

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 6, 2000

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 WIS. STAT. § 808.10 and WIS. STAT. RULE 809.62.

No. 99-1404-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

THERESA ANN JOHNSON,

PETITIONER-APPELLANT,

V.

GARETH R. JOHNSON,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Reversed and cause remanded.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Theresa Ann Johnson appeals a judgment divorcing her from Gareth Johnson. The issue is whether the trial court properly exercised its discretion when it awarded her \$1,000 per month in maintenance

until Gareth retires. We reverse and remand for a redetermination of the maintenance award.¹

¶2 Gareth, age fifty-two, and Theresa, age forty-nine, were married for twenty-eight years. At the time of the divorce, Gareth received a gross income of \$5,080 per month, and Theresa received social security and a disability pension totaling \$1,418 per month. Gareth's father resided with him and paid rent, as well.

¶3 Both parties submitted budgets with expenses exceeding \$3,000 per month. It was calculated that a monthly maintenance payment of \$1,609 would equalize the parties' net income. Theresa asked for \$1,250 to \$1,500 in maintenance per month. Gareth offered \$500 per month. The trial court ruled that "because of the fact that this is a long-term marriage and that [Theresa] is somewhat disabled, I am going to order that the sum of \$1,000 a month for maintenance be made. However, that is only until Mr. Johnson retires ... that will be reviewed upon his retirement."

¶4 The amount and duration of maintenance is discretionary, and we will not reverse an award absent an abuse of discretion. *See LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987). An abuse 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 (Ct. App. 1989) (citation omitted). The "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

¹ This is an expedited appeal under WIS. STAT. RULE 809.17.

a reasoned and reasonable determination.”” *Trieschmann v. Trieschmann*, 178 Wis. 2d 538, 541-42, 504 N.W.2d 433 (Ct. App. 1993) (citation omitted).

¶5 The dual objectives of maintenance are support and fairness. *See LaRocque*, 139 Wis. 2d at 32-33. The support objective seeks to maintain “the recipient spouse in accordance with the needs and earning capacities of the parties.” *Id.* The fairness objective seeks to “ensure a fair and equitable financial arrangement ... in each individual case. *Id.* Thus, maintenance is to be calculated not at “bare subsistence levels,” *Forester v. Forester*, 174 Wis. 2d 78, 89, 496 N.W.2d 771 (Ct. App. 1993), but at the standard of living the parties enjoyed in the years immediately preceding the divorce. *See LaRocque*, 139 Wis. 2d at 36. For long marriages, the trial court should begin its maintenance analysis with an equal division of the total earnings of both parties. *See Bahr v. Bahr*, 107 Wis. 2d 72, 85, 318 N.W.2d 391 (1982).

¶6 The trial court erroneously exercised its discretion by awarding Theresa \$1,000 per month without adequate explanation. According to Theresa’s calculation, the award left Gareth with a monthly net income of \$2,879, some \$100 to \$600 short of his monthly expenses, depending on whether certain disputed items were included. It provided Theresa with a monthly net income of \$2,075, \$1,000 short of her budgeted expenses. The trial court provided no explanation for the discrepancy, nor stated why the award nevertheless satisfied the objectives of fairness and support. Although Gareth argues that Theresa’s budget included exaggerated, speculative and nonexistent expenses, the trial court made no finding as to either party’s budget figures. We therefore cannot sustain the maintenance award on the basis of the parties’ budgets because we cannot find facts nor make determinations as to weight and credibility of the evidence. *See Wurtz v. Fleischman*, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155 (1980).

¶7 In *Bahr*, the supreme court could not resolve the “nagging question” of why the trial court’s maintenance award was proper under the particular facts and circumstances. See *Bahr*, 107 Wis. 2d at 82. We have the same nagging question in this case and similarly cannot resolve it. “[F]or us to properly defer to the trial court’s discretion, the court must illuminate its reasoning in reaching the [maintenance] award.” *Id.* at 84. We therefore remand for reconsideration of maintenance under the law applicable to long marriages and under the particular facts and circumstances of this case, with a reasoned explanation of the resulting award.

¶8 Theresa raised the additional issue whether the trial court accurately described her as “somewhat disabled” rather than “totally disabled.” Theresa’s inability to earn any income was not in dispute and we do not construe the trial court’s description of her as a factor limiting the amount of maintenance awarded.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

