

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 26, 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. 99-0955-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

CARLA A. SEXTON,

PETITIONER-RESPONDENT,

V.

DANIEL P. SEXTON,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
JOHN A. DES JARDINS, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Daniel Sexton appeals an order denying his motion to reduce his maintenance obligation to Carla Sexton.¹ He argues that he

¹ This is an expedited appeal under RULE 809.17, STATS.

established a substantial change in circumstances by showing that his wage income decreased from \$83,000 to \$71,700 and Carla's income increased from \$46,700 to \$49,700 in the year following the divorce. He also contends that the parties' total economic circumstances have sufficiently changed to render the initial maintenance unfair. Because we conclude that Daniel has not established a substantial change in circumstances, we affirm the order.

¶2 Maintenance may only be modified upon a showing of substantial change in the parties' financial circumstances. *See* § 767.32, STATS. Whether the circumstances have changed is a question of fact that this court will not disturb unless the trial court's decision is clearly erroneous. Whether the change is substantial is a question of law that we review de novo. *See Rosplock v. Rosplock*, 217 Wis.2d 22, 32-33, 577 N.W.2d 32, 37 (Ct. App. 1998).

¶3 The decrease in Daniel's income and the increase in Carla's income do not constitute a "substantial change" in the parties' total economic circumstances. Daniel moved for a reduction in maintenance approximately one year after the divorce. In the divorce judgment, the court noted that Daniel's income fluctuated. Having the court's expectations confirmed does not constitute a substantial change of circumstances. Carla's income, on the other hand, predictably increased by \$2,000 to \$3,000 per year. Daniel's anticipated income fluctuation in the months following the divorce together with Carla's anticipated income increase does not establish a substantial change in circumstances. The initial divorce judgment should not be construed in a manner that allows either of the parties to return to court on an annual basis seeking an adjustment of maintenance based on foreseen income fluctuations.

¶4 Daniel has also failed to establish that the short-term reduction in his income combined with the expected increase in Carla's income renders the maintenance award unfair. He concedes that there is no change in his cost of living, but argues without specificity that his increased charge card debt and low expenses demonstrate that his standard of living has substantially deteriorated since the divorce. He argues that he lives rent free with a friend because he is not able to pay the rent on his reduced income. Daniel presently earns \$72,200 per year and pays \$17,500 maintenance, leaving him with \$54,700 to meet his expenses. Daniel has not established that enforcing the initial divorce judgment during this downward fluctuation in his income is unfair.

By the Court.—Order affirmed.

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

