

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 28, 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. 97-3824-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

BERNADINE L. ROSENOW,

PETITIONER-RESPONDENT,

v.

JAMES F. ROSENOW,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
JACQUELINE R. ERWIN, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Roggensack, J.

PER CURIAM. James Rosenow appeals from a judgment divorcing him from Bernadine Rosenow. The issue is whether the trial court

properly awarded Bernadine an indefinite term of maintenance in the amount of \$1,000 per month. We affirm the trial court's exercise of discretion on this issue.¹

The parties divorced after fifteen years of marriage. At the time of trial, Bernadine earned \$25,000 per year in salary and could expect an additional \$9,000 in investment income per year from assets awarded in the divorce. James earned \$96,000 per year plus annual bonuses ranging from \$8,000 to \$24,000. Both parties were in good health, and there were no children of the marriage.

The trial court applied the following analysis to the parties' circumstances.

The nature of the marriage, never a full economic partnership, and the equal property division, providing interest income to [Bernadine] and made regardless of the substantially larger contribution by [James], outweigh considerations of the disparity in income and length of the marriage. [Bernadine] has not sacrificed her earning capacity during the marriage nor did her efforts increase [James's] earning capacity and, therefore, disparity in income does not, standing alone, mandate a maintenance award. On the other hand, [James's] income has increased dramatically in recent years (now quadruple that of [Bernadine]), he has [the] ability to contribute to [Bernadine's] income and she has budgetary needs not covered by her wages alone.... The Marriage of Gerth, 159 Wis.2d 678, 465 N.W.2d 507, provides guidance under these facts. The Court also considers that significant additional income will become available to ... [Bernadine] via [James's] pension plan and social security benefits and that the assets assigned to [James] are currently unavailable to him without significant penalty.

Consequently, the court ordered James to pay \$1,000 per month maintenance and made the award indefinite. James challenges both the amount and its indefinite length.

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

The determination of the amount and duration of maintenance rests within the sound discretion of the trial court and will not be disturbed absent an erroneous exercise of that discretion. *LaRocque v. LaRocque*, 139 Wis.2d 23, 27, 406 N.W.2d 736, 737 (1987). An erroneous exercise of discretion occurs “when the trial court has failed to consider the proper factors, has based the award upon a factual error, or when the award itself was, under the circumstances, either excessive or inadequate.” *DeLaMatter v. DeLaMatter*, 151 Wis.2d 576, 582-83, 445 N.W.2d 676, 679 (Ct. App. 1989). Therefore, the “trial court’s decision must ‘be 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.’” *Trieschmann v. Trieschmann*, 178 Wis.2d 538, 541-542, 504 N.W.2d 433, 434 (Ct. App. 1993) (quoted source omitted).

The dual objectives of maintenance are support and fairness. *LaRocque*, 139 Wis.2d at 32-33, 406 N.W.2d at 740. The support objective is intended to maintain the recipient spouse in accordance with the needs and the earning capacities of the parties. *Id.* The fairness objective is meant to ensure a fair and equitable arrangement in each case. *Id.*

The maintenance award was a proper exercise of the trial court’s discretion. As the trial court noted, an award of maintenance was not necessary to provide a fair and equitable arrangement between the parties. However, as noted, maintenance also has a support objective. The award of \$12,000 per year in maintenance enhances Bernadine’s ability to live within her budget because her income from wages alone is inadequate to meet her needs. In contrast, it reduces James’s gross income by roughly eleven per cent, assuming wages and a bonus totaling \$110,000—which is less than his last two reported years of income—and

constitutes money that is not necessary to support his accustomed lifestyle or to meet his budgetary needs. Under these circumstances the proportionately small maintenance award was reasonable. Additionally, the trial court's finding that Bernadine has reached her maximum earning capacity is not clearly erroneous. The trial court could therefore reasonably determine that Bernadine would require maintenance for an indefinite period.

By the Court.—Judgment affirmed.

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

