

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2016AP2422

ROESEMARY SEYMOUR,

Petitioner-Appellant,

v.

COLE DAWSON,

Respondent-Respondent.

BRIEF OF APPELLANT-PETITIONER ROSEMARY
SEYMOUR

Appeal from a Final Order Entered by the Circuit Court for
Waukesha County, Honorable Felix Frankfurter Presiding
Case No. 2015FA3579

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ISSUES PRESENTED

1. Did Dawson have a “substantial change in circumstance” when he inherited a trust, which requires an increase in child support payments under Wis. Stat. § 767.59?

Answered by the trial court: No.

2. Did Dawson have a “substantial change in circumstance” when he inherited a business, which requires an increase in child support payments under Wis. Stat. § 767.59?

Answered by the trial court: No.

STATEMENT ON ORAL ARGUMENT

Oral argument is not necessary because the parties’ briefs can adequately explain the case and the issues for review. *See* Wis. Stat. § 809.22.

STATEMENT ON PUBLICATION

The court of appeals should publish its opinion because it could help other parties who want to modify a child support order when their former spouse is hiding new assets with as current spouse. *See* Wis. Stat. § 809.23.

STATEMENT OF CASE AND FACTS

This case began on September 8, 2015, when the Appellant, Rosemary Seymour, filed a petition to revise a court order that required her ex-husband, Cole Dawson, to

pay child support. (Petition, R.1.) The original child support order was issued when Seymour and Dawson divorced in April 2009. (R.1-1). At the time, Dawson was a struggling plumber and earned about \$1,200 dollars a month. (R.1-2.) The order required Dawson to pay \$179 a month in child support. (R.1-1.) The court had decided that that amount was appropriate using the “percentage standard” under Wisconsin Statute section 767.511 and the Wisconsin Department of Children and Families’ “Child Support Guidelines for Low-Income Payers.” (*Id.*)

In 2010, Dawson remarried. (R.14, Tr. at 14:3-4.) In 2014, Dawson received a large inheritance when his grandfather died. (*Id.* at 16:2-14.) A trust began paying Dawson a monthly income of \$2,000. (*Id.* at 16:12-17:5.) Dawson also received complete ownership of Best Auto, LLC, his grandfather’s very successful auto shop. (*Id.* at 17:10-21.) The shop reported earnings of \$185,000 in its 2014 tax returns. (*Id.* at 18:5-9.) As the only stakeholder in the company, Dawson was entitled to \$60,000 of those earnings. (*Id.*)

Dawson spent some of his new wealth on a speed boat and a Harley Davidson motorcycle. (*Id.* at 21:1-14.) These expensive purchases motivated Dawson’s ex-wife, Seymour, to investigate Dawson’s finances. (*Id.* at 32:5-10.) That is when Seymour realized what had happened. On September 8, 2015, Seymour filed a petition asking for a revised child support order. (R.1.) After Dawson received notice of Seymour’s petition, he changed the beneficiary of the trust to his current wife, Natasha Billings. (R.1-3.) He also transferred 51% of Best Auto, LLC to Billings. (R.1-4.)

Then, on September 25, 2015, Dawson replied to Seymour’s petition. (R.3.) He provided a bank statement

dated September 15, 2015, showing his income as \$1,197 dollars a month. (R.3-1.) He also provided certificates showing that Billings held a 51% “controlling interest” in Best Auto, LLC. (R.3-2.) Dawson used these documents as evidence that his “financial position had not changed” since the original child support order from 2009. (R.3.)

The circuit court heard the case on October 30, 2015, and denied Seymour’s petition. (R.16, Order at 1.) First, the court discussed whether the trust was a “substantial change in circumstance” under Wis. Stat. § 767.59. (*Id.* at 2.) The court held that it was not because the trust was under Billings’s name, not Dawson’s. (*Id.* at 3.) The court cited *Ulrich v. Cornell*, 168 Wis. 2d 792, 484 N.W. 2d 546 (1992) and explained that a stepparent does not need to provide financial support for a stepchild. (R.16, Order at 3)

Second, the court considered whether the earnings from the auto shop that Dawson inherited were a “substantial change in circumstance” under Wis. Stat. § 767.59. (*Id.* at 4.) Citing *Winters v. Winters*, 2005 WI App 94, 281 Wis. 2d 798, 699 N.W.2d 229, the court ruled that Dawson did not have a controlling interest in Best Auto, LLC, so the company’s earnings could not be considered for child support purposes. (R.16, Order at 5.)

