COURT OF APPEALS
DECISION
DATED AND FILED

November 6, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP112 **Cir. Ct. No. 2004FA214**

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

IN RE THE MARRIAGE OF:

LINDA MARIE KRINGS,

PETITIONER-APPELLANT,

V.

ERIK FITZGERALD PAULSON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Polk County: STEVEN P. ANDERSON, Judge. *Affirmed in part; reversed in part and cause remanded.*

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

¶1 PER CURIAM. Linda Krings appeals a postdivorce order requiring her to split the cost of her four minor children's health insurance premium with her former husband, Erik Paulson. Krings contends that, because the parties' divorce judgment stated Paulson would provide health insurance for the children, the court had no authority to order Krings to pay half of the premium. We conclude the court had discretion to make Krings responsible for half of the premium, as part of its authority to modify child support. However, the court erroneously exercised its discretion by failing to provide adequate reasons for its decision. We therefore affirm in part, reverse in part and remand for the court to properly exercise its discretion.

BACKGROUND

¶2 Krings and Paulson were married in 1989 and divorced in April 2005. They have four minor children. Their divorce judgment incorporated the terms of a marital settlement agreement (MSA). The MSA provided the parties would have joint legal custody and equal physical placement of the children. In lieu of child support or maintenance, they agreed that, for one year, "[e]ach party [would] provide the other party with one-half of their net income … on a bi-weekly basis[]" so that "each parent [would] have exactly the same amount of disposable income[.]" The MSA also stated, "[Paulson] shall continue to provide medical insurance covering the minor children as long as it is available to him through his place of employment at the St. Croix Falls School District." All other variable expenses for the children, including medical expenses not covered by insurance, were to be split equally between the parties.

¶3 The income-sharing arrangement outlined in the MSA was extended until January 1, 2007. On November 20, 2006, the circuit court approved a

"Stipulation for Modification of Divorce Decree." The stipulation provided that, from January 1, 2007 until April 19, 2009, Paulson would pay Krings $500 per month in maintenance and $500 per month in child support. During the following year, Paulson would pay Krings $1000 per month in maintenance, and he would then pay her $900 per month in maintenance until April 19, 2011. Neither party would be entitled to maintenance after April 19, 2011. The stipulation also provided, "Child support shall be reviewed as of April 20, 2011." In all other respects, the terms of the MSA remained in effect.

¶4 On December 16, 2010, Paulson moved for a revision of child support.[1] In addition to asking that child support be set based on the shared placement formula, he requested that the parties each be made responsible for half of the children's health insurance premium. At a hearing on Paulson's motion, Krings argued the court had no authority to modify responsibility for the children's health insurance because the MSA specifically stated Paulson was responsible for that expense. She testified Paulson's payment of the insurance premium was "a huge part" of the original settlement, stating:

> [T]he last two years of child support were no longer called child support, they were just called maintenance. So he got a huge tax benefit for that, and that was some of the give-and-take in the agreement we made. There was a lot of give-and-take and one of them was he would carry the kids on his insurance.

¶5 The court ultimately concluded Krings should be responsible for half of the children's health insurance premium. The court first determined it had authority to modify responsibility for the children's health insurance costs due to a

[1] Paulson also asked the court to address the allocation of the tax exemptions for the parties' children. That issue is not relevant to this appeal.

"change of circumstances" consisting of the "termination of maintenance and the need to determine child support and the need to address the financial obligations of the parties to their children[.]" The court then explained:

> [M]y position generally is that the parties as long as they are splitting everything, or I guess just generally my position is, that the party that's obligated to provide the insurance provides the insurance; but the parties split the premium attributable to the children. And in this case that would be on its face the way to go since the parties are splitting placement, they are splitting variable costs, we have a child support order based upon those splits. It seems like they are sharing across the board.

¶6 The court then noted that, although the MSA required Paulson to pay for the children's insurance, Krings had voluntarily maintained additional health insurance for them through her employer. As long as Krings continued to provide that additional insurance, the court stated it would be appropriate for Paulson to pay the full premium for the insurance provided through his employer. However, Krings conceded she had recently stopped carrying the children on her health insurance. The court therefore concluded, "Since [Krings] has had to drop her insurance and no longer carries the children, what I'm going to order the parties to do is split the health insurance premium which is attributable to the children." The court then ordered Paulson to pay $352 per month in child support, less fifty percent of the children's health insurance premium. Thus, Paulson's ultimate child support obligation was set at $294.72 per month. Krings now appeals, contending the court erred by making her responsible for half of the children's health insurance premium.

DISCUSSION

¶7 Krings argues the court had no authority to modify the parties' responsibility for the children's health insurance because the MSA specifically

provided that Paulson was responsible for that expense. She contends that, by making her responsible for half of the premium, the court improperly granted Paulson relief from the divorce judgment under WIS. STAT. § 806.07.[2]

¶8 We disagree. In November 2006, the parties stipulated that the court would "review" the issue of "child support" in April 2011. Payment of children's health care expenses constitutes child support. *See* ***Kuchenbecker v. Schultz***, 151 Wis. 2d 868, 876, 447 N.W.2d 80 (Ct. App. 1989) ("[B]oth monetary payments to the custodial parent and the assignment of responsibility for health care are child support provisions[.]"). Thus, by giving the court authority to review child support in April 2011, the November 2006 stipulation gave the court authority to review the parties' responsibility for the children's health insurance. Accordingly, the court did not relieve Paulson from the divorce judgment by making Krings responsible for half of the children's premium. Instead, the court acted according to the authority granted by the parties' November 2006 stipulation.

¶9 Nonetheless, a court must exercise discretion in setting child support. *See* ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737 (setting child support is committed to circuit court's discretion). A court properly exercises its discretion when it examines the relevant facts, applies the correct standard of law, and, using a demonstrated rational process, reaches a conclusion a reasonable judge could reach. ***Id.***

¶10 We conclude the court did not adequately explain its reasons for splitting the children's health insurance premium between Krings and Paulson.

[2] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

The court indicated its position "generally" is that when the parties are splitting all other expenses, they should also split the children's health insurance premium. The court stated it seemed appropriate to follow that practice in this case because Krings and Paulson were sharing placement, splitting variable costs, and seemed to be "sharing across the board." However, merely stating that the court's general practice is to split health insurance costs is an inadequate reason for ordering the parties to split the costs in this particular case.

¶11 The court also stated Krings should be responsible for half of the children's premium because, although not required by the MSA, she had until recently provided additional health insurance for the children. However, the fact that Krings used to provide supplemental health insurance for the children does not explain why she should have to pay half of the premium previously paid by Paulson. The court did not, for instance, compare the cost Krings previously paid to insure the children with the cost of half their premium under the insurance provided by Paulson's employer. Nor did the court consider Krings' and Paulson's respective financial situations or determine which party was better able to shoulder the health insurance costs. Additionally, the court did not consider whether the parties' financial situations had changed since the time of the MSA, such that a change in their responsibility for the health insurance costs would be justified. The court simply did not provide an adequate explanation for its decision that Krings and Paulson should split the cost of the children's health insurance premium.

¶12 Accordingly, we affirm the order to the extent the court determined it had authority to modify the parties' responsibility for the children's premium. However, we reverse that portion of the order making Krings responsible for half of the premium by giving Paulson a credit against his monthly child support

obligation. Because we conclude the court failed to adequately explain its reasoning, we remand for the court to properly exercise its discretion in allocating responsibility for the premium.

By the Court.—Order affirmed in part; reversed in part and cause remanded.

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