

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 15, 2000

Cornelia G. Clark
Acting 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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-0285-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

EDWARD FRANK FINN,

PETITIONER-RESPONDENT,

V.

DEBRA M. FINN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM J. HAESE Judge. *Reversed and cause remanded with directions.*

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

¶1 PER CURIAM. Debra M. Finn appeals from that part of the divorce judgment awarding her ex-husband, Edward Frank Finn, \$750 per month in maintenance for an indefinite term. She argues that the trial court misused its

discretion when it relied on her historic earnings rather than her actual earnings to determine her income for purposes of awarding maintenance under WIS. STAT. § 767.26 (1997-98).¹ We conclude that the trial court's maintenance award was predicated on an erroneous finding of fact regarding Debra's actual income. Accordingly, we reverse the trial court's judgment and remand the cause for further fact finding.²

BACKGROUND

¶2 At the time of their divorce on October 5, 1998, Debra and Edward had been married for twenty-one years and had one child. Edward became disabled as the result of a brain tumor in 1978, one year after he married Debra. Edward has not worked since the onset of his disability but has received monthly payments from the Social Security Administration. Debra has worked steadily for Norwest Bank as a telecommunications analyst for twenty-three years.

¶3 The parties stipulated to all issues involved in the divorce except maintenance. Following trial, the trial court issued a bench decision awarding Edward \$750 per month in maintenance for an unlimited term. Debra's appeal alleges that the trial court's award was predicated on its erroneous finding that Debra's annual income was \$34,000.00.³

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

² This is an expedited appeal under WIS. STAT. RULE 809.17.

³ Debra's appeal raises a number of additional challenges to the trial court's maintenance award. However, we decline to address these additional challenges because the disposition of the issue identified in this opinion is dispositive of the appeal. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (if decision on one point disposes of appeal, appellate court will not decide other issues raised).

DISCUSSION

¶4 The resolution of the issue of maintenance is within the trial court's discretion. See *Bahr v. Bahr*, 107 Wis. 2d 72, 77, 318 N.W.2d 391 (1982). Discretion implies a rational mental process in which the facts of record and the relevant legal principles are considered to achieve a reasoned and reasonable determination. See *id.* 78, 318 N.W.2d at 395. A decision based on a factual mistake is a misuse of discretion. See *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶5 Here, the trial court set maintenance at \$750 per month after finding “pursuant to the testimony of the respondent, Debra Finn, that her paychecks up through the date of trial reflect that she is making \$34,000 a year.” The record reflects that Debra's actual annual income at the time of trial was \$29,496.00. The discrepancy between Debra's actual income and the trial court's finding resulted from the trial court's reliance on Debra's historic income when she worked a second job with Norwest Bank, part-time, in addition to her full time forty-hour a week job. However, at the time of trial, Debra testified that she no longer worked the part-time job at Norwest and had no intention of resuming such additional employment.⁴

¶6 Because the trial court erroneously found that Debra's actual annual income was \$34,000.00 at the time of trial, we conclude that the trial court erroneously exercised discretion in determining Edward's maintenance award.

⁴ None of the record references upon which Edward relies in his respondent's brief supports the trial court's finding that Debra's actual annual income was \$34,000. Instead, all of Edward's record references relate to Debra's historic income when she was working two jobs at Norwest Bank.

Accordingly, we reverse the trial court's maintenance award and remand the issue for a new determination of maintenance for Edward in light of Debra's actual income at the time of divorce.

By the Court.—Judgment reversed and cause remanded with directions.

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

