COURT OF APPEALS
DECISION
DATED AND FILED

April 19, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2034 **Cir. Ct. No. 1995FA843**

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

IN RE THE MARRIAGE OF:

MARY JO HOWARD CROAKE,

JOINT-PETITIONER-RESPONDENT,

V.

PAUL ALLEN CROAKE,

JOINT-PETITIONER-APPELLANT.

APPEAL from an order of the circuit court for Dane County: JAMES L. MARTIN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Paul Croake appeals an order denying his motion to terminate his maintenance obligation or, alternatively, to modify the formula by which it is set. Paul's arguments fall into the following categories: (1) the court

erred when it determined he failed to demonstrate a substantial change in circumstances because his income decreased, Mary Jo Croake's income increased, and the court failed to properly consider the parties' expenses; (2) the court was without jurisdiction to adjust the calculation of Mary Jo's net income; and (3) the court erroneously denied admission of a trade publication into evidence. We reject his arguments and affirm the order.

BACKGROUND

¶2 Paul and Mary Jo Croake were divorced following a twenty-nine year marriage. When they were married in 1968, Mary Jo was a college senior. Following graduation, she taught middle school full time for three years, supporting Paul while he attended law school. She then worked part time until the first of their two children was born, when she became a full-time homemaker.[1] Mary Jo returned to the job market in 1990, working at an art gallery, as a substitute teacher and as a fundraiser. In 1995, she obtained a real estate license and began selling real estate part time.

¶3 At the time of their 1997 divorce, Mary Jo's earning capacity was $20,000 and was expected to "increase during the next five to six years, to between $20,000-$50,000."[2] The divorce court found that Mary Jo's "age, her

[1] Mary Jo's and Paul's two children were adults at the time of the divorce.

[2] The court relied on the vocational expert's testimony:

(continued)

sparse work history, her relative lack of job skills, and her inability to retain a higher earning job despite her best efforts" established that her earnings would not approach the marital standard of living of $7,761.84 per month each.[3]

¶4 Paul was employed as a partner at a private law firm at the time of the divorce. In addition to his $120,000 per year salary, he was eligible to receive semi-annual "special draws" based upon performance according to a formula the law firm utilized. His annual income ranged from $140,230 in 1994 to $233,727 in 1996. The court found that Paul's earning capacity increased in 1995 following his firm's merger with another.

¶5 However, due to the unpredictable and fluctuating nature of the parties' incomes, the divorce court agreed with Paul's suggestion to enter a

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> [Mary Jo] can certainly pursue real estate and I suspect that [she] probably will do well in the future. She has a pleasant and professional demeanor and it would appear that she has developed many contacts in the past [that] would serve her well in this field. However, real estate sales [present] some particular challenges, especially for a sole wage earner. Earnings are variable and dependent not only on the individual's skill but on market forces, which are often beyond one's control. The market is also extremely competitive as there are many agents vying for a finite number of commissions. It can also take several years to get established in the field. Based on my knowledge of earnings and assuming that she would be moderately successful, she could expect $10,000-20,000 net earnings in the first couple of years, rising to a level of $20,000-50,000 over the next five or six years. The job brings no benefits, either health or pension other than what she would be able to purchase on her own.

[3] The divorce court found that the parties' average yearly household income for the seven years preceding the divorce was $186,284.14, which, divided by two, was $93,142.07 annually per person. The court used this sum to determine the parties' marital standard of living.

maintenance formula rather than impose a set amount.[4] It ordered that Mary Jo would receive $3,350 monthly maintenance, except that this sum would be reduced one dollar for every dollar Mary Jo earned in excess of $20,000 in any calendar year. As additional maintenance, Mary Jo would be entitled to receive forty percent of any special draws Paul received. Under the maintenance formula, Paul's special draws were defined as those exceeding his $120,000 annual salary, after deducting tuition and health insurance expenses for the parties' children.

¶6 In February 2003, Paul claimed that his 2002 income drastically decreased and Mary Jo's significantly increased. He moved to terminate his maintenance obligation or, alternatively, to modify the maintenance formula. Following a hearing on his motion, the court found that the changes in the parties' financial circumstances were not substantial and denied Paul's motion.

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[4] The divorce judgment, entered July 30, 1997, set Paul's monthly maintenance obligation at $7,354.61 per month indefinitely. Two days later, Paul moved to stay the execution of the divorce judgment, and subsequently both parties moved for reconsideration. In August, the court entered an interim order, reducing Paul's maintenance obligation until the reconsideration motions were resolved. In December 1997, the court entered an amended divorce judgment setting a maintenance formula that Paul had suggested on his motion for reconsideration, providing:

> [M]aintenance shall be set at Three Thousand Three Hundred Fifty and No/100 Dollars ($3,350.00) per month, subject to a reduction of One and No/100 Dollar ($1.00) in maintenance for each One and No/100 Dollar ($1.00) in earnings over Twenty Thousand and No/100 Dollars ($20,000.00) in any one calendar year. As additional maintenance, Mary Jo Croake shall receive forty percent (40%) of the special draws received by Paul Croake, defined as those draws in excess of $120,000 in any one calendar year, after deducting school tuition and health insurance expenses for the parties' children which have been mutually agreed to by the parties in writing prior to incurring the expenses.

¶7 The court concluded that a "three year snap shot" of increased earnings for Mary Jo and decreased earnings for Paul was insufficient to terminate maintenance. Also, despite Mary Jo's increased income, there remained "an enormous discrepancy in secure and stable earning ability of the parties and in the actual earnings … in recent years." The court found "the real estate climate is extremely good in Dane County but that is due in no small part to the unprecedented low interest rates of the last 2–3 years. Changes in interest rates could significantly reduce [Mary Jo's] earnings in the future through no fault of hers." The court found this circumstance unchanged from the time of the divorce, when the divorce court found "real estate sales do present some peculiar challenges … [e]arnings are variable and dependent not only on the individual's skill but on market forces which are often beyond one's control."

¶8 The court also found Paul mischaracterized Mary Jo's income:

> He asserts that [Mary Jo's] net income for real estate commissions in 2002 were $70,153 and $51,598 through December 22, 2003. …. [T]he 2002 and 2003 figures represent gross commissions payable to [Mary Jo] with the net amounts reported for 2002 at $42,855 and an unknown net figure for 2003 due to the lack of a 2003 tax return being a part of the record.

¶9 With respect to Paul's income, the court determined: "While this court recognizes that [Paul's] income has decreased since 1996, the decrease doesn't translate into a substantial change in circumstances such that the maintenance amount is unjust or inequitable." It found:

> [Paul] continues to receive $10,000 per month in salary exclusive of retirement and office expenses.…
>
> For 2001, [Paul] had W-2 income of $190,436; Form 2106 Business Expenses of $9,761; and Retirement Plan contributions of $24,500. Total disposal income of

> $205,175. He paid $65,484 in maintenance for a total adjusted disposal income of $139,691….
>
> In 2002 [Paul] had W-2 income of $121,644; Form 2106 Business Expenses of $8,549 and Retirement Plan contributions of $8,515. The total disposal income is $121,703. He paid $17,914 in maintenance for a total adjusted disposal income of $103,789.…
>
> For 2003, [Paul's] actual/projected W-2 income was $120,000; projected Form 2106 Business Expenses of $8,000; and Retirement Plan contributions of $8,500. The total disposal income was $120,500. He paid $16,839 in maintenance for a total adjusted gross income of $103,661.

¶10 The court found that Mary Jo's gross income, with real estate commissions and maintenance factored in, was $87,870 for 2001; $88,068 for 2002; and $68,438 projected for 2003. The court found that the "income earned thus far by [Mary Jo] is within the range contemplated" by the divorce court. The court also considered that when the tax effects of maintenance were considered, the changes in the parties' incomes did not translate into a substantial change in circumstances such that the maintenance formula should be modified. It ruled that Paul's decision to start a new family and increased monthly expenses "are not a basis to terminate the maintenance order."

¶11 The court further concluded that the maintenance formula was fair to Paul and there was "no demonstration of a substantial change in circumstances warranting modification of this two-tier maintenance approach." It clarified the amended judgment, ruling that the dollar for dollar offset should be taken from Mary Jo's net, rather than gross, earnings that exceed $20,000 per year.

¶12 In addition, the court rejected on hearsay grounds a real estate trade publication Paul offered into evidence to attempt to prove the unreasonableness of Mary Jo's business deductions. The court stated that it found no exception to the

hearsay rule that would justify receipt of the document and Paul "has not provided the court with a basis for receipt of the document." Paul's appeal follows.

DISCUSSION

1. Substantial Change in Financial Circumstances

¶13 Paul argues that the trial court erroneously determined there were no substantially changed financial circumstances. He contends that Mary Jo's financial circumstances have substantially improved while his have substantially worsened. Because the record supports the trial court's conclusion, we reject his argument.

¶14 In order to modify a maintenance award, the party seeking modification must demonstrate a substantial change in circumstances. WIS. STAT. § 767.32(1).[5] "[F]or purposes of evaluating a substantial change in the parties' financial circumstances … the appropriate comparison is to the set of facts that existed at the time of the most recent maintenance order …." ***Kenyon v. Kenyon***, 2004 WI 147, ¶38, 277 Wis. 2d 47, 690 N.W.2d 251. The court should compare the facts surrounding the previous order with the parties' current financial status to determine whether the moving party has established a substantial change in circumstances. ***Id.*** "[A] judge who reviews a request to modify a maintenance award should adhere to the findings of fact made by the circuit court that handled the parties' divorce proceedings." ***Rohde-Giovanni v. Baumgart***, 2004 WI 27, ¶33, 269 Wis. 2d 598, 676 N.W.2d 452. The burden is upon the party seeking modification to show that the circumstances upon which the initial order was

[5] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

based have substantially changed. ***Thies v. MacDonald***, 51 Wis. 2d 296, 301, 187 N.W.2d 186 (1971).

¶15 Our supreme court has stated that it will not disturb a circuit court's maintenance decision unless it represents an erroneous exercise of discretion. ***Rohde-Giovanni***, 269 Wis. 2d 598, ¶17. "A discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." ***Id.***, ¶¶17-18. A circuit court's exercise of discretion is erroneous if it makes factual or legal errors. ***Id.*** Accordingly,

> [t]he question of whether there has been a substantial change of circumstances presents a mixed question of fact and law. The trial court's findings of fact regarding the parties' circumstances "before" and "after" the divorce and whether a change has occurred will not be disturbed unless clearly erroneous. However, whether the change is substantial is a question of law which we review de novo.

Dahlke v. Dahlke, 2002 WI App 282, ¶8, 258 Wis. 2d 764, 654 N.W.2d 73 (citations omitted).

a. Income

¶16 Paul argues that Mary Jo's income has increased, thereby indicating a substantial change in financial circumstances. He contends that in 2002, her gross annual real estate commissions were $101,619 and her net income from real estate activities was $70,153. He claims her 2003 gross commissions were $83,248 and her net was $51,598. The record fails to support his factual assertions.

¶17 Mary Jo testified that as an independent contractor associated with a real estate firm, she pays a portion of her commissions to the firm according to a

formula based on year-to-date earnings. The commission split starts at fifty/fifty for the first $25,000 in earnings and gradually phases out at $100,000 in commissions. Mary Jo explained that the portion of the commission retained by the firm covers certain expenses the firm incurred, such as the "MLS expenses," some advertising and the "supra key" used to show houses.

¶18 After the real estate firm's portion is subtracted, Mary Jo claims additional business expenses, including office, promotion, postage, and car expenses, which she deducts on income tax return Schedule C to arrive at her net income. Thus, she testified that her gross income for 2003 was $51,599. Her financial disclosure statement revealed for the years 2000 to 2003, her average income from real estate sales was $3,474 per month.

¶19 The court found that in 2001, Mary Jo's gross real estate commissions were $22,386 and, together with maintenance, her total gross income was $87,870. In 2002, Mary Jo had gross real estate commissions of $70,154 and maintenance of $17,914, for a total gross income of $88,068. In 2003, the court projected gross real estate commissions of $51,599 and maintenance of $16,839, for a total gross income of $68,434. Thus, the court was entitled to find Mary Jo's gross earnings, other than for the year 2002, were not substantially greater than the $20,000 to $50,000 earning capacity anticipated at the time of the divorce.[6] Also, her earnings plus maintenance were less than the $93,142.07 marital standard of living attributed to each party.

[6] From 1997 to 2001, Mary Jo's Schedule C net income as reported on line twelve of her federal income tax returns was never more than $6,620.

¶20 The record also supports the court's determination regarding Paul's income. Paul continued to receive his $120,000 per year salary. While his income decreased in 2002 due to the national recession, Paul testified that his business law activity had increased during the first part of 2003. Greg Harper, the law firm's administrator, agreed and testified that Paul's chargeable hours had increased significantly in 2003, as had his collections. Paul's actual billing through December 19, 2003, was $355,532. If "things continue as they're going," he believed Paul would eliminate his debt to the firm in 2004, thus making Paul again eligible to receive special draws.[7]

¶21 Thus, the court was entitled to find that the decrease in Paul's 2002 earnings, resulting in indebtedness to his firm, was not likely to continue and that the debt would soon be eliminated. Therefore, although the parties' incomes fluctuated, the court was entitled to find that the two-tiered maintenance formula, together with the set-off provision, anticipated and adjusted for fluctuations. If Paul made no more than his base income of $120,000 in a year, the second tier (40% of special draws) remained dormant. If Mary Jo made more than $20,000 net in a year, the dollar-for-dollar setoff was activated.

¶22 Further, contrary to Paul's assertion, the divorce court did not isolate Paul's 1996 income of $233,727 to determine the parties' living standard and Paul's maintenance obligation. Instead, the divorce court considered the average earnings over the preceding seven years to determine an annual marital living standard. We agree with the court's determination that the demonstrated

[7] Although Paul continued to earn his $120,000 annual salary, Paul became indebted to his law firm because his billings brought in less than necessary to earn his salary and overhead. However, the record establishes that the debt was reduced to $19,667 at the end of October 2003 as his billings increased.

fluctuations in financial circumstances were not substantial, particularly in light of the two-tiered formula. The record supports the court's determination that the formula was not unfair to Paul and that fairness to Mary Jo remains a goal yet to be fully achieved.[8]

¶23 Paul argues, nonetheless, that the court erred "when it relied on ***Dahlke*** … for the proposition that a percentage maintenance award automatically fairly addressed any decrease in Paul's income." We disagree with Paul's characterization of the court's decision. The court cited ***Dahlke*** for the proposition that a percentage maintenance award is probably grounded more on a fairness component than a support component. It found, "[b]ecause of the length of this marriage and the disparity in incomes, this percentage component is appropriate."[9] It concluded: "There has been no demonstration of a substantial change in circumstances warranting modification of this two-tier maintenance approach."

[8] Thus, contrary to Paul's assertion, the court's decision reflects its consideration of fairness. It did not ignore the findings of fact made at the time of the divorce.

[9] The court also stated:

> The maintenance provision in the Judgment is unique. Theoretically, [Paul] does not have to pay maintenance if his income is limited to a $120,000 per year draw and [Mary Jo] makes sufficient net income over $20,000 to offset any payment of maintenance. However, there is a second and separate provision of the order that requires [Paul] to pay to [Mary Jo] 40% of any draws over and above $120,000 per year in any calendar year. This provision shall remain. There is no unfairness in such a percentage arrangement. In ***Dahlke***, 258 Wis. 2d at page 713, it is stated that a percentage aspect in a maintenance award is probably grounded more on a fairness component rather than a support component.

¶24 Contrary to Paul's suggestion, the court did not hold that a percentage order automatically addresses *any* decrease in Paul's income. Instead, it held there was no unfairness in the percentage arrangement under the facts presented. Its reliance on ***Dahlke*** for the stated proposition was correct. In ***Dahlke***, the payor's maintenance obligation was 35% of his earnings between a base of $100,000 and a cap of $568,000. ***Id.*** ***Dahlke*** noted that the percentage standard in that case was "grounded more on the fairness component of maintenance rather than the support component …." ***Id.***, ¶13. It concluded: "Although [the payor's] income has undisputedly decreased, so has his corresponding maintenance obligation." ***Id.***, ¶11.

¶25 Here, although Paul's income has decreased, so has his corresponding maintenance obligation. The record supports the finding that Paul failed to demonstrate a substantial change in circumstances such that the percentage order was unfair. The court did not suggest that a percentage order would automatically address any decrease in income, but that it did address the changes the parties experienced. Because Paul fails to show that the court erred, we sustain its ruling.

b. Expenses

¶26 Paul argues it is "the essential role of a court determining the issue of maintenance to consider the expenses of both parties" and "[t]he modification court completely abdicated its role in this regard." Paul claims the parties' financial disclosure statements do not support the continuation of maintenance.

He submits that Mary Jo's personal living expenses far exceed his.[10] He claims he "is responsible for himself and half of the expenses for his seven-year-old child … who was born prior to the divorce becoming final" and his budget is $300 less than that approved by the divorce court. He argues Mary Jo's budget includes annual trips to Europe for each of the last three years[11] and that there is "not one scintilla of evidence that Paul lives at a lavish lifestyle beyond his means."

¶27 This section of Paul's argument, consisting of three and one-half pages, contains no record citation or legal authority, thus complicating our review. *See* WIS. STAT. RULE 809.19(1)(e). Although Paul does not identify an analytical framework for this section of his brief, we assume that his intent is to demonstrate that the financial disclosure statements support his claim that a substantial change in circumstances entitles him to relief.[12]

¶28 The record fails to support his argument. As Paul acknowledges, at the August 1997 proceeding to amend the divorce judgment, Mary Jo's monthly expenses were determined to be $5,377, including $1,779 debt consolidation payments and $400 business expenses. At the 2003 modification hearing, Mary Jo's monthly personal living expenses were $5,846, a figure that includes $692

[10] Paul acknowledges that his financial disclosure statement showed total monthly expenses of $8,459, including $3,592 of debt payments and $600 of under-withholding for income taxes. His budget of $4,400 per month excludes installment debt.

[11] Mary Jo testified that she took one-week vacations in Europe in 2001, 2002, and 2003. She explained that by using frequent flier miles, they cost $1,500, $1,525, and $1,325 respectively.

[12] On the other hand, if Paul means to say that the court was required to consider the parties' living expenses to determine an appropriate maintenance amount, we agree with Mary Jo's argument that we do not reach this issue until the court finds a substantial change of financial circumstances. *See* WIS. STAT. § 767.32.

debt repayment. While certain line items in her budget have changed, her overall monthly living expenses increased $469 over the course of five years.

¶29 In August 1997, the court determined that Paul's living expenses were $6,966.[13] This included installment debt of $2,288 and business expenses of $785.52 per month. Thus, excluding debt, Paul's living expenses were found to be $3,893. Paul's 2003 financial disclosure statement, submitted at the modification hearing, showed total monthly expenses of $8,459, which includes $3,592 in debt payments and $600 of under-withholding for income taxes. Thus, his current monthly expenses, excluding debt, are $4,267, an increase of $374 per month.[14] While the parties' monthly expenses have increased somewhat over the course of five years, we agree with the court that neither party's living expenses provide a rationale to modify the maintenance formula. Paul's argument fails to provide grounds for reversal.[15]

¶30 Paul's argument that there is "not one scintilla of evidence" that he lives beyond his means does not withstand scrutiny. According to Paul's financial disclosure statement, his net monthly income is $7,866.73, but he claims monthly

[13] This section of Paul's argument neglects to say what his 1997 monthly budget was and fails to provide any record citation to assist the court in locating the information, thus complicating our review. *See* WIS. STAT. RULE 809.19(1)(e). We used the figure that the divorce court relied upon when it granted Paul's motion for reconsideration, a finding that Paul did not challenge on appeal.

[14] We note that Paul included in his 2003 monthly living expenses $220 for childcare, an item that the divorce court did not allow as an expense to detract from Mary Jo's entitlement to maintenance, a ruling not challenged on appeal.

[15] To the extent Paul's argument attempts to raise other issues with respect to personal living expenses, it lacks legal authority and is undeveloped. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (This court declines to consider arguments that are unexplained, undeveloped, or not supported by citation to authority.).

expenses of $8,459.16. While debt payments make up a large portion of his expenses, he nonetheless incurs other expenses, such as a large mortgage payment of $1,744.50 per month and "incidentals"[16] of $250 per month, resulting in greater expenses than income. Paul does not demonstrate that these expenses could not be scaled back. Thus, his own exhibit suggests he is living beyond his means.[17]

¶31 In ***Rohde-Giovanni***, 269 Wis. 2d 626, ¶43, our supreme court made the following observation:

> It is ultimately Rohde-Giovanni's decision as to how best to use her income, and we do not suggest that she should spend it differently. Nevertheless, we conclude that Judge Fiedler did not err when he stated that some problems Rohde-Giovanni was experiencing in trying to meet her budget could be alleviated if she scaled back some of her monthly expenditures.

This observation applies here. It is the parties' decision how to best use their incomes. ***Id.*** However, Paul's financial disclosure statement claims expenses exceeding his income. A significant portion of these expenses is discretionary. Thus, the court was entitled to conclude that Paul chose to live beyond his means, and some problems could be alleviated if he scaled back certain monthly expenses. The court's findings to this effect are not clearly erroneous. *See* WIS. STAT. § 805.17(2).

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[16] Incidentals include grooming, tobacco, alcohol, gifts, special occasions and donations.

[17] The court noted that this circumstance was unchanged from the time of the divorce. At the time of the divorce, the court found that although Paul earned a good salary, he "often 'borrowed from Peter to pay Paul; the marital estate was heavily burdened with debt, although both parties were employed and the marital standard of living enjoyed by the parties was a 'phantom standard.'" Therefore, the divorce court used the parties' average annual income to determine the appropriate standard of living, as opposed to evidence of their expenditures.

¶32 Next, Paul argues that the court erred because it failed to find Mary Jo's Schedule C business expenses unreasonable. The court acknowledged that some of Mary Jo's Schedule C business expenses appeared debatable, "[h]owever, this court is not a tax auditing service and will not look behind each deduction for [Paul's] Form 2106 deductions or [Mary Jo's] Schedule C deductions." The record fails to support Paul's claim of error.

¶33 For example, Paul challenges Mary Jo's claimed car expense of $9,855 in 2002 and $4,521 in 2003, arguing that using a standard mileage reimbursement of 36.5 cents per mile, Mary Jo claimed to have used her vehicle for 26,963 business miles in 2002 and 12,386 business miles in 2003. He contends that because twelve of her sixteen sales in Dane County were "within walking distance" of her home and her office, the mileage is grossly exaggerated. Paul's argument rests on an unproven premise: that Mary Jo traveled to and showed potential buyers only her own listings. Because Paul points to no evidence indicating that her business travel was so limited, we reject his argument.

¶34 Paul also challenges Mary Jo's $4,500 Schedule C expense for legal fees. He argues that "She testified that she considered the $4,500 paid to Attorney Webb's law firm to be a deductible business expense for their representation of her in these divorce proceedings." The record discloses the following testimony to which Paul refers in support of his argument that this is a "serious noncompliance with the federal income tax laws" that "cheats the United States" on these and other "bloated and exaggerated 'business expenses' Mary Jo claims."

> Q. Now, you mention that legal fees were $4,560 of that amount?
>
> A. [Mary Jo]: Correct.
>
> Q. And how do those relate to your real estate activities?

> A. [Mary Jo]: There are deductible amounts and …
>
> Q. So those are amounts that you have paid [the law firm] for representation in those proceedings?
>
> A. [Mary Jo]: I think it's lumped together legal and professional. So it includes accountant in it.
>
> Q. Well, what is the breakdown of the—you mentioned legal?
>
> A. [Mary Jo]: I did.
>
> Q. What is the amount of the legal expense?
>
> A. [Mary Jo]: About 4500.

The foregoing testimony makes no reference to divorce fees and fails to provide any basis to find that the $4,500 was not a deductible expense. Consequently, we reject Paul's argument.

¶35 Paul further claims that Mary Jo's deductions for meals, entertainment, promotion and buyer rebates were unreasonable and "completely non-business related, i.e., personal spending by Mary Jo." The record fails to support his claim. For example, Mary Jo testified that in 2002, her business expenses included $1,840 meals and entertainment, $2,483 promotion, and $2,934 buyer rebates. She explained these expenses expanded her connections to increase the potential of referrals:

> Promotion expenses would be all of the items that I used to promote myself with other individuals in the, in my circle or sphere of influence, which is including gifts, and house gifts, promotion when I have open houses, cards, flowers. There's [sic] various ways that I keep my connections …. Meals and entertainment would be, again, … with a customer, client, a friend, another colleague, people who are potential business referrals ….

¶36 It is undisputed that Mary Jo's real estate commissions increased in 2002. A reasonable fact finder could conclude that Mary Jo's increased

commissions were related to her efforts at self-promotion and expanding her network of clients and colleagues through various means, including meals, entertainment, gifts, cards and flowers. Thus, the record supports that trial court's decision that, although some of the expenses may be debatable, it need not perform an "audit" of Mary Jo's Schedule C.

¶37 Before we leave Paul's argument, we address his assertion that the court "completely abdicated" its role. A cardinal rule of effective appellate writing is to avoid disparaging the court system. ***State v. Rossmanith***, 146 Wis. 2d 89, 89, 430 N.W.2d 93 (1988). In professional endeavors, lawyers "at all times" must display "a cordial and respectful demeanor," SCR 62.02(1)(a), and refrain from "disparaging, demeaning" remarks. SCR 62.02(1)(c) and (d). In their written and spoken words, lawyers have the responsibility to display "courtesy, good manners and dignity." SCR 62.02(4). In an appellate brief that made caustic remarks about a trial court's decision, the appellant inquired whether the court of appeals "wishes to embrace this puerile ideology." ***Al Ghashiyah v. McCaughtry***, 230 Wis. 2d 587, 598 n.4, 602 N.W.2d 307 (Ct. App. 1999). We cautioned the appellant and his attorney that "rhetoric and attacks on the trial court and its reasoning are not helpful to his case ...." ***Id.***

¶38 Paul's assertion that the court "completely abdicated its role" is not helpful to his case. It is neither cordial nor respectful. It fails to demonstrate good manners and dignity. Moreover, it mischaracterizes the circuit court's thirteen-page written decision, which specifically referred to personal living expenses, stating:

> What is clear to this court is that the parties continue to live above their means as they did during the marriage. [Paul] has remarried, started a new family, moved into a large and expensive new home with a 65% ownership interest, and

> drives a late model premium automobile. [Paul's] 2003 monthly expenses are $8,459.17 compared to $7,000 in the original December 1997 order.…
>
> [Paul's] new family and his increased monthly expenses are not a basis to terminate the maintenance order.

¶39 It is unprofessional to mischaracterize the court's ruling. *See* ***Mogged v. Mogged***, 2000 WI App 39, ¶22, 233 Wis. 2d 90, 607 N.W.2d 662. While Paul is entitled to challenge fact finding, he must do so within the confines of WIS. STAT. § 805.17(2), rather than attacking the court's integrity.[18]

2. Adjustment of the calculation of Mary Jo's income

¶40 Next, Paul argues that the court had no jurisdiction to retroactively amend the maintenance offset by adjusting the calculation of Mary Jo's net income. Mary Jo disputes Paul's characterization of the court's ruling and contends that the court did not amend or modify any order. She contends the court's interpretation is consistent with earlier rulings using the parties' net incomes after business expenses and retirement contributions. We agree with Mary Jo that the record shows the court was clarifying its earlier ruling that it would use net income to calculate the offset.

¶41 To the extent Paul makes any other argument, we do not address it. Paul's six and one-half page argument on this issue contains three record citations on just one page, despite that each page contains facts, figures and dates. ***Tam v.***

[18] For example, without setting out as a separate argument challenging the court's fact finding, *see* WIS. STAT. RULE 809.19(1), or referencing a standard of review, Paul argues that his 1997 Infiniti was purchased used with over 100,000 miles. He references only his financial disclosure statement. Paul's financial disclosure statement, however, merely states that the automobile was valued at $9,500 with a $9,500 lien. It does not indicate the number of miles on the car or whether it was purchased new or used. We do not consider facts outside the record. ***Jenkins v. Sabourin***, 104 Wis. 2d 309, 313-14, 311 N.W.2d 600 (1981).

Luk, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990). Also, his entire argument contains just one legal citation, to WIS. STAT. § 767.26(1m), which does not exist. Because Paul's legal and record citations are inadequate under WIS. STAT. RULE 809.19(1)(e), we do not address it further. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463.

3. Trade Publication

¶42 Finally, Paul argues that the court erroneously rejected Exhibit 39, a ten-page photocopied excerpt from REALTOR magazine, dated June 1, 2002. The article included a business and expense survey. Paul offered it to prove that "for sales associates the median income is [$]47,000 … and the median expenses are $6,000 for those people." The trial court responded: "And my question goes to how reliable is it. … [I]s this something that was sent to 10,000 realtors and 500 sent it in, and how reliable is the sample. That's my question …." The court took the matter under advisement. Later, in its written opinion, it rejected the exhibit because Paul provided no evidentiary basis for its admissibility.[19]

¶43 Paul argues that "this published periodical of general circulation is clearly admissible" under WIS. STAT. § 908.03(17), or (18) or (24). WISCONSIN STAT. § 908.03(17) provides that "[m]arket quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations," are not excluded by the hearsay rule.

[19] Paul failed to provide record citation to the court's ultimate ruling. *See* WIS. STAT. RULE 809.19(1)(e).

¶44 Paul has the burden of showing that he brought his theories of admissibility to the trial court's attention. "[T]he appellant [must] articulate each of its theories to the trial court to preserve its right to appeal." ***State v. Rogers***, 196 Wis. 2d 817, 829, 539 N.W.2d 897 (Ct. App. 1995). "Placing the responsibility on the proponent of evidence for identifying the purpose for which the evidence is sought to be introduced, and the grounds for its admissibility, is consistent with our system of advocacy and with prior statements of this court on related evidence questions." ***State v. Friedrich***, 135 Wis. 2d 1, 13, 398 N.W.2d 763 (1987). Paul makes no showing that he directed the court's attention to the proper statutory section or grounds for admissibility. Therefore, his claim of error is not preserved.

CONCLUSION

¶45 The record fails to show that Mary Jo is capable of living at the marital standard without maintenance. We agree with the court that Paul has failed to establish a substantial change in circumstances such that the two-tiered maintenance formula should be modified. The court properly considered the parties' incomes, expenses, as well as the considerations of support and fairness to each party. Absent a substantial change in circumstances, the court correctly denied Paul's motion to terminate or modify maintenance. Paul has failed to adequately develop or preserve the other arguments he attempts to raise on appeal.[20]

[20] In his reply brief, Paul argues that Mary Jo's brief mischaracterizes the record. To the extent that either party's brief may be said to mischaracterize the record, we remind the parties that their statements of fact are not to be a "tenacious recap" of their case, ***Albrechtson v. Board of Regents***, 309 F.3d 433, 435 (7th Cir. 2002), but a fair summary of the record. *See* WIS. STAT. RULE 809.19(1).

(continued)

By the Court.—Order affirmed.

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