

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 2, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 98-0379-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE MARRIAGE OF:**

**GLADYS JEAN JONES,**

**PETITIONER-RESPONDENT,**

**V.**

**EDDIE JONES,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: LOUISE M. TESMER, Judge.<sup>1</sup> *Cause remanded with directions.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

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<sup>1</sup> The Hon. Louise M. Tesmer signed the judgment appealed from, but the Hon. Robert C. Cannon presided over the hearing.

PER CURIAM. Eddie Jones appeals from a divorce judgment ordering him to pay lifetime maintenance payments. Jones contends that the trial court erroneously exercised its discretion when it awarded permanent maintenance to Gladys Jean Jones by failing to address the proper and relevant factors required by law. Because the record is not clear as to the reasons why the trial court granted permanent maintenance, we remand for explication of the factors taken into consideration by the trial court in making its conclusion. If, in fact, the maintenance award was a disputed issue and not part of an agreed upon stipulation, the trial court must take testimony and hear the parties' arguments before deciding the issue.

### **BACKGROUND**

Gladys Jean commenced a divorce action against Eddie on December 12, 1996. A hearing was held on November 10, 1997, before the Honorable Robert C. Cannon, Reserve Judge, in the Circuit Court of Milwaukee County. Prior to the hearing, the parties, their attorneys, and the trial court held a conference *in camera* where a supposed property settlement had been discussed and agreed upon. No record was made of what was discussed at the conference. At the hearing, the parties agreed to the property settlement that had been discussed in chambers without stating it in its entirety on the record. The trial court then ordered Eddie to make monthly maintenance payments of \$600 to Gladys "for the rest of his life," presumably as a result of the stipulation. Eddie argues that the maintenance award was not part of the stipulation and the trial court ordered maintenance despite the fact it was a disputed issue requiring testimony. He claims that because the trial court neither stated a reason nor took into consideration any of the relevant factors delineated in § 767.26, STATS., the maintenance award was improper.

## DISCUSSION

The trial court is entrusted with determining the amount and duration of maintenance payments. *See Olson v. Olson*, 186 Wis.2d 287, 292, 520 N.W.2d 284, 286 (Ct. App. 1994). An award of maintenance will not be disturbed unless the trial court exercised its discretion erroneously. *See id.* In order for this court to determine if there was an erroneous exercise of discretion, “we must be able to see that the [trial] court made a ‘reasoned application of ... the appropriate legal standard[s] to the relevant facts in the case.’” *Weberg v. Weberg*, 158 Wis.2d 540, 546, 463 N.W.2d 382, 384 (Ct. App. 1990) (citations omitted) (second alteration in *Weberg*). Thus, we will affirm a trial court’s decision if the record shows that discretion was exercised and we can perceive a reasonable basis therefrom. *See id.* The record in this divorce action does not indicate the reasons why the trial court decided to award permanent maintenance. The trial court makes reference to the agreement made between the parties during the conference in chambers. Absent any indication of what was discussed during the conference, it is impossible to determine whether the court made a reasoned application of the appropriate legal standards in deciding the amount and duration of the maintenance award.<sup>2</sup> The only reference made on the record presented to us is that the trial court considered the duration of the marriage. That alone is not enough to justify the permanent maintenance award.

We have previously determined that § 767.26, STATS., is the starting point when considering whether to award maintenance. *See Weberg*, 158 Wis.2d

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<sup>2</sup> Further, on the state of this record, we cannot determine whether the maintenance award was stipulated to during the conference in chambers. If the maintenance issue was not stipulated to by the parties, the trial court cannot make proclamations without any underlying facts.

at 546, 463 N.W.2d at 384. The enumerated factors in § 767.26, STATS.,<sup>3</sup> are designed to further the general objectives of maintenance, support and fairness. *See id.* at 546-47, 463 N.W.2d at 385. A court erroneously exercises its discretion if it fails to apply any of the statutory factors or does not fully consider the dual objectives of awarding maintenance. *See Luciani v. Montemurro-Luciani*, 191 Wis.2d 67, 78, 528 N.W.2d 477, 481 (Ct. App. 1995), *aff'd in part, rev'd in part*, 199 Wis.2d 280, 544 N.W.2d 561 (1996). The trial record makes little mention of what factors it took into consideration when it awarded maintenance. In fact, the

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<sup>3</sup> Section 767.26, STATS., reads in relevant part:

**Maintenance payments.** Upon every judgment of ... divorce ..., the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:

- (1) The length of the marriage.
- (2) The age and physical and emotional health of the parties.
- (3) The division of property made under s. 767.255.
- (4) The educational level of each party at the time of marriage and at the time the action is commenced.
- (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
- (7) The tax consequences to each party.
- (8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
- (9) The contribution by one party to the education, training or increased earning power of the other.
- (10) Such other factors as the court may in each individual case determine to be relevant.

only factor mentioned was the duration of the marriage. Perhaps other factors were discussed in chambers prior to the hearing, but without any explication of what the court considered before making its determination, we cannot conclude if there was a proper exercise of discretion. For the foregoing reasons, we remand the cause with the following directions. If the maintenance award is part of the parties' stipulation, the trial court should so state and state its reasons for approving the maintenance award. If not, the trial court must give the parties the opportunity to present testimony on the issue before deciding it.

### CONCLUSION

In sum, we remand this case for further proceedings consistent with this opinion.

*By the Court.*—Cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

