

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 13, 2000

Cornelia G. Clark
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 RULE 809.62.

No. 99-2732

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

DEBORAH A. SCHUMAKER,

PETITIONER-RESPONDENT,

V.

HOWARD D. SCHUMAKER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

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

¶1 PER CURIAM. Howard Schumaker appeals from a judgment divorcing him from Deborah Schumaker. The issues are whether the trial court properly determined both the amount and duration of Deborah's maintenance

award, and whether the court erred by signing and entering the judgment without responding when Howard objected to its terms. We affirm.

¶2 Howard and Deborah, both in their late thirties, divorced after sixteen years of marriage. Deborah received physical placement of the parties' three children. Howard's gross income was \$175,000 per year, while Deborah earned \$16,000 per year in a part-time position. She was in good health and Howard suffered some ailments that the trial court found might minimally affect his income in the future. Howard agreed to pay child support under the percentage standards.

¶3 The trial court concluded that Deborah was entitled to maintenance, and calculated her award as follows. It determined that Howard had a gross income of \$124,000 per year, after deducting child support, and Deborah had an earning capacity, available to her in six months, of about \$4,700 per year after child support. The court then subtracted the estimated tax obligation of each party from these amounts, and determined that each party should receive roughly one-half of the remaining combined total. The resulting award of \$1,200 per month to Deborah was to begin six months after the divorce and last for fifteen years. For the first six months Deborah was awarded \$2,500 per month to support her while she obtained full-time work.

¶4 Counsel for Deborah prepared a draft findings of fact, conclusions of law and judgment and presented it for the trial court's signature. The document considerably elaborated on the reasons the court gave orally for awarding maintenance as it did. Howard wrote a letter to the court objecting to the written modifications, and identifying what he described as clear errors in the draft. The trial court signed the document without addressing Howard's objections. On

appeal Howard contends that the amount and length of the \$1,200 per month maintenance award are excessive. He does not challenge the award of \$2,500 for the first six months after the divorce. He also contends that the judgment should be amended because the trial court signed it without addressing his objections.

¶5 Determining the amount and duration of maintenance is a matter for the trial's court discretion, and we will not reverse absent an erroneous exercise of that discretion. See *LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987). A trial court erroneously exercises its discretion when it fails to consider the proper factors, as set forth in WIS. STAT. § 767.26 (1997-98), bases the award on incorrect facts, or awards an excessive or inadequate amount. See *DeLaMatter v. DeLaMatter*, 151 Wis. 2d 576, 582-83, 445 N.W.2d 676 (Ct. App. 1989). The dual objectives of maintenance are support and fairness. See *LaRocque*, 139 Wis. 2d at 32-33. The support objective is to maintain “the recipient spouse in accordance with the needs and earning capacities of the parties.” *Id.* The fairness objective is meant to “ensure a fair and equitable financial arrangement ... in each individual case.” *Id.* Thus, maintenance is to be calculated not at bare subsistence levels, see *Forester v. Forester*, 174 Wis. 2d 78, 89, 496 N.W.2d 771 (Ct. App. 1993), but at a standard of living the parties enjoyed in the years immediately preceding the divorce. See *LaRocque*, 139 Wis. 2d at 36. In determining the amount of maintenance in a long marriage, the trial court should begin 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 reasonably exercised its discretion by awarding Deborah \$1,200 per month for fifteen years. The trial court noted Deborah's substantial contribution to Howard's medical education and the high income that resulted from it. There is no dispute that she was an equal contributor to the

marriage in all other respects. Given those facts and the length of the marriage, the award of roughly half the potential income to Deborah, diminishing over fifteen years to a significantly smaller share, reasonably satisfies the fairness component of maintenance. Additionally, the \$1,200 per month adequately but not excessively supports Deborah without imposing hardship on Howard. If Deborah works to her capacity, she will have about \$7,800 per month to support herself and the three children, while Howard will have about \$5,00 per month to provide for his own needs. As noted, when each child turns eighteen Howard's available income will increase and Deborah's will decrease. The trial court's determination therefore reasonably addresses the support components of maintenance as well.

¶7 The trial court had no obligation to respond to Howard's objections to the proposed findings of fact, conclusions of law and judgment. Howard presented them in the form of a letter addressed to the presiding judge. No authority exists for the proposition that the trial court had any duty to address or even consider that letter. If Howard was aggrieved by the resulting findings and conclusions, his remedy was to challenge them on appeal, not to challenge the process by which they became effective.

By the Court.—Judgment affirmed.

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

