

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHLEEN MANN,

Plaintiff-Appellant,

v

BRIAN PISCHKE,

Defendant-Appellee.

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UNPUBLISHED

March 6, 2007

No. 265561

Wayne Circuit Court

LC No. 01-112515-DM

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I agree with the majority's conclusion that, under the 2004 amendments to the SERF,<sup>1</sup> any change in circumstances will permit application of the SERF to a modification, even if the SERF was not applied in the initial determination. I write separately, however, because I do not believe that the change in circumstances must have been "relevant when the parties agreed upon the initial judgment." Under the plain language of the child support manual, the SERF "should be applied to . . . modifications based upon changed circumstances *at the time of modification*." 2004 Michigan Child Support Formula Manual, § 3.05(D) (emphasis added). The fact that the parties in this case were divorced by way of a consent judgment has no bearing on this language. Accordingly, so long as a change in circumstances is evident at the time of modification, it is irrelevant that the change in circumstances may not have been relevant or anticipated by the parties at the time of the initial judgment.

I further disagree with the majority's observation that no change in circumstances occurred in this case. The trial court evidently relied solely on the Friend of the Court recommendation and the decision in *Calley*<sup>2</sup> to find a change in circumstances, and apparently did not rely on any other information in reaching its decision. I would not simply conclude that the trial court was incorrect and that no change in circumstances occurred. Nor would I reverse the trial court's decision outright. Instead, I would remand to allow the trial court to consider

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<sup>1</sup> 2004 Michigan Child Support Formula Manual, § 3.05(D)

<sup>2</sup> *Calley v Calley*, 197 Mich App 380; 496 NW2d 305 (1992).

any additional information or evidence that is relevant to the question whether a change in circumstances had in fact occurred at the time of modification.

/s/ Kathleen Jansen