

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 21, 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. 97-0301

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

TERRANCE J. OSTRANDER,

PETITIONER-APPELLANT,

V.

MARY JANE OSTRANDER,

RESPONDENT-DEFENDANT.

APPEAL from an order of the circuit court for Manitowoc County:
FRED H. HAZLEWOOD, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Nettesheim, JJ.

PER CURIAM. Terrance and Mary Jane Ostrander were divorced pursuant to a judgment entered in the trial court in July 1996. The judgment required Terrance to pay maintenance of \$750 per month to Mary Jane.

In September 1996, Terrance filed a motion seeking termination of maintenance payments. Although a family court commissioner subsequently ordered the suspension of maintenance, the trial court vacated that order. The trial court found that while a change in Mary Jane's financial circumstances had occurred, it warranted a reduction of maintenance to \$650 per month rather than a termination of maintenance. Terrance appeals from the trial court's order. We affirm.

A motion for modification of a maintenance award is addressed to the discretion of the trial court. *See Haeuser v. Haeuser*, 200 Wis.2d 750, 764, 548 N.W.2d 535, 541 (Ct. App. 1996). However, the trial court may not modify the maintenance award except upon a positive showing of a change of circumstances. *See id.* at 764, 548 N.W.2d at 541-42. The change must be substantial and relate to the financial circumstances of the parties. *See id.* at 764, 548 N.W.2d at 542. The burden of establishing grounds for modification is on the party seeking relief. *See id.*

We generally look for reasons to sustain a trial court's discretionary decision. *See id.* at 765, 548 N.W.2d at 542. The trial court's decision will be sustained if the record demonstrates that it undertook a reasonable inquiry and examination of the facts and had a reasonable basis for its decision. *See id.* In addition, we may not set aside the trial court's findings of fact unless they are clearly erroneous. *See id.* at 766, 548 N.W.2d at 542.

Based on the undisputed evidence that Mary Jane had been unemployed at the time of the parties' divorce but was now working full time with a gross income of \$22,700 per year, the trial court found that a substantial change in her financial circumstances had occurred. However, evidence also indicated

that the parties' children were ages three and five at the time of the hearing on modification. The trial court found that Mary Jane incurred child care expenses of approximately \$200 per week for the children's care while at work. Based on the substantial expenses incurred by her to care for them while working, it reasonably concluded that termination of maintenance payments was unwarranted. However, in light of the increase in Mary Jane's income, it determined that a reduction in the maintenance award from \$750 to \$650 per month was appropriate.

The trial court arrived at the amount of the reduction after finding that Terrance had an annual gross income of approximately \$74,000, representing 77% of the parties' combined total income. Because these factual findings are not clearly erroneous, they cannot be disturbed by this court. Based on its finding that Terrance earned 77% of the parties' total income, the trial court required him to pay approximately 77% of the child care expenses incurred by Mary Jane while working, or \$650 per month.

No basis exists for this court to conclude that the trial court's analysis and conclusions are unreasonable. While Terrance objects that the trial court is requiring him to pay additional child support in the guise of maintenance, this argument ignores the fact that the child care costs are an additional debt incurred by Mary Jane for which she is personally liable, no different than a party's rent, mortgage or car payment. While these costs may relate to the children, they were not contemplated when maintenance and child support were originally set because Mary Jane was not working at the time of the divorce and did not have these expenses. They are now additional expenses reasonably incurred by her and cannot be ignored when her additional income is considered.

Terrance also argues that continued maintenance payments are unreasonable because Mary Jane is limiting her work to forty hours per week even when overtime is available to her. Based on Mary Jane's child care responsibilities and primary physical placement of the parties' daughters, no basis exists for this court to conclude that the trial court acted unreasonably in failing to further reduce maintenance based on potentially available overtime work.

By the Court.—Order affirmed.

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

