

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 5, 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. 98-0767

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

MARLENE A. FREITAG,

PETITIONER-RESPONDENT,

V.

SCOTT D. FREITAG,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
MICHAEL NOWAKOWSKI, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

PER CURIAM. Scott Freitag appeals the judgment divorcing him from Marlene Freitag. The trial court awarded limited-term maintenance to Marlene, ordered Scott to maintain her as a beneficiary on his life insurance

policy, and excluded Scott's inherited property from the marital estate. On appeal Scott challenges certain aspects of those rulings. We affirm.

The parties were married seventeen years. At the time of divorce, Scott, thirty-eight, earned \$4,450 per month as a farmer. Marlene, forty, earned \$1,473 per month as a baker. Both were in good health. It is undisputed, as the trial court noted, that during the marriage

[Marlene] sacrificed any advancement of her employment skills and marketable skills in the community and in the job market in favor of being a full time mother and wife and farm wife. The end result is that she finds herself on today's date with only entry-level skills at age 41 and without the ability to support herself or her children at a level that would come even close to that which she enjoyed during the term of the marriage, in no small part because of her contributions to it.

The parties stipulated that Marlene would continue to provide primary care for the couple's four children, then aged sixteen, fourteen, twelve and three.

Scott agreed that Marlene was entitled to some maintenance in view of her sacrifices and contributions, and the trial court awarded her \$500 per month for six years, and \$1,000 per month for the ensuing six years. The court reasoned that twelve years reflected the moderate length of the marriage and should allow Marlene to increase her earning capacity enough to support herself. The court added that the increase to \$1,000 per month after six years would allow Marlene to meet her needs after Scott's child support obligations substantially dropped when only one minor child remained with Marlene. The trial court stated:

In short, twelve years provides a reasonable time within which Marlene can become wholly self-supporting by enhancing her own income, by utilizing the property division award made to her and by enjoying the decreased financial responsibilities of her children. It is likewise a

fair time period for Scott to assist Marlene and he will have the capacity to do so.

Additionally, the court ordered Scott to maintain Marlene as a one-half beneficiary, and the children as beneficiaries on the other half of his \$300,000 life insurance policy, until his child support and maintenance obligations terminated.

Also disputed was the value of real estate Scott inherited in 1980, which was then worth \$18,800. The value of that property was substantially increased by Scott's and Marlene's joint effort to rebuild a poorly maintained house, and by the addition of various outbuildings and silos. Scott contended that it was also substantially increased by market forces, and that this increase should accrue to him. However, the trial court found that Scott failed to produce evidence showing a distinction between the market appreciation and the value of the improvements, and therefore excluded from the marital property only the original \$18,800 value. However, to reflect the assistance provided by that inheritance in producing the parties subsequent assets, Scott received fifty-five percent of the net marital estate of \$262,000.

On appeal Scott challenges the extension of maintenance beyond six years, and the increase to \$1,000 per month for that extended period. Next, he contends that the trial court erred by requiring him to maintain Marlene as a beneficiary of \$150,000 worth of life insurance, when his total maintenance obligation to her only amounted to \$108,000 at its highest point. Finally, he contends that he was entitled to a higher valuation on his excluded inheritance.

Dividing the marital estate and awarding maintenance are matters within the trial court's discretion. See *Haugan v. Haugan*, 117 Wis.2d 200, 215,

343 N.W.2d 796, 804 (1984). To properly exercise its discretion, the trial court must articulate its reasoning and must rely on facts of record and the proper legal standards to reach a reasonable determination. *See id.* at 215-16, 343 N.W.2d at 804. And, while this court may have reached a different result than did the trial court, that is not the test; it is enough that a reasonable judge could have reached the result that was ordered. *See Schneller v. St. Mary's Hosp. Med. Ctr.*, 155 Wis.2d 365, 376, 455 N.W.2d 250, 255 (Ct. App. 1990). In awarding maintenance the court must consider the needs and earning capacities of the parties, and must insure a fair and equitable financial arrangement between them. *See LaRocque v. LaRocque*, 139 Wis.2d 23, 32-33, 406 N.W.2d 736, 740 (1987).

The trial court did not erroneously exercise its discretion by awarding Marlene twelve years of maintenance. Scott contends that six years was long enough for Marlene to develop and improve her employment skills so that she could comfortably support herself. However, as Marlene points out, she will have substantial childcare responsibilities during that six years, while continuing to work full-time as well. There was no evidence to show that Marlene could substantially increase her earning capacity through training or otherwise at the same time. Under those circumstances, the trial court reasonably concluded that Marlene's need for maintenance would extend for a longer period. Furthermore, in settling on twelve years, the trial court considered the length of the marriage, the parties earning capacities, their custodial responsibilities, the length of time necessary for Marlene to become self-supporting, and her contribution to Scott's earning capacity. These are all proper factors to consider under § 767.26, STATS., and the trial court explained its reliance on them in the record.

The trial court also did not erroneously exercise its discretion by increasing the award to \$1,000 after six years. Scott contends that the trial court

improperly used maintenance to compensate for the anticipated reduction in Marlene's child support after three of the four children turned eighteen. We disagree. Scott cites no authority for the proposition that the trial court cannot consider Marlene's increased need, and Scott's increased ability to pay, at a time when child support is substantially reduced. As Scott notes, maintenance looks to the relative positions of the former spouses. *See Cook v. Cook*, 208 Wis.2d 166, 180, 560 N.W.2d 246, 252 (1997). That is what the trial court did here, and the resulting \$1,000 per month for the second six years is not excessive, given their anticipated relative positions at that time. If circumstances change significantly during the period for which maintenance was awarded, Scott may move for an appropriate modification.

The trial court also did not err when it ordered Scott to retain Marlene as the beneficiary on his insurance policy. The order does not, as Scott contends, separately insure the maintenance payments for \$150,000 and the child support for \$150,000. We construe it to insure both obligations together, with both the children and Marlene as beneficiaries, until Scott's obligations terminate. The insurance provision, like the maintenance provision, does not constitute an erroneous exercise of discretion.

Finally, we cannot conclude that the trial court erred in valuing Scott's inheritance. Scott asked the court to credit him with the market appreciation of the inherited property since 1980. The trial court declined, finding that the evidence did not allow it to calculate a value for that appreciation. Scott disagrees, citing his estimate of the value of the improvements to the property, subtracted from the current total value. However, Scott conceded that he based the estimate on his recollection of out-of-pocket expenses for materials, with no consideration given to the cost of his and Marlene's labor. Additionally, he valued

two relatively new silos on the property at a small fraction of their installment cost. The trial court is the ultimate arbiter of the weight and credibility it gives to the evidence. *See L.M.S. v. S.L.S.*, 105 Wis.2d 118, 120, 312 N.W.2d 853, 854 (Ct. App. 1981). We will not reverse its decision to disregard the testimony and evidence described above. Without it, Scott has not satisfied his burden to prove the enhanced valuation he claimed.

By the Court.—Judgment affirmed.

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