ARGUMENT

I. The Standard of Review.

“Maintenance and child support determinations are entrusted to the circuit court and are not to be disturbed on review unless there has been an erroneous exercise of discretion.” *Ladwig v. Ladwig*, 2010 WI App 78, ¶15, 325 Wis. 2d 497, 785 N.W.2d 664. “[A] discretionary

determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and considered together for the purpose of achieving a reasoned and reasonable determination.” *In re Marriage of LeMere*, 2003 WI 67, ¶13, 262, Wis. 2d 426, 663 N.W.2d 789.

II. The Circuit Court Erroneously Exercised its Discretion by Not Considering Dawson’s Monthly Trust Income as Part of His Hospital Income.

Trust income matters for child support payments. *Grohmann v. Grohmann*, 189 Wis. 2d 532, 538, 525 N.W.2d 261, 263 (1995). The circuit court was wrong to rely only on a bank statement from September 15, 2015, to determine that Dawson’s income was only \$1,197 a month. That statement was dated a full week after Dawson was notified about Seymour’s petition to modify the child support order. During that time, Dawson transferred his trust to his current wife, Billings. Between January 2014 and August 2015, Dawson received \$2,000 a month from the trust.

The trial court should not have relied on *Ulrich v. Cornell*, 168 Wis. 2d 792, 484 N.W. 2d 546 (1992). In *Ulrich*, the court held that a stepparent does not have an obligation to pay child support. *Id.* at 789-99. But *Ulrich* did not involve a person who was trying to hide his income to avoid paying child support (like Dawson). When a person transfers money to someone else to “bury his true income,” the transferred funds are still considered income for calculating child support. *Evjen v. Evjen*, 171 Wis. 2d 677, 685, 492 N.W.2d 361, 364 (Ct. App. 1992). Here, the timing of Dawson’s transfer of his trust to Billings suggests that Dawson tried to hide his income after learning about

Seymour's petition. Therefore, the circuit court should have considered the trust to be part of Dawson's income.

Taking into account the trust, Dawson's monthly income would more than double, from \$1,197 a month to \$3,197 a month. That is a "substantial change," and Seymour should get more child support from Dawson.

III. The Circuit Court Erroneously Exercised its Discretion by Not considering Best Auto's Earning as Part of Dawson's Total Income.

Wisconsin courts don't let people use a corporate structure to "camouflage or bury [their] true income status." *Evjen*, 171 Wis. 2d at 686. But that is what Dawson did when he transferred a 51% interest in Best Auto, LLC to Billings. Under these circumstances, the circuit court should have considered Best Auto's earnings when calculating Dawson's income. In 2014, Dawson earned \$60,000 from the shop. That is \$5,000 a month, a substantial change from what he made as a plumber.

The court incorrectly relied on *Winters v. Winters*, 2005 WI App 94, 281 Wis. 2d 798, 699 N.W.2d 229. In *Winters*, the court explained that it considers two factors when deciding if company earnings should be included in child support calculations. "First, the court must ascertain whether the child support payer has the ability to individually control or access the undistributed earnings. Second, the court must determine whether there is a valid business reason for the company's decision to retain the earnings." *Id.*, ¶9.

The circuit court determined that Dawson did not have the ability to control Best Auto because Billings held the controlling interest in the company. But the court ignored the fact that Billings is Dawson's wife. The court also

disregarded the fact that Dawson transferred the interest to Billings only after learning about Seymour's petition. These facts show that Dawson still had control of Best Auto despite Billing's 51% "controlling interest."

Because Dawson used Best Auto, LLC to hide income, the circuit court should have considered the company's earnings when calculating Dawson's income. The \$60,000 that Dawson earned from the company in 2014 represents a substantial increase in Dawson's income. Seymour is entitled to more child support on this basis.

CONCLUSION

The court of appeals should reverse the circuit court's judgment and hold that Dawson's trust and auto shop business qualify as a "substantial change in circumstance" under Wis. Stat. § 767.59. The court of appeals should send the case back to the circuit court to calculate a new child support order based on this change in Dawson's financial circumstances.

Dated this 5th day of January, 2016.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,272 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 5th day of January, 2016.

Signed:

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