

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 3, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

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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. 99-1398**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN RE THE MARRIAGE OF:**

**LYNDA D. DAHLKE,**

**PETITIONER-APPELLANT-  
CROSS-RESPONDENT,**

**V.**

**JAMES D. DAHLKE,**

**RESPONDENT-RESPONDENT-  
CROSS-APPELLANT.**

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APPEAL and CROSS-APPEAL from a judgment of the circuit court for Waukesha County: PATRICK C. HAUGHNEY, Judge. *Affirmed.*

Before Brown, P.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Lynda D. Dahlke appeals from a judgment of divorce and argues that the amount of maintenance is too low. James D. Dahlke cross-appeals, arguing that the maintenance award is excessive and should not be

indefinite in duration. We conclude that the circuit court properly exercised its discretion in determining maintenance and affirm the judgment.

¶2 The Dahlkes were married for twenty-five years. They married in 1973. James had already finished college and Lynda completed her college degree during the first year of the marriage. The Dahlkes' two adult daughters were college students at the time of the divorce.

¶3 James successfully climbed the corporate ladder during the marriage. The circuit court found his income as president and CEO of Harrow Industries, Inc. to be \$568,000 a year. The court found that Lynda had played the role of a "corporate spouse" in that she assisted James climb the corporate ladder by moving two times for his job and taking primary responsibility for the children and household during his frequent periods of travel. Lynda was employed at various periods as a nurse and pursued her master's degree in nursing on a part-time basis. In 1984, she obtained her master's degree and became a university professor. From 1988 to 1992, Lynda pursued a doctorate degree while still employed at the university. In 1994, Lynda became a licensed psychologist. At the time of the divorce she was employed full time as an organizational consultant and also worked part time at another position. The circuit court found that she earns \$75,000 a year.

¶4 The maintenance award is structured so that Lynda receives an amount equal to thirty-five percent of James's income over \$100,000 and up to \$568,000. This resulted in an initial monthly maintenance payment of \$13,650. The circuit court ordered that maintenance continue for an indefinite period.

¶5 Maintenance determinations are discretionary with the circuit court, and we will not reverse absent an erroneous exercise of that discretion. *See Grace*

*v. Grace*, 195 Wis. 2d 153, 157, 536 N.W.2d 109 (Ct. App. 1995). We look to the court's explanation of the reasons underlying its decision, and where it appears that the court looked to and considered the facts of the case and reasoned its way to a conclusion that is one a reasonable judge could reach and is consistent with applicable law, we will affirm the decision as a proper exercise of discretion. *See id.* We must consider whether the circuit court's application of the appropriate factors achieves both the fairness and support objectives of maintenance. *See Forester v. Forester*, 174 Wis. 2d 78, 84-85, 496 N.W.2d 771 (Ct. App. 1993).

¶6 The appeal and cross-appeal basically attack the circuit court's exercise of discretion in structuring the maintenance award. Lynda argues that it is unfair to set the \$100,000 floor and \$568,000 cap on the amount of James's income subject to maintenance. James claims that it is error to accept Lynda's budget when it included mortgage payments on assets which she took on a "net" basis in the property settlement and expenses related to costs of the adult children. James suggests that maintenance for eight years is the reasonable result. Both argue that the circuit court failed to consider the appropriate statutory factors and the support and fairness objectives of maintenance.

¶7 We reject these claims because the circuit court's rationale for the award of maintenance demonstrates a reasoned decision. The court applied the relevant factors in WIS. STAT. § 767.26 (1997-98). It found this to be a long-term marriage and noted the parties' ages, health and the \$1 million estate each received from the property division. It examined the education and career advancement each party achieved during the marriage and the life-style they enjoyed. The tax consequences were accounted for by the use of computer program. While the court considered the equalization of income as the starting point, *see Wikel v.*

*Wikel*, 168 Wis. 2d 278, 282, 483 N.W.2d 292 (Ct. App. 1992), it found that an equalization resulted in Lynda being unjustly enriched.

¶8 Of note is that this is not a maintenance award driven by the support or need objective. With two high income earners, any level of maintenance would be more than adequate to meet Lynda's basic needs and within James's ability to pay. The support objective came into play with respect to Lynda being able to enjoy the life-style she would have enjoyed had the marriage continued. The circuit court addressed that objective by making maintenance indefinite.

¶9 The circuit court used both the floor and cap as a mechanism to achieve the fairness component of maintenance. The \$100,000 floor is to equalize the parties' positions in terms of contribution to career goals. While the court found that Lynda had served as a "corporate spouse," it also recognized that it was not the traditional stay-at-home corporate spouse situation. Lynda had not subordinated her career to James's but had pursued her own career advancement. Lynda and James had an expectation that Lynda would earn a "six-figure" income as a result of her pursuit of higher education. The \$100,000 floor is a mechanism for accounting for the parties' investment in Lynda's education and is not an imputation of income. The \$568,000 cap is based on the circuit court's finding that Lynda's role as a "corporate spouse" ceased when James took the presidency of Harrow Industries and moved to Michigan to accept that position. Lynda chose not to move. It is a reasonable result to allow James the benefit of further corporate advancements. The indefinite term of maintenance also compensates Lynda for her years as a "corporate spouse." The result is a balanced decision.

¶10 Because the maintenance award is not solely need based, James's claims that Lynda's budget was inflated by mortgage payments which had been

accounted for by awarding her the assets on a net basis and expenses for the adult children miss the mark. The bottom line on Lynda's budget did not impact the fairness decision the circuit court ultimately made. Moreover, the parties stipulated to the valuation of assets for purposes of property division and the valuation cannot be questioned now. Lynda's mortgage obligations remained a legitimate expense despite the parties' treatment of the assets.

¶11 James has adopted inconsistent positions about the children's expenses. He accounted for all the children's college expenses in his budget but seeks to deny Lynda a similar expense. The circuit court recognized that the parties' life-style included the choice to fund their children at college and, in fairness, allowed an accounting for that choice. The circuit court found credible Lynda's representation that she also paid expenses for the children. We defer to the circuit court's credibility determinations. See *Hughes v. Hughes*, 148 Wis. 2d 167, 171, 434 N.W.2d 813 (Ct. App. 1988).

¶12 In sum, the circuit court provided a reasoned decision which explains why maintenance is structured as it is and made indefinite. It is not an erroneous exercise of discretion.

¶13 Lynda claims that the circuit court's finding that her income is \$75,000 is clearly erroneous. See *Sellers v. Sellers*, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996). The income figure encompassed Lynda's undisputed earnings of \$54,157 from her full-time employment, \$8093 from part-time employment, and a bonus she was expecting. The court acknowledged that there was no evidence in the record from which the bonus could be determined. However, the court placed the blame for the lack of evidence on Lynda. Lynda testified that she had not asked her employer for information on what her bonus

amount might be. The court found Lynda's testimony that her boss was secretive about such matters incredible. Lynda failed to provide evidence that only she had access to. The court was free to make a finding on the available information. *See Lellman v. Mott*, 204 Wis. 2d 166, 173, 554 N.W.2d 525 (Ct. App. 1996). Additionally, because maintenance is structured on income in excess of \$100,000, without regard to Lynda's actual income, any error with respect to Lynda's income is harmless.

¶14 We affirm the judgment on both the appeal and the cross-appeal. Therefore, neither party is entitled to costs.

*By the Court.*—Judgment affirmed.

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

