take the [MAA payments] into consideration." The court denied Deborah's motion, and this appeal follows.

DISCUSSION

¶7 Child support determinations are committed to the circuit court's discretion. ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We will affirm if the court examined the relevant facts, applied the correct standard of law, and used a demonstrated rational process to reach a reasonable conclusion. ***Id.***

I. Incorrect legal standard

¶8 Deborah first argues the circuit court erroneously exercised its discretion by applying an incorrect legal standard.[2] Specifically, she argues the court erred by treating the MAA payments as social security payments under WIS. ADMIN. CODE § DCF 150.03(5). We disagree. The payments at issue in this case are not expressly addressed in WIS. ADMIN. CODE § DCF ch. 150. The parties do not cite, and our research has not revealed, any Wisconsin case discussing how payments of this type should be treated in divorce actions. Faced with this lack of

[2] Both parties use the phrase "abuse of discretion." Our supreme court changed the terminology used in reviewing a circuit court's discretionary act from "abuse of discretion" to "erroneous exercise of discretion" in 1992. *See* ***State v. Plymesser***, 172 Wis. 2d 583, 585 n.1, 493 N.W.2d 367 (1992).

We also note that both Daniel and Deborah use party designations, rather than names, in the argument sections of their briefs, contrary to WIS. STAT. RULE 809.19(1)(i). In addition, we observe that Daniel cites an unpublished opinion from 1988, contrary to WIS. STAT. RULE 809.23(3). We remind counsel for both parties that future violations of the Rules of Appellate Procedure may result in sanctions. *See* WIS. STAT. RULE 809.83(2).

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

guidance, the circuit court reasonably decided to treat the MAA payments as it would treat social security payments for purposes of calculating child support.

¶9 There are notable similarities between social security payments and the MAA payments. Like the MAA payments, social security payments are not paid directly to the child, but rather to the child's representative payee, typically one of his or her parents. *See* ***Paulhe v. Riley***, 2006 WI App 171, ¶17, 295 Wis. 2d 541, 722 N.W.2d 155. Social security benefits "are to be applied to the child's current support and reasonably foreseeable needs." ***Id.*** The MAA payments are intended to be used in the same way. In addition, "[t]he sole and express purpose of social security dependent benefits is to support dependent children." ***Id.***, ¶19 (quoting ***In re Marriage of Henry***, 622 N.E.2d 803, 809 (Ill. 1993)). Similarly, the purpose of the MAA payments is to facilitate "the legal adoption of the child and to aid the adoptive family in providing proper care for the child." Based on the similarities between the two types of payments, and in the absence of any authority indicating otherwise, the circuit court could reasonably conclude the MAA payments should be treated as it would treat social security payments under WIS. ADMIN. CODE § DCF 150.03(5).

¶10 Deborah contends the two types of payments are not analogous because social security payments are intended to replace income a disabled parent would have earned but for his or her disability, while MAA payments are gratuitous payments made for the benefit of an adopted child and have no connection to the parents' income. However, there is no evidence in the record that the MAA payments are made gratuitously. To the contrary, the Adoption Assistance Agreement Deborah and Daniel signed indicates the MAA payments are made by the government in exchange for parents taking on the legal obligation to adopt and thereby support a child with special needs. Moreover, even if the

MAA payments are properly characterized as gratuitous, in light of the other similarities between MAA payments and social security payments, and given the lack of authority regarding how MAA payments should be treated, the circuit court could reasonably decide to treat the MAA payments as it would treat social security payments for purposes of calculating Daniel's child support obligation.

¶11 Deborah argues treating the MAA payments similar to social security payments for purposes of calculating child support is contrary to ***Paulhe***. However, ***Paulhe*** did not address whether payments like those at issue in this case were properly offset against a parent's child support obligation. Instead, it considered whether a father who had made all requisite child support payments while unemployed was subsequently entitled to a credit against his child support obligation for social security disability benefits paid to his ex-wife on their child's behalf. *See* ***Paulhe***, 295 Wis. 2d 541, ¶¶1-4. This issue required the court to address two questions: (1) whether giving the father credit for the social security disability payments constituted a retroactive revision of child support; and (2) whether WIS. STAT. § 767.32(1r)(d) (2003-04), should be construed to bar such credit in a situation where the child support payor had made all required payments. ***Paulhe***, 295 Wis. 2d 541, ¶4. Because the issues addressed in ***Paulhe*** were vastly different from the issue raised in this case, ***Paulhe*** does not persuade us the circuit court erroneously exercised its discretion by treating the MAA payments as it would treat social security payments under WIS. ADMIN. CODE § DCF 150.03(5).

