

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 6, 2000

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. 99-0987**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE MARRIAGE OF:**

**MICHAEL L. KLABACKA,**

**PETITIONER-RESPONDENT,**

**V.**

**BRENDA L. KLABACKA,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dane County:  
ROBERT DE CHAMBEAU, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Brenda Klabacka appeals from a judgment of divorce. She challenges the trial court's decision to allow her attorney to withdraw from representation without resetting the trial date, and also its decision

to deny her maintenance. We conclude the trial court properly exercised its discretion in both regards, and therefore affirm.

### **BACKGROUND**

¶2 Michael Klabacka petitioned for divorce from Brenda after an eight-year marriage. Just over a month before the date set for trial, Brenda's attorney moved to withdraw as her counsel on the basis that Brenda owed him \$9,035.39 in attorney fees which she had no feasible plan to pay, and that his professional relationship with her had broken down. Michael objected to the withdrawal of Brenda's counsel if the withdrawal was deemed materially adverse to Brenda's interests because he did not want any further delays of the approaching trial date.

¶3 At a hearing on the withdrawal issue, the trial court asked Brenda for her position. She responded that she did not blame her attorney for withdrawing. The trial court then asked Brenda whether she planned to seek substitute counsel. She said that she had not decided. She had been trying to find someone else, but she did not have any money. She did not object to her attorney's withdrawal or ask for a setover. The trial court allowed counsel to withdraw and informed the parties that the final hearing would proceed as scheduled.

¶4 At the final hearing, Brenda indicated that she was not ready to proceed because prior counsel had told her that the trial was to be rescheduled, but again, she did not request a setover. The evidence produced at the hearing established that the parties had three minor children, whom the guardian ad litem strongly recommended be placed with Michael; that Brenda was undergoing drug treatment and rehabilitation and had other mental health issues; that Brenda was capable of earning \$6 an hour on a part-time basis while Michael earned \$6,250 per month before taxes and had monthly expenses in the approximate amount of

\$4,000. It was undisputed that Brenda had incurred \$10,025.18 in uninsured medical expenses after the entry of the Temporary Order. Brenda claimed that Michael's employer would reimburse him for the expenses. However, Michael testified that creditors had been pursuing him for those debts, and a few had already obtained judgments against him. He feared he would need to file for bankruptcy if he had to cover Brenda's medical debts, which she had no ability to pay, as well as make maintenance payments.

¶5 The trial court assigned the house and the vast majority of the marital debt to Michael, and awarded him primary physical placement of the children. He also assigned the medical debts that Brenda had incurred during the pendency of the divorce to Michael in lieu of requiring him to pay maintenance.

### STANDARD OF REVIEW

¶6 The decision whether to allow retained counsel to withdraw from representation lies within the sound discretion of the trial court, subject to the requirements of due process. *See State ex rel. Dressler v. Circuit Court*, 163 Wis. 2d 622, 632, 472 N.W.2d 532, 536 (Ct. App. 1991); *Sherman v. Heiser*, 85 Wis. 2d 246, 253, 270 N.W.2d 397, 400 (1978). We also review maintenance determinations under the erroneous exercise of discretion standard. *See King v. King*, 224 Wis. 2d 235, 247-48, 590 N.W.2d 480, 484 (1999). A court properly exercises discretion when it considers the facts of record under the correct legal principles and reasons its way to a rational conclusion. *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37, 39 (Ct. App. 1991).

## ANALYSIS

### *Withdrawal of Counsel*

¶7 The rules of professional conduct allow an attorney to withdraw from representing a client if “the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services” or if “the representation will result in an unreasonable financial burden on the lawyer.” *See* SCR 20:1.16(b)(4) and (5) (1998). However, an attorney shall continue representation, notwithstanding good cause for withdrawal, when ordered to do so by a tribunal. *See* SCR 20:1.16(c) (1998).

¶8 Brenda does not dispute that her attorney had adequate grounds to withdraw. She nonetheless contends the trial court erroneously exercised its discretion by allowing counsel to withdraw without rescheduling the trial date because she was thereby prejudiced. However, she did not advance a claim of prejudice before the trial court. *See State v. Rogers*, 196 Wis. 2d 817, 826, 539 N.W.2d 897, 900 (Ct. App. 1995) (noting a party seeking reversal may not advance arguments on appeal which were not presented to the trial court for a determination). Brenda’s reliance on Michael’s initial objection is misplaced because it became clear at the hearing that Michael’s primary concern was that the trial not be delayed. Once the trial court assured Michael that the trial would proceed as scheduled, Michael had no remaining objection to counsel’s withdrawal.

¶9 Furthermore, neither Brenda nor Michael made any showing that a month would be an inadequate amount of time for Brenda to be able to prepare, or that Brenda would be able to retain successor counsel if given additional time. Therefore, there was nothing that would have compelled the trial court to set the

trial date back. In short, we are satisfied that the trial court's decision to allow counsel to withdraw a month before trial was reasonable based upon the record before it.

### *Maintenance*

¶10 WISCONSIN STAT. § 767.26 (1997-98) lists a number of factors for a trial court to consider when determining the amount and duration of a maintenance award, including the length of the marriage, the age and health of the parties, the property division, the parties' respective educational levels and earning capacities, the contributions of one party to the education or earning power of the other, tax consequences and the standard of living enjoyed during the marriage. These factors "are designed to further two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective)." *LaRocque v. LaRocque*, 139 Wis. 2d 23, 32-33, 406 N.W.2d 736, 740 (1987).

¶11 Brenda concedes that the trial court considered all of the relevant statutory factors. She contends that the trial court correctly determined in the temporary order that maintenance would be appropriate in furtherance of the support objective given the parties' disparity in incomes, but then erroneously exercised its discretion in the final judgment when it concluded that fairness dictated that Michael be relieved of any maintenance obligation in favor of an assumption of her medical debts. She claims the record does not support a determination that it would be fair for Michael to assume her medical debts in lieu of maintenance because his employer would reimburse the medical debts anyway.

However, there was conflicting evidence in the record on the question of whether Michael would be reimbursed. Although Brenda testified that Michael's employer would pay the bills, Michael testified that he himself was paying them to satisfy the creditors who were hounding him. The trial court was entitled to find, based on Michael's testimony, that his employer was not reimbursing him. It was further entitled to conclude that it would be unfair for Michael to pay both the medical bills and maintenance. We see no erroneous exercise of discretion.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

