



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 19, 2025

To:

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You are hereby notified that the Court has entered the following opinion and order:

2025AP54

Kristin N. Kappl v. Christopher F. Kappl (L.C. #2017FA1412)

Before Neubauer, P.J., Gundrum, and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In this postdivorce proceeding, Kristin N. Kappl appeals from an order regarding child support. She contends that the circuit court erroneously exercised its discretion in multiple ways. Based upon our review of the briefs and Record, we conclude at conference that this case is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We reverse and remand the matter for further proceedings consistent with this opinion.

Kristin N. Kappl (“Krissy”) and Christopher F. Kappl (“Chris”) were divorced in June 2019. They have two minor children, S.K. and A.K., who were ten and seven at the time of the divorce.

The judgment of divorce incorporated a marital settlement agreement (MSA), which required Chris, a successful real estate investor, to pay Krissy \$17,000 per month in child support based on his annual income of \$1,400,000. The MSA defined the income available for child support as “business profit (as opposed to taxable income) plus any W2 wages paid to husband.”

In the years following the divorce, Chris’ income increased substantially. Accordingly, in February 2023, Krissy moved to modify child support. Chris filed his own motion to modify child support, and the circuit court set the matter for trial.²

To assess Chris’ income available for child support, both parties retained forensic accountants—Gaylene Stingl for Krissy and Terry Hoover for Chris. The deadline to exchange expert reports was February 15, 2024. The depositions of Stingl and Hoover were taken on February 20, 2024, just six days before trial commenced.

After depositions were taken, but before trial commenced, Hoover submitted a second report. That report, which was done at the request of Chris’ counsel to reflect the “methodology”

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

² Krissy and Chris also moved to modify the children’s custody and placement. The circuit court’s rulings on those issues are not challenged on appeal.

of the MSA,³ differed significantly in its bottom-line conclusion. Whereas Hoover's first report concluded that Chris had an annual income of \$3,937,555 available for child support, his second report lowered that number to \$2,838,508.⁴ The second report appeared to be based on an individual tax return in which Chris used accelerated depreciation to reduce his taxable income.

Krissy objected to the admission of Hoover's second report because she was unable to conduct discovery on it. The circuit court allowed the report in anyway, citing the "late preparation of [Chris'] 2022 taxes." Ultimately, the court adopted the figure in Hoover's second report as Chris' income available for child support. It found the methodology used by Hoover to be appropriate in light of the parties' past agreement. Based on this and the new placement schedule, the court ordered Chris to pay Krissy \$24,512 per month in child support.

Krissy asked that the new child support order be effective March 1, 2023—the month after her motion to modify child support was filed. The circuit court instead set the effective date as August 1, 2024—the month after the trial was completed. In making this decision, the court observed, "There are a lot of factors here about what [Chris] was paying in the past. The fact that [S.K.] wasn't home in the most part."⁵ The court subsequently memorialized its rulings in a written order. This appeal follows.

³ The MSA does not detail how the parties arrived at Chris' annual income of \$1,400,000. Accordingly, Hoover explained that he had to base the calculations in his second report, in part, on "Chris's counsel's notes."

⁴ Stingl's report, by contrast, concluded that Chris had an annual income of \$4,900,000 available for child support.

⁵ S.K. was at a therapy program and boarding school for much of the time that Krissy's motion to modify child support was pending.

This court reviews an order regarding child support under an erroneous exercise of discretion standard. *See Ladwig v. Ladwig*, 2010 WI App 78, ¶15, 325 Wis. 2d 497, 785 N.W.2d 664. An erroneous exercise of discretion occurs when the circuit court's decision is based on an erroneous finding of fact, an incorrect conclusion of law, or an improper application of the law to the facts. *Seifert v. Balink*, 2017 WI 2, ¶93, 372 Wis. 2d 525, 888 N.W.2d 816. The failure to exercise discretion also constitutes an erroneous exercise of discretion. *See Schinner v. Schinner*, 143 Wis. 2d 81, 104, 420 N.W.2d 381 (Ct. App. 1988).

On appeal, Krissy contends that the circuit court erroneously exercised its discretion in multiple ways. In particular, she criticizes the court for: (1) allowing Hoover's second report to be admitted as evidence; (2) adopting the figure in the second report as Chris' income available for child support; and (3) making the effective date of the new child support order August 1, 2024, which was more than 17 months after her motion to modify child support was filed.

We agree with Krissy that the circuit court's admission of Hoover's second report is problematic. Not only was the report untimely, but Krissy was unable to conduct discovery on it. The court did not address this prejudice to Krissy in its decision to allow in the report. Moreover, the court apparently believed that the report was the result of new information (i.e., Chris' 2022 taxes). This was a mistake of fact. Hoover testified that there was no new information that led to the report; rather, it was simply done at the request of Chris' counsel after depositions.

We also share Krissy's concerns about the circuit court's adoption of the figure in Hoover's second report as Chris' income available for child support. The problem with this adoption is twofold. First, the report did not account for the accelerated depreciation used by

Chris to reduce his income.⁶ Second, to the extent that the court wished to remain consistent with the parties' past agreement, the report's reliance on an individual tax return appears at odds with the MSA's definition of income available for child support. The court did not address either of these issues in its decision.

Finally, we agree with Krissy that the circuit court failed to provide sufficient reasoning for making the effective date of the new child support order August 1, 2024. The court indicated that there were "a lot of factors" about what Chris had paid in the past; however, it did not identify what those factors were or how they influenced its decision. Furthermore, the fact that one child was not home for much of the period in question does not mean that Krissy did not incur expenses for that child. Indeed, she helped pay for the child's therapy program and boarding school and continued to maintain the family residence for when the child was home. The court did not expressly take any of this into consideration.

In the end, by relying on a mistake of fact and failing to adequately exercise its discretion on several issues, we conclude that the circuit court erroneously exercised its discretion with regard to its rulings on child support. Accordingly, we reverse and remand the matter for further proceedings consistent with this opinion.

⁶ Citing *In re Steven J.S.*, 183 Wis. 2d 347, 355, 515 N.W.2d 719 (Ct. App. 1994), Krissy argues that the use of accelerated depreciation is not permissible when calculating a person's income available for child support. Chris did not respond to this argument in his brief. Thus, we deem the argument conceded. See *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and cause remanded for further proceedings. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals