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May 13, 2025

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

2023AP442

Kelsie A. Hallgren v. Brandon L. Drake (L. C. No. 2019FA67)

Before Stark, P.J., Hruz, and Gill, 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).

Brandon Drake, pro se, appeals a circuit court order vacating a court commissioner's decision to reduce Drake's child support obligation and reinstating child support in the amount of \$1,400 per month. Drake argues that the court erroneously exercised its discretion by failing to apply "all the necessary factors of federal law, state law, and case law." Specifically, Drake contends that the court failed to properly consider the effect of Drake's incarceration on his ability

to pay child support. Drake also claims that the court did not consider his current mental health, nor did it properly consider the value of Drake's residence as an income-producing property. We conclude at conference that this case is appropriate for summary disposition. We reject Drake's arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2023-24).¹

Drake and Kelsie Hallgren were divorced on March 5, 2020, and Hallgren was awarded sole legal custody of the couple's two minor children. Based on Drake's full-time employment where he was earning \$26 per hour as a "CNC machinist," the judgment of divorce provided that his monthly child support obligation was \$1,185.82, which included \$1,126.67 of base child support plus \$59.15 for Drake's share of the children's health and dental insurance premiums.

At the time of the final divorce hearing, Drake was being held in the Taylor County Jail on 13 criminal charges arising from 4 cases, which included allegations of domestic abuse against Hallgren.² Therefore, the divorce judgment contemplated the impact any potential incarceration would have on the placement schedule set forth in the judgment.

Drake ultimately pled no contest to six offenses, including strangulation and suffocation, second-degree recklessly endangering safety, knowingly violating a domestic abuse injunction order, disorderly conduct, and two counts of domestic abuse battery. The remaining counts were dismissed and read in. The circuit court withheld the sentences and placed Drake on probation, with ten months of conditional jail time and Huber privileges.

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

² See Taylor County Case Nos. 2019CF92, 2019CF73, 2019CF70, and 2019CM68.

In November 2021, Hallgren moved to modify child support, alleging a substantial change in circumstances. Specifically, Hallgren claimed that Drake's hourly wage had increased from \$26 to \$28 and that he was working "side jobs" for which he was not reporting the income. While that motion was pending, Drake was arrested and placed on a probation hold based on an alleged domestic abuse incident involving his then-girlfriend and illegal drug usage. Hallgren consequently moved to suspend Drake's child placement. At the time of a February 3, 2022 hearing on Hallgren's motions, Drake remained on a probation hold, facing potential prison time. Drake nevertheless stipulated to an increased child support payment of \$1,400 per month.

The circuit court's electronic dockets reflect that upon the revocation of Drake's probation, the court imposed concurrent sentences aggregating an eight-year term, consisting of four years of initial confinement followed by four years of extended supervision. Drake moved to suspend his child support obligation during the remainder of his initial confinement, asserting that he was unable to work at the prison and that he had been diagnosed with a mental illness. Hallgren opposed the motion. After a hearing, a court commissioner reduced Drake's monthly child support obligation to \$850, concluding that he had the ability to earn this amount from the rental of his Medford-area home.

Drake then moved the circuit court for de novo review of the court commissioner's decision, seeking to further reduce his monthly child support obligation to \$180. Drake asserted that the commissioner mistakenly deemed his home to be an "income-producing property." At the motion hearing, Drake testified that his home had an appraised value of \$170,000, he owed \$159,000 on the mortgage, and his monthly mortgage payment without taxes was \$1,000. When asked how he was paying the mortgage, Drake testified that he had sold his truck and withdrew \$20,000 from his 401(k). Drake added that he paid off his court fines with the proceeds from his

truck sale, and he was paying his mortgage with the 401(k) withdrawal, leaving him roughly \$13,000 at that time. Although Drake agreed that the fair market rental value of his home was \$850 per month, he asserted that he could not arrange to rent it while incarcerated. Drake, however, acknowledged that his stepfather was currently taking care of the home.

Drake recognized his obligation to support his children, but he explained that he sought to reduce his payments both because he was making only \$20 per month at his prison job and because he did not want to be released from prison with a “large arrearage.”³ Drake also noted that his mental health prevented him from placement in an institution that allows work release. The circuit court ultimately denied Drake’s motion for an additional reduction in child support and reinstated his monthly child support obligation of \$1,400. This appeal follows.

This court reviews a circuit court order denying a motion to modify child support under an erroneous exercise of discretion standard. See *Rottscheit v. Dumler*, 2003 WI 62, ¶11, 262 Wis. 2d 292, 664 N.W.2d 525. We will affirm the court’s exercise of discretion if it examined the evidence before it, applied the proper legal standards, and reached a reasonable conclusion. *Id.* Even if a circuit court fails to articulate the reasons for its decision, this court will independently review the record to determine whether there is any reasonable basis upon which we may uphold the circuit court’s discretionary decision. *State v. Davidson*, 2000 WI 91, ¶53, 236 Wis. 2d 537, 613 N.W.2d 606.

