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STATE OF WISCONSIN

CIRCUIT COURT,
FAMILY COURT BRANCH

WINNEBAGO COUNTY

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In 'Re the Marriage of :

DEBRA A. VAN PRICE,

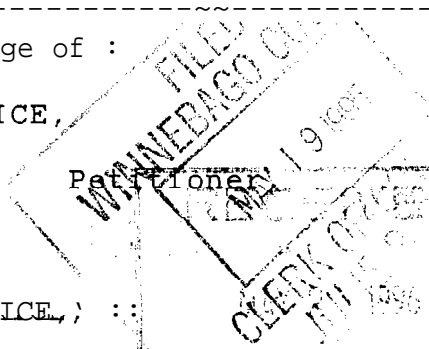
Petitioner

PETITIONER'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO VACATE THE
JUDGMENT

and

ROBERT A. VAN PRICE, :

Case No. 81-FA-31



Respectfully submitted, :

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This case is before the court on petitioner's motion to vacate an order dated July 14, 1992 regarding a set child support obligation under s806.07, Wis. Stats. This memorandum will briefly address arguments raised in the Winnebago County Child Support Agency's memorandum for the State of Wisconsin and the respondent, Robert A. Van Price (hereafter respondents). Robert A. Van Price did not file a memorandum. There are two basic issues: 1) whether the restriction on motions to retroactively modify child support judgments found in §767.32(1m), Wis. Stats., prevents a party in a family law action from bringing a §806.07, Wis. Stats. motion to vacate a child support order; and 2) if so, should the petitioner's motion to vacate be granted? The relevant facts are outlined in the petitioner's initial memorandum and will be raised at relevant parts of this reply.

First of all, throughout its brief, the respondents incorrectly focus on the January 10, 1989 Order initially setting the petitioner's child support obligation at \$50.00 a week. (Respondent's Brief (Resp.Br.), beginning at page 1.) Petitioner is not asking for vacation of the January 10, 1989. In fact, petitioner does not question the validity of the January 1989

Order. Instead, petitioner is requesting the court to vacate the July 14, 1992 Order, or, in the alternative, to vacate the February 14, 1994 Order. Both of these Orders were entered after petitioner became disabled on November 1, 1991.¹ The motion brought by petitioner, which petitioner often referred to as a motion to vacate a judgment, also applies to orders such as the July 14, 1992 and February 14, 1994 Orders. 5806.07(1), Wis. Stats. Obviously, these are the orders that the petitioner is asking the court to vacate.(See Petitioner's January 31, 1995 and February 16, 1995 Motions, oral argument at the March 21, 1995 hearing, and petitioner's brief (Pet.Br.). Therefore, the respondents' arguments based on the validity of the January 10, 1989 Order are irrelevant.

I. CHAPTER 767, INCLUDING 767.32(1m), DOES NOT ELIMINATE THE LONGSTANDING REMEDY OF A 5806.07 MOTION TO VACATE IN FAMILY LAW CASES WHERE JUSTICE SO REQUIRES

Respondents' argue that Chapter 767 sets out the exclusive procedure for modifying judgments in actions affecting the family and thus, 5806.07, Wis. Stats., can never be used in a family law action. (Resp.Br. at 2-3! Pet.Br. at 7-14). The petitioner agrees that Chapter 767 sets out a procedure for continuing jurisdiction to prospectively modify judgments in actions

¹ As discussed in petitioner's brief, the July 14, 1992 Order was based on an Order to Show Cause dated October 4, 1991. While the Order to Show Cause was pending, the Social Security Administration thoroughly evaluated the petitioner's medical and work history and found she was disabled as of November 1, 1991. The second order, the February 14, 1994 Order, was the most recent Order continuing the \$50.00 child support obligation and was within a year of the filing of petitioner's Motion to Vacate.

affecting the family. However, nothing in Chapter 767 prohibits motions to vacate under s806.07. The motion to modify under 5767.32 and the motion to vacate under s806.07 are two separate motions with distinct requirements. In addition, s806.07 motions to vacate have been used in family law actions for years. See e.g. State ex rel. M.L.B Iv- D G H, 122 Wis.2d 536, 544, 363 N.W.2d 419, 423 (Wis. 1985) and other paternity judgment cases in petitioner's brief (Pet.Br. at 8-g).¹ As demonstrated by the paternity judgment cases, the motion to vacate is an available remedy even if it affects a child support order or judgment.