¶12 Deborah also notes that the purpose of child support is to maintain a child's standard of living at the level he or she would have enjoyed had his or her parents remained married. *See* ***Sommer v. Sommer***, 108 Wis. 2d 586, 589-90, 323 N.W.2d 144 (Ct. App. 1982). She asserts that, in this case, if the parties had remained married, the child who is the subject of the Adoption Assistance

Agreement would have received the benefit of Daniel's income as well as the full amount of the MAA payments. She therefore asserts reducing Daniel's child support obligation to account for his share of the MAA payments conflicts with the purpose of child support. Deborah further contends that, because the child at issue lives primarily with her, "the money will benefit the child the most" by being paid to her. She also contends Daniel has not shown "any hardship or reason for a downward deviation from the [child support] guidelines."

¶13 These arguments disregard Daniel's continued role in the lives of the children and his continued obligation to provide for their support—not only through court-mandated child support payments, but also by shouldering expenses that arise during his periods of placement and by paying half of the children's health and dental insurance premiums and half of their medical expenses that are not covered by insurance. Deborah does not explain why crediting Daniel with half of the MAA payments—which she receives in full—will result in a markedly decreased standard of living for either of the parties' children. We agree with the circuit court that "[t]here is no bona fide reason why Daniel should not share in the economic benefit that the [MAA] payments provide, especially since he and Deborah both share a legal obligation to support the children."

¶14 Moreover, contrary to Deborah's assertion, the circuit court did not deviate from the applicable guideline when determining Daniel's child support obligation. Rather, the court: (1) determined each party was entitled to one-half of the monthly MAA payments; (2) included Daniel's half of the payments in his gross income; (3) calculated Daniel's monthly child support obligation using the appropriate guideline—that is, twenty-five percent of his gross income; and (4) credited Daniel's half of the MAA payments—which, by the parties' agreement, is paid directly to Deborah—against his monthly child support

obligation. This procedure is consistent with the treatment of social security payments set forth in WIS. ADMIN. CODE § DCF 150.03(5). Deborah points to no evidence that this allocation is unfair, nor does she cite any authority supporting her assertion that Daniel was required to show "hardship" in order to receive a credit for his half of the MAA payments. Deborah also fails to address the circuit court's conclusion that not including the MAA payments in the child support calculation would result in Deborah receiving a "$291 monthly windfall." On this record, we cannot conclude the court erroneously exercised its discretion by giving Daniel credit for his half of the MAA payments.

II. Characterization of the MAA payments as a "marital asset"

¶15 Deborah also argues the circuit court erred by describing the MAA payments as a "marital asset." She asserts the MAA payments are instead a "source of income paid by a gratuitous source." (Capitalization omitted.) She acknowledges that, immediately after describing the payments as a "marital asset," the circuit court went on to state the payments are "a stream of income that the parties receive from a government program because they adopted a child with special needs." However, Deborah contends that statement is only "partially true," in that the parties only "continue to receive [the MAA payments] because they continue to care for the child." She observes the Adoption Assistance Agreement provides that the MAA payments terminate upon the child's death, upon a determination that the parties no longer support the child, or upon termination of the parties' parental rights. She therefore argues the payments are not a "financial asset" of the parties. She then asserts that, because she has primary placement of the children, "she should be the one to have that money," and "[i]t is unfair for [Daniel] to pay less child support because of it."

¶16 Deborah's argument in this regard is undeveloped and unsupported by legal authority. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not address arguments that are undeveloped or unsupported by legal authority). Although the circuit court initially characterized the MAA payments as an asset, Deborah acknowledges that the court went on to describe them as an income stream. Consistent with that characterization, the court included half of the MAA payments in Daniel's gross income for purposes of calculating child support, rather than including the payments in the property division. Although the court's initial characterization of the payments as an "asset" was perhaps unfortunate, Deborah does not explain why that choice of words matters, given the court's subsequent treatment of the payments as income.

¶17 Deborah's assertion that the circuit court erred because the MAA payments terminate upon the occurrence of certain events listed in the Adoption Assistance Agreement is similarly unavailing. She does not explain why the potential termination of the payments, at some point in the future, should affect the court's treatment of the payments at the present time. In the event the child who is the subject of the agreement dies, or Daniel and Deborah no longer have a legal obligation to support him, Daniel's child support obligation regarding that child will terminate, and his support obligation regarding the parties' other child will be revised accordingly.

¶18 Finally, we have already rejected Deborah's argument that Daniel should not receive credit for his half of the MAA payments because the children are placed with Deborah the majority of the time. *See supra*, ¶¶12-13. As noted above, Daniel remains legally obligated to support the children and will continue to be responsible for expenses associated with them, despite the fact that he does

not have primary placement. Under these circumstances, we reject Deborah's argument that giving Daniel credit for his half of the MAA payments is "unfair." We instead agree with the circuit court that it would be unfair and inequitable not to account for the MAA payments in the child support calculation.

By the Court.—Judgment affirmed.

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