

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 7, 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. 97-2777-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

CHARLES MICHAEL KEYS,

PETITIONER-RESPONDENT,

v.

BONNI JO KEYS,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:

RAYMOND THUMS, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Bonni Keys appeals her two-year \$500 monthly maintenance award. She argues that the award was inadequate, in light of the disparity in earning capacities and the resulting reduction in her lifestyle. She has

an earning capacity ranging from \$13,500 to \$17,000 annually. Charles earns up to \$65,000 annually. While married, they admittedly lived beyond their income as shown by their filing of a bankruptcy petition for relief under a ch. 7 bankruptcy proceeding.

The trial court made a discretionary decision, *see Haugan v. Haugan*, 117 Wis.2d 200, 215, 343 N.W.2d 796, 804 (1984), which we must uphold if reasonable, regardless of whether we agree with the award. *See Independent Milk Producers Co-op v. Stoffel*, 102 Wis.2d 1, 12, 298 N.W.2d 102, 107 (Ct. App. 1980). We reject Bonni's arguments and affirm the award.¹

Whether to award maintenance and the duration and amount thereof if an award is to be made are matters committed to the sound discretion of the trial court. *Bahr v. Bahr*, 107 Wis.2d 72, 77, 318 N.W.2d 391, 395 (1982). Generally, we look for reasons to sustain the trial court's discretionary decision. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis.2d 656, 662, 158 N.W.2d 318, 320 (1968). Because the exercise of discretion "is not the equivalent of unfettered decision-making," in order to sustain a discretionary determination we must be able to see that the court made a "reasoned application of ... the appropriate legal standard[s] to the relevant facts in the case." *Hedtcke v. Sentry Ins. Co.*, 109 Wis.2d 461, 471, 326 N.W.2d 727, 732 (1982) (*quoting Hartung v. Hartung*, 102 Wis.2d 58,

¹ This is an expedited appeal under RULE 809.17, STATS.

66, 306 N.W.2d 16, 20 (1981)). Thus, "if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision," we will affirm. *Prahl v. Brosamle*, 142 Wis.2d 658, 667, 420 N.W.2d 372, 376 (Ct. App. 1987).

Bonni has cited several reasons why she believes the maintenance award deviates from the standards in *LaRocque v. LaRocque*, 139 Wis.2d 23, 406 N.W.2d 736 (1987), favoring continuation of the existing marital standard of living. For example, Bonni was unemployed while Charles made \$65,000 annually and she no longer has Charles's health insurance. She claims that she cannot support herself on the \$500 monthly maintenance and her part-time job of two days per week. She cites examples of having to purchase clothing at less expensive stores, living in less expensive housing and no longer owning a car. She admitted, however, that her expenses were inflated by around \$400, but that her monthly living expenses would be \$1,345.

We cannot say that the trial court misused its discretion. The parties did have disparate earning capacities, but this is not determinative. The trial court considered her reasonable living expenses of \$1,345 and, after considering her present earnings as well as her earning capacity, concluded that under either scenario, her income would exceed her budgeted expenses. The court also considered the fact that their marriage of nine years was relatively short, but an award of some minimum maintenance was necessary to allow her to obtain

improved employment in order to obtain a standard of living reasonably comparable to that which should have been enjoyed during their marriage. The court commented that because they lived beyond their means during their marriage, neither would be able to reach the actual standard of living they had during their marriage.

The trial court also found that Charles's higher earnings were the result of his own efforts, not Bonni's, and concluded that these factors, taken together, reduced the share of Charles's earnings Bonni could equitably claim. It also rejected Bonni's demand that it employ the *LaRocque* standards for her comparatively short-term marriage to force Charles to continue to fund 100% of her former, higher-spending lifestyle. Instead, the trial court could reasonably conclude that the equities weighed in favor of a limited award for a limited term. *See Kennedy v. Kennedy*, 145 Wis.2d 219, 223, 426 N.W.2d 85, 87 (Ct. App. 1988). Under these circumstances, we cannot conclude that the trial court's \$500 monthly maintenance award for a two-year term was unreasonable.

By the Court.—Judgment affirmed.

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