A circuit court may modify child support if there has been a substantial or material change in circumstances of the parties or the children since the date of the last support order. See *Poehnelt*

³ At the time of the hearing, Drake was scheduled for release from his initial confinement in just over two years.

v. Poehnelt, 94 Wis. 2d 640, 648-49, 289 N.W.2d 296 (1980). The burden of demonstrating a substantial change in circumstances is on the party seeking modification. *Kelly v. Hougham*, 178 Wis. 2d 546, 556, 504 N.W.2d 440 (Ct. App. 1993). We will not disturb a circuit court’s findings of fact unless they are clearly erroneous. See *Rohde-Giovanni v. Baumgart*, 2003 WI App 136, ¶5, 266 Wis. 2d 339, 667 N.W.2d 718. However, we “independently determine whether the moving party has shown a substantial change in circumstances” as a matter of law. *Jalovec v. Jalovec*, 2007 WI App 206, ¶22, 305 Wis. 2d 467, 739 N.W.2d 834. Our determination must nevertheless give weight to the circuit court’s decision “because the determination is ‘heavily dependent upon an interpretation and analysis of underlying facts.’” See *Pero v. Lucas*, 2006 WI App 112, ¶23, 293 Wis. 2d 781, 718 N.W.2d 184 (reviewing a decision regarding proposed modification of custody or placement that also required a showing of a substantial change in circumstances).

Drake argues that the circuit court erroneously exercised its discretion by failing to properly consider the effect of his incarceration on his ability to pay child support. Recognizing that the purpose of the child support system is to protect the child and the child’s best interest, the *Rottscheit* court noted that “[d]epriving a child of financial support solely because his or her parent committed a criminal act does not serve that interest.” *Rottscheit*, 262 Wis. 2d 292, ¶35. Incarceration by itself, however, neither mandates nor prevents modification of a child support obligation. *Id.*, ¶1. Rather, “[i]ncarceration is one factor that should be considered, but the determination should be made on a case-by-case basis, looking at the totality of the relevant circumstances.” *Id.* The factors for consideration regarding an incarcerated payer include, but are not limited to:

the length of incarceration, the nature of the offense and the relevant course of conduct leading to incarceration, the payer's assets, the payer's employability and the likelihood of future income upon release, the possibility of work release during incarceration, the amount of arrearages that will accumulate during the incarceration, and the needs of the children.

Id., ¶41.

In reinstating Drake's \$1,400 child support obligation, the circuit court acknowledged and discussed these factors. It emphasized that the needs of Drake's "relatively young children" had not changed and, in fact, would likely increase as they aged. The court noted that Drake "is a young man, who has employable skills," having worked for more than eleven years as a machinist and having earned an hourly wage of \$28 before his sentencing after probation revocation. The court acknowledged the length of Drake's remaining incarceration and the significant arrearages that would accrue; however, it concluded there was a high likelihood that Drake would be able to secure "decent employment" upon his release, "given his age, work history, experience and skills," thus putting him in a position to pay off the arrearages over time.

The circuit court also noted that Drake had assets and resources in the community from which he could draw during his incarceration—namely, his house, his remaining pension, and his stepfather, who was looking after the house. With respect to the house, the court recognized that, rather than selling or renting the home, Drake had chosen to keep it vacant during his incarceration. The court additionally considered the fact that Drake had been convicted of violent crimes in which Hallgren was the victim; that he had been given community supervision; that his probation was revoked; and that he was sentenced to prison when he chose to violate conditions of his probation. The court ultimately determined, as a matter of fairness, that the children "should not be deprived

of the support they would have received if not for Drake's own actions against their mother and his subsequent drug use."

Drake appears to argue that the circuit court did not consider proper factors when denying his motion and reinstating the stipulated child support amount. We disagree. As noted above, the court applied the proper legal standards to the evidence before it and it reached a reasonable conclusion based on the totality of the relevant circumstances. Drake suggests that the court ignored the facts that he earns virtually nothing in prison; that he will have significant arrearages upon his release from prison; and that it is unreasonable to expect him to sell or rent his home to pay his child support obligation. The court, however, was presented with these arguments during the motion hearing. Drake's disagreement with the court's conclusion that his arguments did not warrant any reduction in the stipulated child support amount does not establish an erroneous exercise of discretion.

Drake also asserts that the circuit court's consideration of his crimes against Hallgren, coupled with its refusal to reduce his child support obligation, is akin to double jeopardy because it constitutes punishment in addition to his sentence. We are not persuaded because "the nature of the offense and the relevant course of conduct leading to incarceration" are proper factors when considering an incarcerated payer's motion for child support modification.

Drake also argues that facts asserted by Hallgren or relied upon by the circuit court were inaccurate. Specifically, he asserts that he did not expect to be sentenced to prison when he stipulated to \$1,400 in monthly child support. In its decision, however, the court noted only that Drake was on a probation hold and that he "was facing the possibility of going to prison" when he agreed to pay \$1,400. To the extent Drake also claims that he did not use drugs or alcohol during

his probation, the record suggests that his alcohol or drug use was not the primary basis for the court's order.

Ultimately, the record supports the court's determination that a reduction in Drake's child support obligation was not warranted. Therefore, we affirm.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to 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