COURT OF APPEALS
DECISION
DATED AND FILED

January 7, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP17 **Cir. Ct. No. 1999FA445**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:

CHRISTINE NANETTE HUIRAS,

PETITIONER-RESPONDENT-CROSS-APPELLANT,

V.

CHRISTOPHER MERLYN HUIRAS,

RESPONDENT-APPELLANT-CROSS-RESPONDENT.

APPEAL AND CROSS-APPEAL from an order of the circuit court for La Crosse County: DALE T. PASELL, Judge. *Affirmed in part; reversed in part and cause remanded for further proceedings.*

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

¶1 PER CURIAM. Christopher Huiras appeals from a postdivorce order of the circuit court increasing the amount of maintenance Christopher must

pay to his former spouse, Christine Huiras. Christopher contends that the circuit court's decision to increase maintenance by an amount that equalizes the parties' incomes was an erroneous exercise of the court's discretion. Christine cross-appeals, contending that the circuit court erroneously exercised its discretion when it failed to find Christopher in contempt for failing to report his increased income, increased the maintenance award prospectively rather than retroactively, and refused to award Christine interest on any arrearages in support. For the reasons discussed below, we reverse that portion of the order increasing maintenance and remand for further proceedings.

BACKGROUND

¶2 Christopher and Christine were divorced in 2002, following a twenty-two year marriage. At the time of the divorce, Christine did not work outside the home and Christopher was employed as a surgeon earning approximately $239,400 annually. However, during most of the parties' marriage, Christine supported the family by working as a nurse while Christopher went to medical school and obtained his medical training.

¶3 In the judgment of divorce, the circuit court found that the parties had "agreed either orally, or by their conduct, that [Christopher] would obtain his medical degree while [Christine] would support the family and [Christopher] through medical school," and that "[a]fter [Christopher] received his medical degree, [Christopher] was to support the family financially while [Christine] was to manage the household," which included the parties' four minor children. The court found that it was "not fair under the circumstances presented in this case that [Christopher] be able to maintain a lifestyle that will be better than [Christine's]," and that "it is not unreasonable to order maintenance equalizing the parties'

incomes" in light of the statutory factors, and the court decided that "maintaining equal incomes for each of the parties is fair and equitable." In accordance with these findings, the circuit court awarded Christine maintenance, "for an indefinite period terminable upon the death of either party or the remarriage of [Christine]," in the amount of $4,500 per month. Christopher was also ordered to pay Christine child support in the amount of $4,648 per month. The total amount of maintenance and child support ordered was approximately one-half of Christopher's monthly income at the time of divorce. The circuit court found that "maintenance shall be adjusted either up or down: (1) As the child support obligation decreases as each of the children are no longer eligible for child support; [and] (2) June 6, 2006, when [Christine] gets or should get her degree [in early childhood education] and obtain[s] employment."

¶4 In November 2006, Christopher's maintenance and child support obligations were increased. At that time, Christopher's income was approximately $269,061 annually, and the circuit court imputed an annual income to Christine, who had not finished her education nor obtained employment, of $29,558. The circuit court ordered Christopher to pay Christine $4,040.38 bi-weekly, or roughly $8,754 per month, in combined maintenance and child support. With the increase in support, the parties' incomes remained largely equalized.

¶5 Christopher continued to pay Christine the amount of support specified in the November 2006 order. In May 2014, Christine filed a motion with the circuit court seeking an "Adjust[ment] [of] Maintenance in Accordance with the Orders of the Court" and a determination of arrearages if Christopher had not been paying the correct amount of maintenance and child support. Christine also moved the circuit court for an order of contempt because Christopher had failed to notify her and the child support agency of Christopher's changes in income.

Christopher, in turn, moved the circuit court for an order establishing maintenance "in an amount necessary to maintain the standard of living enjoyed by [Christine] during the marriage," and an order prohibiting the retroactive adjustment of maintenance.

¶6 The circuit court ordered that Christopher's maintenance obligation be increased to an amount that equalized the parties' incomes. The court explained in its oral ruling:

> [I]n this case it's clear that [in the original divorce judgment, the circuit court] was saying, in fairness to [Christine], because she supported [Christopher] when he was going to medical school, that she should have the lifestyle that she was reasonably anticipating when she was providing that support, as if they had stayed married. That was the words [the court] use[d], basically."

At that time, Christopher's income was $480,636.33 annually. The court increased maintenance to roughly $19,274.00 per month, effective as of the date of the court's order. The court denied Christine's motion to order any arrearage on either spousal support or maintenance, ruling that the increase in maintenance was to be prospective, and the court denied Christine's contempt motion. Christopher appeals and Christine cross-appeals.

DISCUSSION

A. Appeal

¶7 Christopher contends that the circuit court erroneously exercised its discretion when it increased Christine's monthly maintenance so that his and Christine's incomes are equalized.

¶8 Generally, issues involving maintenance are addressed to the circuit court's discretion. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) We will sustain a discretionary determination if the court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987).

¶9 When a former spouse seeks to modify a maintenance award, the former spouse must first demonstrate that there has been a substantial change in circumstances warranting the proposed modification. *See* ***Kenyon v. Kenyon***, 2004 WI 147, ¶12, 277 Wis. 2d 47, 690 N.W.2d 251. If the former spouse does so, the circuit court must then determine whether modification of maintenance is appropriate, which the court does after reconsidering the factors used to arrive at the initial maintenance award under WIS. STAT. § 767.56 (2013-2014).[1] ***Id.***, ¶13. In the present case, however, we are not asked to review whether the circuit court erroneously exercised its discretion by *modifying* a maintenance award. Rather, we are asked to review whether the circuit court's *construction* of the maintenance award was correct.

¶10 The interpretation of a judgment is a question of law, which we decide de novo. ***Jacobson v. Jacobson***, 177 Wis. 2d 539, 546-47, 502 N.W.2d 869 (Ct. App. 1993). We interpret judgments in the same manner in which we interpret other written instruments, as a whole and in context. ***Estate of Schultz v. Schultz***, 194 Wis. 2d 799, 805, 535 N.W.2d 116 (Ct. App. 1995). A written

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

judgment that is clear on its face is not open to construction. ***Cashin v. Cashin***, 2004 WI App 92, ¶10, 273 Wis. 2d 754, 681 N.W.2d 255. However, where the judgment is ambiguous, meaning it is subject to two or more reasonable interpretations, the judgment may be construed to effectuate the circuit court's objective. ***Id.***; ***Schultz***, 194 Wis. 2d at 805-06.

¶11 In the "Conclusions of Law" portion of the judgment of divorce at issue here, Judge Michael Mulroy concluded: "[Christopher] shall pay the amount of $4,500 per month as maintenance payments for [Christine]. The maintenance shall continue until further order of the Court, but shall terminate on the death of either party, or the remarriage of [Christine]." In the fact-finding portion of the judgment, Judge Mulroy found as follows:

> [A] maintenance award to [Christine] from [Christopher] of $4,500 monthly … is appropriate. The award of maintenance is for an indefinite period terminable upon the death of either party or the remarriage of [Christine]. This is a long term marriage. The parties have accumulated few assets, other than [Christopher's] retirement accounts. [Christopher] became a licensed surgeon during the marriage. [Christine] began working on a degree in Early Childhood Education during the divorce, and she has no income at this time. Even when [Christine] receives her degree, it is not feasible for her to become self-supporting at a standard of living reasonably comparable to that enjoyed by the parties during their marriage. The Court finds that the parties agreed either orally, or by their conduct, that [Christopher] would obtain his medical degree while [Christine] would support the family and [Christopher] through medical school. After [Christopher] received his medical degree, [Christopher] was to support the family financially while [Christine] was to manage the household. As a result, [Christine] subsumed her career to [Christopher's] medical school and raising the children and maintaining and managing the home.
>
> The Court has also considered the child support that [Christopher] will be paying. The Court believes that each of the parties will be able to live at a comparable standard of living with this award of maintenance and child support

> previously set forth. The Court finds [Christine's] choices with regard to schooling to be not unreasonable. The Court also finds that it is not fair under the circumstances presented in this case that [Christopher] be able to maintain a lifestyle that will be better than [Christine] given the statutory factors. Under the circumstances, it is not unreasonable to order maintenance equalizing the parties' income. This is what the Court has done here, and in effect has decided under the factors set forth more fully attached Exhibit A that maintaining equal incomes for each of the parties is fair and equitable.
>
> There may be factors which are at present unforeseeable which could influence the Court's decision as it relates to future maintenance. The Court maintains the power to adjust the same should some unforeseeable event occur which makes it appropriate under all of the circumstances.
>
> The Court further specifically finds that the maintenance shall be adjusted either up or down: (1) As the child support obligation decreases as each of the children are no longer eligible for child support; (2) June 6, 2006, when [Christine] gets or should get her degree and obtain employment….

¶12 In Exhibit A, Judge Mulroy stated that maintenance was going to be ordered "in the amount of $4,500.00 per month for an indefinite period of time," and then went on to address each of the statutory factors for awarding maintenance under WIS. STAT. § 767.56. Relevant to the present appeal are Judge Mulroy's findings with regard to factor (h), which considers whether there was "[a]ny mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, if the repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties." Section 767.56(h). Judge Mulroy found:

> [I]t is obvious from [its] perspective that the parties agreed either orally or by their conduct that [Christopher] would

> obtain his medical degree while [Christine] would support the family and [Christopher] through medical school. After he received his medical degree, [Christopher] was to support the family financially while [Christine] was to manage the household.

¶13 Also relevant are Judge Mulroy's findings with regard to factor (j), "other factors [] the court may in each individual case determine to be relevant." Section 767.56(j). Judge Mulroy found:

> There is an additional aspect of maintenance and that is fairness. The Court must ask itself the question "is it fair under the circumstances presented in this case that [Christopher] be able to maintain a lifestyle that would be better in many respects than [Christine]? The answer, given the statutory factors … is "no." The Court's decision on maintenance reflects most importantly, the length of the marriage and the contribution that [Christine] made to [Christopher's] obtaining of his degree which consequently resulted in the very high household income that is now present. The spendable income that each will have is significant although, as conceded, neither party will be able to live at a standard of living in a separate household that they would have been able to live at in the unified household. As the ***LaRocque*** case indicates, it is not unreasonable to start the maintenance calculations at a 50/50 point. That is what the court has done here and in effect has decided under the factors mentioned that that would be fair and equitable.

¶14 Christopher asserts that the judgment of divorce *did not* award maintenance in an amount that indefinitely equalizes the parties' incomes, arguing that nothing in the judgment "expressly indicated" that maintenance was to do so. Christine asserts that the judgment of divorce *did* award maintenance that permanently equalizes the parties' incomes, and directs this court to Judge Mulroy's statement in Exhibit A that it would not be fair under the circumstances for Christopher to be able to maintain a lifestyle that would be better in many

respects than Christine's.[2] We conclude that both interpretations are reasonable and that the judgment of divorce is ambiguous as to maintenance. Accordingly, we must construe the judgment to effectuate Judge Mulroy's intent.

¶15 We interpret judgments largely in the same manner that we interpret other written instruments. We construe the judgment as whole and in context. ***Schultz***, 194 Wis. 2d at 805. We have recognized, however, that the construction of a written judgment may differ from the construction of other written instruments because in the former situation, the drafter of the disputed language may have the opportunity to interpret his or her own decision. ***Chasin***, 273 Wis. 2d 754, ¶12. We observed in ***Chasin*** that the judge "who drafted the ambiguous language has a superior practical knowledge of its meaning." ***Id.*** Accordingly, we concluded in ***Chasin*** that where the drafter of an ambiguous judgment has the opportunity to interpret that decision and does so "based on his or her experience of the trial and uses a reasonable rationale," we will apply a deferential standard of review to the judge's interpretation of his or her own ambiguous language. ***Id.***

¶16 In the present case, the judgment of divorce was drafted by Judge Mulroy. However, Judge Dale Pasell presided over Christine's motion to adjust her maintenance. Because Judge Pasell was not interpreting his own judgment, and was therefore not in a position to have any more practical knowledge of the

[2] Both Christopher and Christine devote significant argument as to whether an award of maintenance indefinitely equalizing the parties' incomes is appropriate under ***LaRocque v. LaRocque***, 139 Wis. 2d 23, 37, 406 N.W.2d 736. However, their focus on ***LaRocque*** is misplaced because the question here is not whether indefinite equalization was appropriate; rather the question is whether indefinite equalization was in fact ordered. It might be different if Judge Mulroy had referred to ***LaRocque*** in a way that sheds light on the issue here, but that did not occur.

meaning of the judgment than this court, we afford no deference to Judge Pasell's interpretation of the judgment.

¶17 The interpretation here appears to us to be a close call. The words that we emphasize in the following passage in the Exhibit A attachment to the judgment of divorce appear to point in conflicting directions on the question of whether maintenance was awarded based on incomes as of the time of divorce, or instead on an ongoing basis:

> It appears that the parties, while [Christopher] was in medical school and his various residencies, pretty much struggled financially. *It was only at the end of the marriage that the parties obtained a standard of living which they could anticipate when [Christopher] assumed his surgical practice*. He *is now* at a significant standard of income. Since it is not unreasonable to assume that the parties anticipated, *had they stayed married*, that they would *enjoy the fruits of [Christopher's] employment* as a family, maintenance will take that into consideration.

However, for the following reasons we conclude that the judgment of divorce did not award maintenance indefinitely equalizing the parties' incomes, but instead fixed maintenance based on the incomes of the parties as of the time of the divorce.

¶18 The judgment awarded Christine maintenance in the amount of $4,500 per month until further ordered by the court, and Judge Mulroy specifically found that the "award of maintenance is for an indefinite period" of time. The amount of maintenance awarded, in conjunction with the child support Christopher was ordered to pay, approximately equalized the parties' incomes. Judge Mulroy found that "it is not fair under the circumstances presented in this case that [Christopher] be able to maintain a lifestyle that will be better than [Christine] given the statutory factors" and that "is not unreasonable to order

maintenance equalizing the parties' incomes," which Judge Mulroy stated was what he "has done here," that he had "in effect [] decided … that maintaining equal incomes for each of the parties is fair and equitable." Judge Mulroy found that Christopher and Christine had agreed that Christine would support the family until Christopher completed his medical training, at which point Christopher would support the family financially and Christine would become a stay-at-home mom, and that it was only after Christopher had completed his medical training that they had achieved a high family income.

¶19 The judgment of divorce reflects Judge Mulroy's observation that the parties were equally entitled to the fruits of joint financial efforts. We conclude, however, that the logical interpretation of the judgment is that it awarded Christopher and Christine equalized incomes *at the time of divorce*, indefinitely, not equalized incomes *indefinitely***.** The judgment awarded Christine a set amount of maintenance, not a percentage of Christopher's income. Had Judge Mulroy intended Christine to be entitled to one-half of Christopher's income, indefinitely, we would expect that he would have set forth in the judgment a mechanism for the adjustment of maintenance based on increases or decreases to Christopher's income. No such mechanism was established, which creates uncertainty as to when any adjustments were to be made if indefinite equalization was intended. Were adjustments to take place monthly, every six months, annually? While Judge Mulroy's finding that he intended the parties' incomes to be equalized, and some of the language we quote above weighs in favor of the interpretation argued by Christine, we conclude that is outweighed by other language, and by the lack of both specific language that such an equalization was to be indefinite and a mechanism for making it so.

¶20 Furthermore, construction of the judgment of divorce as not awarding indefinite equalization of income is in line with established law. We stated in ***Enders v. Enders***, 147 Wis. 2d 138, 145, 432 N.W.2d 638 (Ct. App. 1988), and again in ***Johnson v. Johnson***, 225 Wis. 2d 513, 520, 593 N.W.2d 827 (Ct. App. 1999), that "[t]here is no rule of law in Wisconsin stating that a recipient spouse is entitled to one-half of the other's salary for the rest of his or her life." To the contrary, WIS. STAT. § 767.56(6) provides that the circuit court is to consider "[t]he feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during marriage." We stated in ***Johnson*** that case law cannot be read to counter § 767.56(6), and that "[a] payee spouse is not *entitled* to maintenance allowing a lifestyle above and beyond the predivorce standard of living." ***Johnson***, 225 Wis. 2d at 519-20 (emphasis added). If the divorce judgment intended to have that effect, it needed to be specific in stating so.[3]

¶21 Christine in effect does not ask us to follow the judgment of divorce, but instead to order modification of maintenance. The end result following remand may ultimately be the same,[4] but the procedure for modification requires the circuit court to find that there has been a substantial change in circumstances and to consider the factors set forth in WIS. STAT. § 767.56. *See* ***Kenyon***, 277 Wis. 2d 47, ¶¶12-13.

[3] This law is consistent with one observation made by Judge Pasell in wrestling with this issue: "I've never had a divorce judgment look like this, because [maintenance has] always been [determined based on] what the standard of living was at the time" of divorce.

[4] *See* ***LaRocque***, 139 Wis. 2d at 36 ("a reasonable maintenance award is measured ... by the lifestyle that the parties enjoyed in the years immediately before the divorce and could anticipate enjoying if they were to stay married" where the payee spouse shares responsibility for the income-enhancing activity after divorce.

¶22 Accordingly, we conclude that the judgment of divorce did not award maintenance indefinitely equalizing the parties' incomes and that the circuit court's conclusion that it did so was erroneous. We, therefore, reverse the order adjusting maintenance and remand for further proceedings.[5]

B. Cross-Appeal

¶23 Christine contends on cross-appeal that the circuit court erroneously exercised its discretion in: (1) denying her motion for contempt for Christopher's failure to disclose to her and the child support agency changes to his income since 2011; (2) failing to order that the increase in maintenance be retroactive; and (3) failing to award her interest on any arrearages in child support and maintenance payments. Christine's latter two arguments are premised on the circuit court's conclusion that the judgment of divorce awarded maintenance in an amount indefinitely equalizing her and Christopher's incomes. Because we conclude that the circuit court erred in its interpretation of the judgment of divorce, we reject those arguments.

¶24 Turning to the sole remaining argument, we review a circuit court's use of its contempt power for an erroneous exercise of discretion. ***Benn v. Benn***, 230 Wis. 2d 301, 308, 602 N.W.2d 65 (Ct. App. 1999). We will sustain a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a decision a reasonable judge could reach. ***McLaren v. McLaren***, 2003 WI App

[5] Because our conclusion that the circuit court's construction of the judgment of divorce was erroneous is dispositive, we do not address other arguments raised by Christopher on appeal. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if a decision on one point disposes of the appeal, the court will not decide other issues raised).

125, ¶13, 265 Wis. 2d 529, 665 N.W.2d 405. "Although the proper exercise of discretion contemplates that the circuit court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court's discretionary decision." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

¶25 The judgment of divorce required Christopher to "notify the Child Support Agency … and the other party within ten (10) business days … of any substantial change … of his … income such that his … ability to pay child support is affected." In 2006, Christopher and Christine entered into a stipulation that Christopher would provide her with copies of his quarterly compensation reports and his annual compensation and benefit plan, within ten days of his receipt of that information. At the time, Christopher was paid a salary based on a projected percentage of earnings, and his income was adjusted quarterly based upon his actual earnings. While Christopher was compensated in this manner, he would send his quarterly salary letter to his attorney, along with a supplemental support payment based upon the quarterly adjustment to his income. In 2007, Christopher and Christine entered into another stipulation that charged both parties with the obligation to make a calculation as to child support and maintenance, and provided that after an agreement was reached as to the amount Christopher owed, that amount would be paid by Christopher.

¶26 In 2011, Christopher notified Christine that he would no longer be receiving quarterly adjustments to his income and that he would, therefore, no longer be reporting his income on a quarterly basis. Christopher testified that he provided his attorney with his annual salary letters for 2012 and 2013, and relied on his attorney to forward that information to Christine. Christopher's attorney

failed to do so, a fact Christopher testified he was not aware of until April 2014, at which point he provided his salary information directly to Christine.

¶27 In denying Christine's motion to hold Christopher in contempt for failing to provide her with his income statements since 2011, the circuit court found credible Christopher's testimony that he sent his attorney his annual compensation statements for the years 2012 and 2013, and the court found that those documents were lost or misplaced by Christopher's attorney, who failed to provide that information to Christine. The court declined to hold Christopher in contempt, stating that there was not "anything here that would show me that [Christopher] has intentionally and willfully violated an order of the court." The court also stated that both parties "were charged with the obligation to work out the calculations of what [child support and maintenance] should be, and both parties were told that if they couldn't reach an agreement," the issue should be raised before the court.

¶28 Christine argues that the circuit court's decision not to hold Christopher in contempt of court for failing to provide her with his compensation information between 2011 and 2014, was an erroneous exercise of the circuit court's discretion because Christopher had an obligation to report that information under the terms of the judgment and under WIS. STAT. § 767.58(1).[6] Christine

[6] WISCONSIN STAT. § 767.58(1)(b) provides: "Each order for child support … or maintenance payments shall [] include an order that the payer notify the county child support agency … and the payee, within 10 business days … of any substantial change in the amount of his or her income … affecting his or her ability to pay child support … or maintenance." At the time the parties' judgment of divorce was entered, this requirement was codified at WIS. STAT. § 767.27(2m) (2001-02), which provided: "In every action in which the court has ordered a party to pay child or family support under this chapter … the court shall require the parties annually to exchange financial information."

takes issue with the court's reasoning and weighing of the evidence, but fails to present this court with a persuasive argument that the court failed to apply the proper standard of law, or that the court failed to reach a decision that a reasonable judge could reach. Accordingly, we conclude that the circuit court did not erroneously exercise its discretion in denying Christine's contempt motion.

CONCLUSION

¶29 For the reasons discussed above, we affirm in part, reverse in part, and remand for further proceedings.

By the Court.—Order affirmed in part; reversed in part and cause remanded for further proceedings.

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