



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

January 16, 2013

To:

Hon. Faye M. Flancher
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Rose Lee
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Frederick L. Babino
P.O. Box 316
Iowa State Penitentiary - #1114917
Fort Madison, IA 52627

Jodi Koker
1515 Carlton Dr.
Racine, WI 53402

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

2012AP190

In re the Paternity of K. C. B.: Jodi Koker v. Frederick L. Babino
(L.C. # 1992PA137)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Frederick L. Babino appeals from a circuit court order denying his motion to modify child support. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2009-10).¹ We affirm the order of the circuit court.

In 1992, Babino was adjudicated the father of Jodi L. Koker's child. The circuit court ordered Babino to pay child support.

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

On January 6, 2012, Babino moved for a reduction of his child support payments based upon his incarceration in prison. The circuit court denied the motion. This appeal follows.

This court reviews a circuit court order denying a motion to modify child support under an erroneous exercise of discretion standard. *Rottscheit v. Dumler*, 2003 WI 62, ¶11, 262 Wis. 2d 292, 664 N.W.2d 525. We will affirm the circuit court’s exercise of discretion if it examined the evidence before it, applied the proper legal standards, and reached a reasonable conclusion. *Id.*

On appeal, Babino contends that the circuit court erroneously exercised its discretion by denying his motion to modify child support. Specifically, he asserts that the court erred when it found that his earning capacity is the same now as it was prior to his incarceration.

As a threshold matter, we note that Babino’s child support payments stem from his failure to pay past due child support, not from any ongoing obligation. With that in mind, we are satisfied that the circuit court properly exercised its discretion in denying his motion to modify child support. The fact that Babino is presently incarcerated does not prevent the court from requiring him to make good on his past due child support regardless of his current income. As the court explained, “the payer’s child/children or mother of the child/children should not have to subsidize the payer’s illegal activity and the consequences thereof.”

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals