**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**September 4, 2013**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2013AP116** **Cir. Ct. No. 1997FA515**

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

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**IN RE THE MARRIAGE OF:**

**JOAN J. BACHHUBER,**

**PETITIONER-APPELLANT,**

**V.**

**RAYMOND G. BACHHUBER,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Brown County: JOHN ZAKOWSKI, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Joan Bachhuber appeals a postdivorce order modifying maintenance, arguing the circuit court erroneously exercised its

discretion by reducing monthly maintenance payments and setting a termination date, despite evidence of a serious health concern. We affirm.

¶2 Joan and Raymond Bachhuber were divorced in 1998, following a twenty-four-year marriage. Ray was employed as a physician earning $271,200 annually. Joan had been suffering from systemic lupus erythematosis (SLE), a chronic disease which could lead to potentially fatal flare-ups. As a result of this disease, she was characterized as permanently disabled. Joan was receiving $600 in monthly social security and $398.68 in private disability insurance benefits.

¶3 At the final hearing, a stipulation was reached and incorporated into the divorce judgment. Joan received a somewhat greater property division, primarily because of inherited property credited to her. Ray was ordered to pay Joan an amount of child support. The parties also agreed Ray would pay 23.1% of his gross monthly income to Joan for maintenance.

¶4 In 2006, Ray filed a motion to terminate maintenance, and Joan filed a motion to increase maintenance. After the taking of some testimony, the motions were withdrawn, and no formal ruling was made. At that time, Ray was earning $358,837 annually. Joan was still permanently disabled and receiving disability benefits.

¶5 In 2007, Joan moved to Madison, and shortly thereafter began working as a nurse at St. Mary's Hospital, earning over $13,000 annually. She worked throughout the years 2008, 2009 and 2010. By 2011, her earnings had increased to $71,522, plus benefits.

¶6 In 2012, Ray again filed a motion to terminate maintenance, and Joan filed a motion to increase maintenance. After three days of trial, the circuit

court issued a decision modifying maintenance. Based upon a recommendation from Joan's treating physician that Joan work no more than twenty-four hours weekly, the court reduced maintenance to $1,625 monthly, to continue for approximately eighteen months, at which time maintenance would terminate. Joan filed a motion for reconsideration, which was denied, and this appeal follows.

¶7 Modification of maintenance is committed to the sound discretion of the circuit court. ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. 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 a reasonable judge could reach. ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987).

¶8 Modification of maintenance is allowed when there has been a substantial change in circumstances. ***Rosplock v. Rosplock***, 217 Wis. 2d 22, 32, 577 N.W.2d 32 (Ct. App. 1998). Whether there has been a substantial change in circumstances presents a mixed question of fact and law. ***Id.*** at 32-33. Whether the change is substantial is a question of law that we review independently. ***Id.*** at 33. Findings of fact will be upheld unless clearly erroneous. WIS. STAT. § 805.17(2).[1]

¶9 Here, the circuit court recognized the seriousness of Joan's SLE, but noted her hourly wage information indicated she was working an average of thirty hours per week in 2011. The court recognized there was the possibility that due to fatigue, stress or other unforeseen circumstances, flare-ups could occur which

[1] All references to the Wisconsin Statutes are to the 2011-12 version.

might significantly alter her ability to work. However, the court also considered the fact that Joan had been able to work continuously for over five years at a considerable salary. The court also noted after reviewing the medical evidence that "if Joan follows her doctor's advice and cuts back to 24 hours a week," the possibility of flare-ups should actually decrease.

¶10 The court concluded that to make the leap from permanent disability to earning $70,000 yearly "borders on a dramatic change in circumstances." The court stated:

> [I]t is not simply the fact that Joan is working but how that employment has changed her financial status which is cause for a modification. The court finds it significant that Joan made more in compensation in 2011 ($71,552) than what she received in maintenance in 1999 ($66,742) when she was still permanently disabled. Her 2011 wages were more than 85 percent of the maintenance she received in 2006 ($82,891) when she was still permanently disabled. The court believes it is not fair for someone to continue to pay the same amount of maintenance after the recipient ex-spouse finds considerable employment.

¶11 Joan argues the circuit court "relied almost entirely on the financial circumstances while paying lip service to the medical evidence." We are not persuaded. The circuit court closely reviewed the treating physician's testimony and clinical notes in determining the state of Joan's health. The court found that although Joan's SLE is a serious affliction, it can and has been controlled by the proper use of medication. Moreover, the court continued the term of maintenance for eighteen months until "Joan reaches her retirement age and is eligible for benefits. She may continue to work at that time [if] she so chooses."

¶12 Joan also argues "the law instructs that the unpredictability of serious illnesses and likelihood of recurrences at any time constitute circumstances that require prevent [sic] a court from terminating maintenance." In support of her

argument, she cites generally to ***Leighton v. Leighton***, 81 Wis. 2d 620, 261 N.W.2d 467 (1978), and ***Grace v. Grace*** 195 Wis. 2d 153, 536 N.W.2d 109 (Ct. App. 1995).[2] Joan misrepresents these cases, which do not mandate holding maintenance open when there is evidence of a serious health concern. Rather, the cases emphasize the consideration of appropriate factors and a reasoned conclusion based on the strength of the record before it. *See* ***Leighton***, 81 Wis. 2d at 631; ***Grace***, 195 Wis. 2d at 159-60.

¶13 The record in this case demonstrates the circuit court employed a process of reasoning based upon proper factors and relevant facts, and reached a reasoned conclusion. The court properly exercised its discretion.

*By the Court.*—Order affirmed.

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

[2] For example, Joan cites, "See Leighton, Grace." This fails to conform to the requirements of WIS. STAT. RULE 809.19. It should be clear to all lawyers that appellate briefs must give appropriate citation to legal authority as set forth in the Uniform System of Citation. *See* WIS. STAT. RULE 809.19(1)(e).