

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 8, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 96-2222

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF: XIAOXIA YU,

PETITIONER-RESPONDENT,

V.

JIAYOU ZHANG,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
ANGELA B. BARTELL, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

PER CURIAM. Jiayou Zhang appeals from a judgment divorcing him from Xioxia Yu. He argues that: (1) the judgment was unfairly obtained; (2) the parties' circumstances have changed; and (3) the circuit court erred in requiring him to maintain \$50,000 in life insurance with Yu as the beneficiary, in requiring him to pay Yu \$1,250 per month in maintenance, and in requiring his

contribution to Yu's attorney's fees. We conclude that the circuit court properly exercised its discretion and therefore affirm.

BACKGROUND

Zhang and Yu were married in 1986, in Peking, China. They have apparently resided in the United States since late in that year, when they registered their marriage in Austin, Texas. Zhang has a Ph. D., is employed in a tenure track position at the University of Kentucky, and earns over \$50,000 in gross wages per year. Yu has a Chinese high school degree, speaks little English, and during the marriage was employed as a waitress in a Chinese restaurant and as a homemaker. Her post-marriage plans at the time of the divorce were to improve her English and to enroll as a full-time student in classes that would eventually result in obtaining a nursing or pharmacy degree. Zhang and Yu have two minor children, David and George, who reside full time with Zhang in Kentucky, with placement of about sixty days per year with Yu in Madison, Wisconsin.

STANDARD OF REVIEW

The test of the amount or time limitation for the payment of maintenance is a matter of trial court discretion. *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981). Discretionary decisions will be reviewed to determine whether they are 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.*

ANALYSIS

Many of Zhang's arguments boil down to an assertion that the parties' circumstances have changed since the time of the divorce. He maintains that he has little money and is deeply in debt. He also argues that Yu does not appear to be engaged in full-time scholarship, pointing emphatically to those portions of the divorce decree that hold the issues of maintenance and child support open in the event Yu is not engaged in full-time study.

These arguments are not properly before this court. We are a reviewing court, not a fact-finding court. *See Wurtz v. Fleischman*, 97 Wis.2d 100, 107 n.3, 293 N.W.2d 155, 159 (1980). If Zhang wishes to present evidence about Yu's current circumstances or his change in financial circumstances, he must present these issues to the circuit court in a motion to modify the child support or maintenance provisions of the divorce judgment. *See, e.g.*, § 767.32, STATS. We do not consider these matters further.

Zhang also argues that the judgment was unfairly obtained. He complains of "tricks" played by opposing counsel. Having carefully reviewed the entire record, we conclude that the circuit court did not err in observing that cultural barriers made communication difficult in this matter, and the fact that Zhang appeared *pro se* did not help this situation. In any event, our review of the record does not support an assertion that "tricks" were played upon Zhang by opposing counsel. Specifically, Zhang testified in open court that he agreed that a partial marital settlement had resolved all issues other than child support, maintenance payments (including an insurance obligation in connection with the maintenance provision), and the responsibility for legal fees. Because most issues between the parties were resolved by stipulation, the course of dealing of the

parties on contested issues all occurred in open court, and no evidence of “tricks” appears.

Zhang argues that the circuit court erred by requiring him to maintain \$50,000 in life insurance with Yu as the beneficiary. He argues that because he has to maintain so much life insurance for Yu’s benefit, he is able to maintain less for the children’s benefit. Yet, Zhang argues, the children require more life insurance benefits than Yu because they would be more affected by his death. Zhang therefore concludes that the order is in error because it favors the less needy ex-wife at the expense of the more needy minor children.

As stated above, maintenance is a matter of discretion with the circuit court. The court here specifically noted Yu’s inability to provide for herself and gave proper reasons on the record for requiring Zhang to maintain a \$50,000 policy to secure a potential debt of over \$100,000 (the sum of all the maintenance payments ordered). We cannot say that the court erred in the exercise of its discretion in implementing this requirement, in light of Yu’s circumstances.¹

Zhang argues that the court erred in requiring him to pay Yu \$1,250 per month in maintenance and in requiring him to contribute to Yu’s attorney’s fees. However, a good deal of this argument focuses on Yu’s current circumstances. As noted above, the issue of Yu’s circumstances as they have changed since the judgment is not properly before this court.

¹ Further, if Zhang should die, Yu would be left with sole legal custody of the children, as the parties are now in joint legal custody. Therefore, Zhang’s scenario—that the children are more needy than Yu—invites this court to make a false split between parties whose interests would be analogous in the case of Zhang’s death.

Zhang may be arguing that a \$1,250 monthly maintenance payment and a contribution to fees is excessive. But at the time of the divorce, Yu was a full-time student unable to speak passable English and therefore incapable of supporting herself in any advanced position. We therefore cannot say that the circuit court misused its discretion. The court noted that Zhang had increased Yu's legal expenses by overtrying the case. The court also noted Zhang's superior earning power and Yu's meager earning power, expenses and position as a student. While the sum of maintenance awarded or the lack of child support payable by Yu may not be decisions that this court would have made in light of the length of the marriage or Yu's proven earning capacity, our inclinations are not the test. *See Sentry Ins. v. Royal Ins. Co.*, 196 Wis.2d 907, 914, 539 N.W.2d 911, 914 (Ct. App. 1995). Further, as Zhang has correctly noted, these matters have been held open for possible future modification.

In sum, we cannot say that the circuit court failed to consider the relevant facts and relevant law to come to a reasonable decision. We therefore affirm.

By the Court.—Judgment affirmed.

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

