COURT OF APPEALS
DECISION
DATED AND FILED

November 26, 2003

Cornelia G. Clark
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. 02-3041 **Cir. Ct. No. 91FA0002061**

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

IN RE THE MARRIAGE OF:

JULIE A. KENYON,

JOINT-PETITIONER-APPELLANT,

V.

RALPH C. KENYON,

JOINT-PETITIONER-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: MORIA KRUEGER, Judge. *Affirmed*.

Before Deininger, P.J., Dykman and Snyder, JJ.

¶1 PER CURIAM. Julie Kenyon appeals the circuit court's order denying her motion to increase maintenance. The issue is whether the circuit court misused its discretion in denying the motion. We affirm.

¶2 Julie and Ralph Kenyon were married in 1977 and divorced in 1993. Ralph was ordered to pay $866.66 per month in maintenance to Julie. In 1995, the maintenance award was modified pursuant to a mandatory review ordered by the court at the time of divorce. Ralph's obligation was decreased to $366 per month. In April 2002, Julie moved to increase maintenance to the amount paid to her in 1993. The circuit court denied the motion.

¶3 "The purpose of any maintenance adjustment is to fulfill the objective of the original judgment, which is to maintain the dependent spouse at the standard of living enjoyed during the marriage." ***Harris v. Harris***, 141 Wis. 2d 569, 577, 415 N.W.2d 586 (Ct. App. 1987). A post-divorce request for maintenance modification may be granted only if the movant shows a substantial change in the financial circumstances of the parties. ***Johnson v. Johnson***, 217 Wis. 2d 124, 127, 576 N.W.2d 585 (Ct. App. 1998). If the movant shows a substantial change of circumstances, the decision whether to modify the award is committed to the circuit court's discretion. ***Id***. A circuit court properly exercises its discretion if its decision is based on the facts appearing in the record and the appropriate and applicable law, and is a product of a rational mental process. ***Id***.

¶4 The circuit court found there was a change in circumstances because Julie's physical disabilities, when coupled with the medications she took that impaired her cognitive function, prevented her from holding sustained employment. The court nevertheless concluded that modification was not appropriate because Julie had not shown an increased need. The circuit court reasoned that, although Julie's income from her employment had gone down, her disability payments had risen and her expenses had decreased. Acknowledging that Julie's budget showed that she lived a very frugal lifestyle, and explaining that it did not think that Julie was in any way shirking, the court did not increase

maintenance because Julie had shown that she was able to live within her limited means. Noting that this was a difficult case because Julie was disabled, the court also noted that it had not intended to make Ralph provide Julie's primary source of income forever. The court sought a middle ground that addressed these concerns by ordering Ralph to continue maintenance, but not increasing it. The circuit court's decision was well explained and based on the facts of record and the applicable law. As such, it was a proper exercise of discretion. *See* ***id***.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2001-02).