In addition to being incorrect, the respondents' position could lead to absurd results. Respondent seems to be saying that a party could not bring a motion to vacate under any circumstances. As demonstrated by the above cases, judgments, including family law judgments, which are based on fraud, mistake, etc. may, under appropriate circumstances, be vacated under 5806.07 even if they could not be modified under 5767.32. For example: a mother could deliberately lie and name Donald Trump as the father of her child. Then, she could forge service

¹ s806.07 motions for relief have also been heard for divorce property settlements even though they are specifically prevented from modification under s767.32. See e.g. Spankowski v. Spankowski, 172 Wis.2d 285, 493 N.W.2d 737 (Wis.App. 1992); Johnson v. Johnson, 157 Wis.2d 490, 460 N.W.2d i66 (Wis.App. 1990); Thorne v. Thorpe, 123 Wis.2d 424: 367 N.W.2d 233 (Wis.App. 1985); Kastelic v. Kasteu, 119 Wis.2d 280, 350 N.W.2d 714 (Wis.App. 1984); Conrad v. Conrad, 92 Wis.2d 407, 284 N.W.2d 674 (1979) (divorce property judgment); and West v. West, 82 Wis.2d 158, 262 N.W.2d 87 (1978).

documents and have a default judgment entered against Donald Trump for child support. Years later it could come to Donald Trump's attention that there was a child support order against him in Wisconsin. If respondents' position was correct, Donald Trump could not bring a motion to vacate the invalid judgment. This is obviously ridiculous.

In addition, as described in petitioner's brief in detail (Pet.Br. at 9-14), the respondents' position is inconsistent with the history of both the state and federal statutes. The purpose of the restriction on retroactive modifications of child support orders was to put child support orders on an equal footing with other court judgments and orders. It was not to eliminate a remedy generally available to all court orders in Wisconsin.

II. THE PETITIONER'S MOTION TO VACATE THIS UNJUST ORDER AGAINST A DISABLED CLIENT SHOULD BE GRANTED

The second part of respondents' brief argues the factors for relief under 5806.07(1). (Resp.Br. at 3-7, Pet.Br. at 14-26). Once again, even though petitioner's brief focused on the situation at the time of the July 14, 1992 Order, respondent focuses on the initial January 10, 1989 Order.³ Petitioner agrees that the facts at the time of the January 10, 1989 do not warrant a motion to vacate. However, the petitioner's disability status., based on the November 1, 1991 Social Security Administration's (SSA's) quasi-judicial determination, at the

³ In the alternative, petitioner brought a motion to vacate the February 14, 1994 Order continuing child support. (Pet. Br. at 25-26). Respondents basically ignored this motion conceding it. Petitioner will not repeat her arguments from the brief.

time of the July 14, 1992 Order does warrant a motion to vacate. Respondent apparently concedes that the factors at the time of the July 14, 1992 Order require that the petitioner's motion to vacate be granted. Even though the petitioner was receiving SSI because she is disabled, and the July 14, 1992 and February 14, 1994 Orders could have suspended the child support obligations, these Orders specifically continued petitioner's \$50.00 a week child support obligation.

The respondents continue to ignore the significance of petitioner's disabled status. The SSA found petitioner to be disabled as of November 1, 1991 after a thorough evaluation of her medical and work history. Based on another thorough review, on June 1, 1994 the SSA found that the petitioner continues to be disabled. As discussed in the petitioner's brief, Lanclois v. Lancflois, 150 Wis.2d 101, 441 N.W.2d 286 (Wis.App. 1989) (Pet.Br. at 18-19), prohibits burdening the petitioner's SSI benefits with a child support obligation. In addition, a set child support obligation is inconsistent with the social security regulations. (Pet.Br. at 19-24). The respondents have not disputed this.

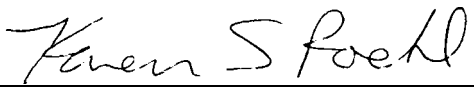
Instead, respondents focus on the petitioner's unsuccessful attempts to work and go to school and ignore that these unsuccessful attempts did not end the petitioner's disability status. (Pet.Br. at 19-24). In fact, the petitioner's sporadic work history is evidence of her disability. As a result, the set \$50.00 a week obligation should not have been ordered to continue because it was inconsistent with Lanslois and SSA requirements.

The last factor of the court's analysis under *Ma, supra*, concerns whether or not there are other circumstances, such as detrimental reliance, that would make it inequitable to grant the motion to vacate. The respondents seem to be disputing this factor, however, they do not describe how they detrimentally relied on the July 14, 1992 and February 14, 1994 Orders. The State of Wisconsin would provide AFDC regardless of these Orders. In addition, the parties did not change their positions based on the Orders. Realistically, there is little chance of this disabled person paying all this child support. The respondents knew petitioner was disabled and receiving SSI and should have known the significance of that. Even if there was any reliance after petitioner became disabled, that reliance was illfounded.

For the foregoing reasons, petitioner respectfully requests that the court grant her motion to vacate the judgment back to November 1, 1991, based on the July 14, 1992 Order, or, in the alternative, the February 14, 1994 Order.. because justice so requires

Dated this 19th day of May, 1995.

LEGAL SERVICES OF NORTHEASTERN
WISCONSIN, INC.
Attorneys for Petitioner

By: - 
Karen S. Roehl
Attorney at Law
State Bar No. 1001508

404 N. Main St., #702
oshkosh, WI 54901
414-233-6521