STATE OF W I S C O N S I N

C O U R T O F A P P E A L S

DISTRICT II

Case No. 0000AP0000

In re the Marriage of

JOHN DOE,

Petitioner-Appellant,

v.

MARY DOE,

Respondent-Respondent.

BRIEF OF RESPONDENT-RESPONDENT

On Appeal from a Memorandum Order/Decision of the Sheboygan County Circuit Court, Case No. 0000FA0000, The Honorable Joseph Smith, Presiding.

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**CASES CITED**

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***Whitford v. Whitford***,   
232 Wis.2d 38, 606 N.W.2d 563   
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issueS presented

**What’s this?**

1. Did the trial court err when it estopped Appellant John Doe from seeking modification of family support?

The trial court answered: No.

2. Did the trial court err when it failed to reallocate the dependency exemptions and reassign responsibility for health insurance and health care expenses despite a substantial change in circumstances?

The trial court answered: No.

statement on oral argument

**What’s this?**

Respondent Mary Doe (“Mary”) does not believe that oral argument is necessary. The written briefs, incorporating the transcripts of the hearings held in the trial court and other relevant materials submitted to the trial court, can fully and adequately present the issues and the arguments of the parties.

STATEMENT ON PUBLICATION

**What’s this?**

Pursuant to Wis. Stats. Section 809.23(1)(a)l. and 5, the court of appeals should publish its decision. The issue presented is a matter of first impression and of significant public interest.

statement of the CASE AND FACTS

**What’s this?**

The parties to this action, John Doe (hereafter referred to as “John”) and Mary Doe (hereafter referred to as “Mary”) were divorced on October 18, 2005. The parties entered into a written Marital Settlement Agreement resolving all issues. It was approved by the court in its entirety and was incorporated into the Findings of Fact, Conclusions of Law, and Judgment of Divorce. (R.20).

Pursuant to the agreement of the parties, Mary was granted primary physical placement of the three minor children, ages seventeen, eleven, and eight. John was granted reasonable periods of temporary physical placement of the children. (R.20: 10).

After lengthy negotiations between the parties and counsel, the parties agreed to forego payment of maintenance and child support in favor of family support payments from John to Mary. The parties agreed that John would pay family support to Mary in the sum of Four Thousand ($4,000) Dollars per month for a period of five (5) years, and in the sum of Three Thousand ($3,000) Dollars per month for an additional five (5) years. Most importantly, the parties agreed, and the trial court ordered, that "these family support payments are non­modifiable until the final payment is made under the terms of this agreement." (R.20: 16). Finally, it was agreed that these payments would constitute income to Mary, and could be deducted by John. (R.20: 16).

The Marital Settlement Agreement further provided that John was to secure health insurance coverage for the children, and Mary would be responsible for any and all uninsured medical expenses incurred for the children. The party paying medical expenses would be entitled to deduct the expenses if they itemized deductions. (R.20: 17-18).

With respect to tax deductions, the agreement of the parties entitled Mary to claim the children as exemptions for state and federal income tax purposes. (R.20: 21).

In late November or early December, 2007, the youngest child of the parties, Michael, began living primarily with John. (R.36: 36). The parties entered into a written stipulation transferring primary physical placement of Michael to John, which was approved by the court by order dated January 4, 2008 (R. 25). Michael has continued to reside primarily with John since that time. Shortly after Michael began living with John, John began receiving approximately One Thousand ($1,000) Dollars per month from the State (incentive payments received because the parties had adopted Michael, who had been a foster child placed in their care). These payments had previously been paid to Mary while Michael resided in her home. (R.36: 12; 38-39).

On January 16, 2008, John filed a motion seeking to modify the family support payments on the basis that the parties' oldest child had turned 18 years of age since the granting of the divorce; that Mary had remarried; and that Michael was now living primarily with him. John also sought modifications with respect to the allocation of the dependency exemptions, provision for health insurance coverage, and payment of uninsured medical expenses for the children. (R.26).

On July 7, 2008, the trial court held an evidentiary hearing on John's motion. The parties presented various testimony and written evidence. (R.36). Each of the parties were given an opportunity to file memorandum briefs, setting forth their respective legal arguments for the trial court's consideration. (R.27, 30, 31).

After reviewing the evidence and written arguments submitted by the parties, the trial court issued a Memorandum Decision/Order dated October 13, 2008, denying John's motions in their entirety. (R.32). John is now appealing the trial court's order.

argument

**What’s this?**

I. The Trial Court Was Correct in Estopping John from Seeking to Modify Family Support.

A party is estopped from seeking a maintenance revision if the parties stipulated to permanent nonmodifiable maintenance that was part of a comprehensive settlement of all property and maintenance issues that was approved by the court and was fair and not illegal or against public policy at the time. ***Nichols v. Nichols***, 162 Wis.2d 96, 469 N.W.2d 619 (1991). This holding was affirmed and extrapolated further in ***Whitford v. Whitford***, 232 Wis.2d 38,606 N.W.2d 563 (Ct. App. 1999), a case cited by the trial court in denying John's motion to modify his family support obligation in this case.

In the case at hand, the parties reached a global settlement of all financial issues, including maintenance, child support, property division, assignment of dependency exemptions, provision of health insurance, and payment of uninsured medical bills. John argues that a major component, if not the entirety, of the family support can be characterized as child support, and cites case law that found agreements containing language calling for non-modifiable child support payments as contrary to public policy and thus void. As a result, John argues that the family support payments are subject to modification, and the fact that he now has primary physical placement of Michael justifies a reduction in his payments.

During the course of negotiations, John’s trial counsel forwarded to Mary’s attorney a letter dated June 7, 2005, containing the offer which served as the basis for the parties’ agreement on these issues. (R.42). The letter makes it abundantly clear that the family support payments were primarily intended to be a substitute for maintenance, and not child support. The amount and length of the payments are structured to address maintenance-related issues such as making “a little more up front while she pursues the training she needed to get back into the job market;” her total annual income; and John wanting "her to be able to support her life style.” The proposal at no time suggests that any portion of these amounts was intended as support for the parties' minor children.

Rather, child support was addressed by awarding Mary the approximately $2,600 of tax free money from the State each month which the parties were entitled to receive because they had adopted foster children. In essence, the money from the State was substituted in lieu of child support payments from John. The amounts Mary would be receiving from the State were considered in determining her needs and what amount John should be required to pay her in family support.

As the correspondence of counsel suggests, the payment of family support was utilized to provide tax relief to John, and to protect Mary by providing for the payments to continue even after her anticipated remarriage. The amount and duration of the payments was not in any way based upon child support considerations.

John also argues that requiring him to continue making the same payments to Mary, despite the fact that Michael is now living with him, is inequitable and should be a basis to modify the otherwise non-modifiable family support payments which the parties negotiated. This issue neglects an important point. Since shortly after the child began living with him, John has been receiving the money from the State that the parties agreed would be payable to Mary. These payments equal almost $1,000 per month. As a result, John has this money, in addition to his own income, to support Michael. On the other hand, Mary no longer has the benefit of these amounts, which were factored into the calculation of family support that John would be responsible for paying to her.

It is respectfully submitted that John's receipt of the State benefits cures any inequity that might otherwise exist. Allowing these amounts to be diverted from Mary to John (which Mary does not oppose), and then to also permitting John to reduce his non-modifiable family support payments as well, would be truly inequitable and inconsistent with the purpose and intent of the original agreement of the parties.

Under these circumstances, and pursuant to the holding in ***Rintelman v. Rintelman***, 118 Wis.2d 587, 596, 348 N.W.2d 498 (1984), as well as ***Nichols v. Nichols***, ***supra***, and ***Whitford v. Whitford***, *supra*, estoppel is appropriate in this case. The parties entered in the stipulation freely and knowingly and with the assistance of counsel; each of the parties bargained for certain concessions, which included tax considerations, and both received favorable provisions in exchange for something in return; the overall settlement was fair and equitable; the agreement is not illegal or against public policy, and promotes resolving disputes other than through litigation. It would be wholly unfair to allow John to escape the bargain he not only negotiated, but actually proposed himself to Mary, by permitting him to have the family support payments reduced.

II. The Trial Court was Correct in Denying John’s Motions to Modify the Judgment of Divorce with Respect to the Issues of Dependency Exemptions, Provision of Health Insurance, and Payment of Uninsured Medical Expenses.

John argues that under the circumstances, he should be entitled to a modification of the terms regarding tax dependency exemptions, health insurance coverage, and payment of uninsured medical expenses. However, he has not established any legitimate reasons why this is the case.

The overall settlement of the parties took tax considerations into account. Modifying the provision as to which party could claim the children would change this entire dynamic. In addition, since Michael is not living with his father, John is now receiving almost $1,000 per month in tax free money from the State. In light of these circumstances, it was most certainly within the discretion of the court to deny John's motion.

With respect to health insurance, one of the children is still residing with Mary. John has the insurance available to him through his employment, whereas Mary does not. The cost of health insurance will normally be the same to provide coverage for one child as it would be for two children; you don't cover one child and leave the other child without health insurance. Therefore, the fact that Michael is now living with John has no practical impact. Finally, both parties receive State assistance because the children were adopted foster children, which covers most of the children's medical bills. As a result, there is no reason to modify the terms of the judgment, and the court properly denied the motion.

Finally, the judgment provides that Mary is responsible for payment of all uninsured medical expenses for the children. If anything, the change in Michael's placement makes this inequitable to Mary. If John wishes to modify the judgment such that each party is responsible for payment of uninsured medical. expenses for the child in their care, Mary would gladly agree.

conclusion

**What’s this?**

For the reasons stated above, Respondent-Respondent Mary Doe respectfully requests that the court of appeals affirm the trial court’s decision in its entirety.

Dated this 15th day of April, 2016.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

**What’s this?**

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 1,750 words.

CERTIFICATE OF COMPLIANCE  
WITH RULE 809.19(12)

**What’s this?**

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 15th day of April, 2016.

Signed:

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