

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 31, 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. 98-3324-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

JOHN A. BUDZINSKI,

PETITIONER-RESPONDENT,

V.

**ROSALIE A. PELLEGRINO, F/K/A
ROSALIE A. BUDZINSKI,**

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
WILLIAM J. HAESE, Judge. *Affirmed.*

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

PER CURIAM. Rosalie Pellegrino appeals from the trial court's order terminating the obligation of her former husband, John Budzinski, to pay her maintenance, and from the trial court's order denying her motion for

reconsideration. The issues are: (1) whether the trial court misused its discretion when it terminated Budzinski's obligation to pay Pellegrino maintenance; and (2) whether the trial court properly refused to consider Pellegrino's motion to modify Budzinski's child support obligation. Pursuant to this court's order dated January 20, 1999, this case was submitted to the court on the expedited appeals calendar. *See* RULE 809.17, STATS. We affirm.

Pellegrino and Budzinski were divorced in 1988 after 20 years of marriage. They were awarded joint legal custody of their four minor children and Pellegrino was awarded primary physical placement. Budzinski was ordered to pay \$1500 per month in maintenance for "four years, at which time [maintenance] shall ... be reviewed for both parties." No review occurred until 1997, when Pellegrino moved to revise the maintenance award and set child support at 17% of Budzinski's gross income. The court commissioner ordered Budzinski to pay \$1000 per month child support and \$1200 per month maintenance. Budzinski then sought *de novo* review in the trial court of the maintenance order. The trial court terminated Budzinski's maintenance obligation. The trial court refused to consider Pellegrino's motion to modify child support because she had not sought review of the court commissioner's order setting child support. The trial court also denied Pellegrino's motion for reconsideration.

Pellegrino first argues that the trial court misused its discretion in terminating Budzinski's maintenance obligation to her. She contends that she is still entitled to maintenance because Budzinski's income has risen substantially since the time of the divorce, from \$50,000 to \$117,000, while her standard of living continues to be below that which she enjoyed during the marriage because she earns only \$800 per month. She argues that the trial court erroneously

exercised its discretion in concluding that she had chosen not to maximize her earning capacity.

A maintenance award is committed to the trial court's discretion. *See Haugan v. Haugan*, 117 Wis.2d 200, 215, 343 N.W.2d 796, 804 (1984). To properly exercise its discretion, the trial court must articulate its reasoning and must rely on facts of record and the proper legal standards to reach a reasonable determination. *See id.* at 215-16, 343 N.W.2d at 804. In awarding maintenance, the court must consider the needs and earning capacities of the parties, and must insure a fair and equitable financial arrangement between them. *See LaRocque v. LaRocque*, 139 Wis.2d 23, 32-33, 406 N.W.2d 736, 740 (1987).

We conclude that the trial court did not erroneously exercise its discretion in terminating the maintenance award. Based on the testimony of Pellegrino and the vocational experts, the trial court found that Pellegrino had chosen not to earn as much as she was capable of earning in order to have a lifestyle that was less stressful. The court found that Budzinski's increased earnings since the marriage were not the result of Pellegrino's efforts and concluded that Budzinski should not have to continue to supplement Pellegrino's income because ten years had elapsed since the divorce and Pellegrino had chosen to forgo income by being self-employed as a cosmetologist rather than working for another person and earning more income. The trial court's decision is reasonable and is supported by the facts of record and the applicable law. *See Haugan*, 117 Wis.2d at 215-16, 343 N.W.2d at 804. As such, it was a proper exercise of discretion.

Pellegrino next argues that the trial court should have considered her motion to revise the child support award. We agree with the trial court that the

issue of child support was not properly before it because Budzinski sought review of only the portion of the court commissioner's order that concerned maintenance. In any event, Pellegrino has, subsequent to the filing of this appeal, moved the court commissioner to increase child support based on the termination of Budzinski's maintenance obligation and has received an increased child support award. Both parties have the right to seek timely *de novo* circuit court review of that order.

By the Court.—Orders affirmed.

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

