

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 12, 2011

A. John Voelker
Acting 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. 2011AP574-FT

Cir. Ct. No. 2005FA149

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JANE MARIE JOHNSON,

PETITIONER-RESPONDENT,

V.

DARYL KEVIN DOSTAL,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Barron County:
JAMES C. BABLER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Daryl Dostal appeals a postdivorce order concerning modification of child support.¹ Daryl argues his financial circumstances warranted a reduction in his child support obligation. We disagree and affirm.

¶2 Daryl and Jane Johnson were divorced on August 25, 2006. The court reserved ruling on issues of property division, maintenance and child support. On October 28, 2008, the circuit court approved a stipulation regarding all remaining issues, including an agreement that Daryl pay \$900 monthly child support. The agreement also gave Jane primary physical placement of the couple's two minor children.

¶3 On April 9, 2009, Daryl moved to revise the divorce judgment, requesting modification of placement and child support, among other things. The parties eventually agreed to shared placement, and the circuit court held a hearing concerning child support modification. The court determined that the shared physical placement constituted a substantial change in circumstances and reduced Daryl's child support obligation to \$472 monthly. However, the court found that Daryl failed to show a substantial change regarding his income or earning capacity. Daryl now appeals.

¶4 Modification of child support is committed to the sound discretion of the circuit court. *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We generally look for reasons to sustain the circuit court's discretionary decision. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656,

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2009-10 version.

662, 158 N.W.2d 318 (1968). We may search the record to determine if it supports the court’s discretionary determinations. *Randall*, 235 Wis. 2d 1, ¶7. We will sustain a discretionary decision if the circuit court examined the facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2).

¶5 Here, there is no dispute that the change in physical placement constituted a substantial change in circumstances. The court properly found that the change in placement warranted a reduction in Daryl’s child support obligation. However, the court rejected Daryl’s contention that his financial circumstances warranted a further reduction of his child support obligation.² We conclude the court appropriately exercised its discretion in that regard.

¶6 Significantly, the circuit court found that it was “impossible for the Court to determine Mr. Dostal’s exact and real income without expert testimony.” The court also found that Daryl failed to provide full financial discovery. As the court emphasized:

Mr. Dostal did not disclose all of the financial documents as required by the Court Order, even after several Motions to Compel and a finding of contempt for failure to provide documentation. The Court heard the matter on December 9, 2010 without complete financial information.³

² Daryl argued he was adversely affected by a “drastic” reduction in milk prices.

³ Daryl contends that he “provided releases” as a “remedy for not possessing the requested records.” We conclude any releases Daryl provided for financial records fail to ameliorate the court’s specific findings that he failed to provide full financial disclosure as required by court order.

¶7 The record supports the court’s findings. At the October 29, 2008 hearing, Daryl submitted a lengthy financial disclosure statement. However, Daryl left blank the section entitled “Gross Income.” Following the line entitled “Gross Monthly Income Total,” Daryl referenced: “SEE ATTACHED TAX RETURNS.”

¶8 Moreover, the circuit court found that Daryl had income available despite the fact that his tax returns showed a significant loss. The court found Daryl’s “[b]ank loan applications show that in 2008 and 2009 Mr. Dostal had total cash available between \$7,293 and \$8,800 per month” The court stated that “during this time, the testimony is quite clear that Mr. Dostal was able to make all of his child support payments, all of his farm payments and household payments.” The court therefore determined that the financial records adduced at the December 9, 2010 hearing demonstrated that Daryl had sufficient income “despite the numbers on the income tax returns.”

¶9 Daryl argues that once a substantial change in circumstances was shown, “in placement or otherwise,” the circuit court was also obligated to consider Daryl’s changed income in setting child support payments.⁴ This argument is not relevant given the court’s findings that it was impossible to determine Daryl’s actual income due to his failure to provide full financial evidence.

⁴ Daryl contends in his reply brief that Jane did not contest these arguments contained in Daryl’s brief-in-chief. According to Daryl, these arguments are therefore admitted. *See, e.g., Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). Because we conclude Daryl’s arguments in this regard are irrelevant, we need not address further whether Jane conceded the arguments.

¶10 The record demonstrates that the circuit court employed a process of reasoning based upon relevant facts, and reached a reasonable conclusion. The circuit court properly exercised its discretion by modifying the child support obligation to \$472 monthly, and the court appropriately rejected Daryl's contention that his financial circumstances warranted a further reduction of his child support obligation.

By the Court.—Order affirmed.

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

