

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 2010

David R. Schanker
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP2875

Cir. Ct. No. 2006FA183

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

DEAN J. BAUMGARTNER,

PETITIONER-APPELLANT,

V.

MARIA A. BILOTTI,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Dean Baumgartner appeals a judgment of divorce, arguing the circuit court erroneously exercised its discretion with regard to the amount and duration of maintenance. We affirm.

¶2 Baumgartner and Maria Bilotti were married on December 8, 1995. A divorce was granted on June 19, 2008. The parties had two minor children at the time of the divorce, and Baumgartner received primary placement by stipulation. Baumgartner was forty-three years old and employed as a process engineer earning approximately \$94,000 annually, exclusive of bonuses. Bilotti was approximately forty-six years old and was not employed during the marriage. Prior to the marriage, in her best earning years she earned approximately \$13,000 as an assistant manager of a pizza parlor.

¶3 Temporary maintenance was set at \$1,980 monthly. After the final hearing, the circuit court ordered an equal property division with the exception of money Baumgartner received from the sale of an inherited cottage. The court determined Bilotti's earning capacity was \$13,000, based upon her social security records, and ordered her to pay child support in the amount of \$271 monthly, which was offset against an award of \$2,000 monthly maintenance of an indefinite duration. This appeal follows.

¶4 The award of maintenance rests within the sound discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We generally look for reasons to sustain the circuit court's discretionary decisions. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968). 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. We will sustain discretionary decisions if the court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). It need not be a lengthy process. While reasons must be stated, they need not be

exhaustive. *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2).¹

¶5 Baumgartner argues the circuit court failed to demonstrate a rational reasoning process in reaching the maintenance determination. Although Baumgartner concedes the court “mentioned each of the statutory factors,” he contends the court misapplied the factors or failed to adequately take them into account. Baumgartner also contends the court erroneously failed to consider the fairness objective of maintenance.

¶6 We are satisfied the circuit court adequately considered the statutory factors under WIS. STAT. § 767.56. The court discussed the length of the marriage.² It also recognized the physical health of the parties, including Bilotti’s medical problems.³ The court also referenced the educational levels of the parties, their earning capacities, and the speculative nature of Baumgartner’s future bonuses. It also specifically noted the infeasibility of Bilotti becoming self-sufficient at the standard of living the parties enjoyed during the marriage. The court concluded that neither party contributed substantially to the earning capacity

¹ All references to Wisconsin Statutes are to the 2007-08 version.

² Baumgartner takes issue with the circuit court’s characterization of the marriage as long term. The parties were married for approximately thirteen years. Regardless, we are not persuaded the court’s maintenance calculations were erroneously based on “the idea that this was a long term marriage.”

³ Baumgartner notes there were no medical records received into evidence or medical testimony corroborating Bilotti’s testimony concerning gastro-intestinal problems and fatigue she claimed to have suffered for several years prior to trial. The circuit court, as the ultimate arbiter of credibility, was entitled to believe Bilotti’s testimony. See *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

of the other. The court considered issues relating to the tax exemptions for the parties' dependents, and how those exemptions would benefit Baumgartner.⁴ The court also considered that Baumgartner was responsible for the additional mortgage payments until the residence could be sold. The circuit court did not misapply the statutory factors and its analysis went beyond a mere cursory review.

¶7 It is also apparent from the court's oral decision that, although not explicitly stated, fairness was a primary objective in awarding \$2,000 monthly maintenance for an indefinite period. Although the court concluded Bilotti would be unable on her own to reach the standard of living the parties enjoyed during the marriage, it emphasized the award of indefinite maintenance:

is subject to change ... of circumstances; whether she gets employed, he gets a bonus, how she's – she has a number of all sorts of things that could amount to a change of circumstances, and I realize that could change the terms of the maintenance and the amount of the maintenance, and I recognize that there are probably gonna be some changes when the house is sold and she gets a job.

¶8 The record demonstrates the court considered the proper statutory factors concerning the amount and duration of maintenance, employed a process of reasoning based upon the facts of record, and reached a conclusion a reasonable

⁴ Baumgartner contends the circuit court gave Bilotti "53% of the total net income, despite the fact that Dean has primary placement of the parties' two minor children." However, Baumgartner fails to mention the tax implications of the court's award of the dependent exemptions to Baumgartner. Moreover, the court did not impute income for purposes of determining maintenance. The court imputed income to Bilotti for the sole purpose of determining her contribution to child support. The court then stated, "I realize that she's not gonna be able to pay that so I'm going to try to account for that in a set-off against the maintenance owed" Accordingly, we conclude Baumgartner's argument that Bilotti received 53% of the net income is flawed.

judge could reach. The court's decision, as a whole, incorporates appropriate considerations and is not an erroneous exercise of discretion.

By the Court.—Judgment affirmed.

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

